IN-DEPTH

International Capital Markets

MEXICO

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In-Depth: International Capital Markets (formerly The International Capital Markets Review) is an incisive overview of the legal and regulatory frameworks governing the capital markets in major jurisdictions worldwide. It offers practical guidance on a range of key issues, including the regulators' recent enforcement activities, prospectus requirements and other mandatory disclosures, tax considerations and much more.

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Mexico

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Summary

Introduction

The Mexican securities regulatory framework is comprehensive and includes federal regulations, general laws and specific administrative regulations applicable to capital market participants, specific corporate types, corporate governance requirements applicable to listed securities and public companies, specific Mexican instruments, public and private offerings, disclosure obligations, penalties and fines.

The National Banking and Securities Commission (CNBV) is the central securities and banking regulator in Mexico and oversees the two Mexican stock exchanges – Bolsa Mexicana de Valores (BMV) and Bolsa Institucional de Valores (BIVA) (jointly, Stock Exchange) – and all other capital market participants, such as underwriters, broker dealers, issuers and custodians. Key capital market statutes include the Securities Market Law, which provides the general operational framework for securities-related commercial acts, and the general rules and regulations issued by the CNBV, Mexico's Central Bank – Banco de México – (Central Bank) and the Stock Exchange, which include:

1. general regulations applicable to issuers and other participants of the securities market (General Provisions);
2. BMV internal regulations;
3. BIVA internal regulations;
4. Indeval (the central securities depository for the Mexican securities market) internal regulations;
5. general regulations applicable to stock exchanges;
6. general regulations applicable to broker-dealers; and
7. general regulations applicable to entities and issuers regulated by the CNBV that contract external audit services for basic financial statements.

The General Law of Negotiable Instruments and Credit Transactions provides the regulatory regime applicable to, among other matters, securities, transactions with securities and securities holders' meetings, and sets forth the rights and available remedies for securities holders. The Law also governs the special purpose vehicle that is most commonly used in securitisation transactions, the Mexican trust and trust certificates issued thereunder, which are securities used in many Mexican structured finance transactions and are also regulated under the Securities Market Law as fiduciary stock certificates. Separate legal frameworks that may be relevant to consider when working on a capital markets transaction include the laws and regulations applicable to the Mexican pension funds and the General Provisions applicable to securities transactions by directors, officers or employees of financial entities and other supervised persons.

Other legislative and regulatory regimes may apply, depending on the type of underlying assets involved, for example civil legislation when dealing with real estate, leases or mortgages, as well as special requirements and formalities for the transfer of certain types of receivables.

The General Provisions, which also apply to securitisation transactions, are considered the most important secondary rules relating to securities. Further regulations enacted by the CNBV and the corresponding Stock Exchange may result in being applicable to public offerings.

The main finance regulator in Mexico is the Ministry of Finance and Public Credit (Ministry of Finance). The Ministry of Finance is responsible, among other matters, for facilitating transactions and promoting the development, expansion and competitiveness of the market. The Ministry of Finance acts through subordinated entities under its control, such as the CNBV, which is the main regulator of the securities market. The CNBV has broad supervision and enforcement powers in connection with publicly issued securities. Some of its most important powers include:

1. authorisation, supervision and regulation of market participants;
2. authorisation of public and private offerings;
3. investigating, requesting information, issuing advice and warnings as well as imposing penalties and fines to market participants;
4. issuing general regulations applicable to market participants and transactions with securities;
5. approving internal operating rules of the Stock Exchange; and
6. managing and overseeing the National Securities Registry (considering that all publicly issued securities must be registered, the CNBV's powers to authorise, suspend or cancel securities registrations in the Registry are particularly relevant).

The year in review

i Developments affecting debt and equity offerings

Mexican markets have weathered the severe impacts of the covid-19 pandemic and the ripple effects of the war in Ukraine on global economies. These adversities have catalysed a resilient recovery, manifesting in consistent market performance. Despite inflationary surges abroad, the Mexican peso has demonstrated remarkable resilience against the US dollar. This can be attributed to strategic interest rate management, a significant increase in remittance payments coming into the country and an optimistic outlook for foreign investment.

Although stability is evident in the Mexican capital markets, particularly with respect to debt transactions, institutions such as the CNBV, the Stock Exchange and major issuers are leading indicators, positioning themselves in anticipation of forthcoming challenges and pivotal shifts in capital markets regulations.

Over the past two years, the Mexican capital markets have withstood uncertainties and volatility. Even in the face of interest rate adjustments by the Federal Reserve to combat inflation, the Mexican peso's strength has exceeded the global average. It has also outpaced other emerging economies, largely due to factors like a substantial international reserve, a robust institutional response to escalating inflation and market resilience amid global shocks.

The Mexican capital markets offerings are further solidifying, with products evolving in sophistication. As evidence, there currently exist issuances of over 84 equity development trust certificates (CKDs), 33 CERPIs (investment project trust certificates), 19 FIBRAs (the Mexican equivalent of a US REIT) and nine FIBRA Es (investment vehicles intended for energy and infrastructure projects that issue trust certificates (CBFEs)).

In the past year, 1,867 short-term debt issuances and 147 long-term debt issuances have been placed in the BMV as well as 56 short-term debt issuances and 41 long-term debt issuances on BIVA, resulting in a total of 1,923 short-term debt issuances and 188 long-term debt issuances in the Stock Exchange. It is expected that debt issuances will continue to increase in the following months. These indicators suggest that the Mexican capital markets are entering a novel phase of growth, setting the trajectory for future endeavours.

New challenges on the horizon for capital markets and opportunities in nearshoring

Emerging challenges and opportunities, like the impending 2024 presidential elections, global political tensions, climate change implications and initiatives for gender equality, exert additional pressures on the markets. However, the aftermath of the covid-19 pandemic and changes in global logistics and supply-chain concerns have catalysed a local business shift. The recent vulnerabilities in offshore transactions by dominant export nations have unveiled promising prospects for closer and more secure investments, which could result in the increase of equity and debt issuances in the Mexican capital markets. The United States-Mexico-Canada Agreement has further augmented this environment by facilitating favourable financial conditions for Mexican projects.

According to the Minister of Finance, in 2022,[2] export values grew by nearly 17 per cent with significant contributions from non-automotive manufacturing and oil products. As of November 2022, the Capitalization Inex (ICAP) of the Multiple Banking System stood at 19 per cent and the Non-Performing Loan Index at 2 per cent, underscoring a robust financial system forecast. With over two million job opportunities created in 2022 and historically low unemployment rates, together with a strategic proximity to the world's largest market, Mexico's positioning for investments and projects is undeniably favourable.

Amendments to capital markets legislation on the horizon

Despite consistent growth, Mexican capital markets have encountered stagnation in public equity offerings and listings. To address these issues, the Ministry of Finance, in collaboration with the Stock Exchange and other stakeholders, has proposed comprehensive legislative amendments to the Securities Market Law.

Key features of these amendments include the introduction of a simplified registration procedure (SSRP)to boost participation of small and medium-sized companies (SMEs) in the public markets. The amendments also intend to reallocate certain supervisory responsibilities from the CNBV to the Stock Exchange. Additionally, legislative adaptability for the *sociedad anónima bursátil* (SAB) (a public company) is emphasised, endorsing the issuance of differentiated rights capital shares and augmenting board of directors' powers. It is expected that such amendments be passed and enacted in 4Q 2023.

Environmental, social and governance trends in the spotlight

In the past year, there has been a discernible pivot towards environmental, social and governance (ESG) considerations in new securities issuances. This change is not just to cater to institutional investors' interests, but also in response to a global push towards more sustainable and equitable business practices. Even though not mandated by current Mexican regulations, it has become increasingly routine for both new and existing instruments to encompass ESG disclosures in their offering documents, yearly and quarterly reports.

The emphasis on climate change has never been more pronounced. Although the precise ramifications of greenhouse gas emissions remain under study, the visible impacts – including dwindling water supplies, heightened temperatures, frequent wildfires, disruptions in food supply and torrential rainfall – are undeniable. Both investors and issuers are recalibrating their strategies to align with climate-conscious practices and risk management and are pivoting towards projects that prioritise sustainability.

Further highlighting this shift, the Ministry of Finance, in consultation with the CNBV and the Central Bank, is planning to introduce general provisions that focus on sustainability and gender equality. These provisions will be relevant to a wide spectrum of entities, from issuers and SABs to stock exchanges and rating agencies.

The emergence of sustainability-linked bonds

The palpable impacts of climate change are spurring the finance of eco-friendly projects across various sectors. This has catalysed the evolution of the sustainability-linked bond (SLB): innovative financial instruments tailored to funding projects that align with ESG objectives. Whether issued by private companies or governmental bodies, SLBs underscore a commitment to a more sustainable future.

Although currently there is no strict regulatory framework governing SLBs in Mexico, this is likely to change soon. Proposed amendments to the Securities Market Law, if passed, will empower the CNBV, in conjunction with the Ministry of Finance and the Central Bank, to set forth guidelines on sustainability. However, the foundations for SLBs, such as key performance indicators, sustainability performance targets, bond attributes, reporting and validation, are already informed by globally recognised principles, notably the ICMA Sustainability-Linked Bond Principles Voluntary Process Guidelines. Notably, the dynamic and evolving landscape of market transactions has fostered creation of bespoke structures to ensure adaptability and agility. Moreover, SLBs are versatile, as they can either be newly issued bonds or become integrated into pre-existing projects for refinancing.

A slew of corporations, ranging from Femsa and Grupo Aeroportuario del Pacífico to Grupo Herdez and BID Invest, have ventured into SLB initiatives, channelling substantial investments into this domain. The Mexican Stock Exchange, too, has witnessed an uptick in interest, with numerous issuers such as Viva Aerobus, Grupo Aeroportuario del Centro Norte (OMA), and Cementos de Mexico (Cemex) championing SLBs. Such endeavours not only underscore a commitment to sustainability but also signal a promising trajectory for the integration of ESG principles into capital markets, solidifying a greener future.

Relevant capital markets transactions

Some of the most relevant recent capital market transactions include:

1. Fibra Uno, a leading FIBRA specialised in the acquisition, development, construction, leasing and operation of industrial, commercial and office properties, issued trust certificates for an amount of 1,730 million Mexican pesos and an amount of 4,970 million Mexican pesos.
2. Fibra Danhos, a leading FIBRA specialised in the development, redevelopment, acquisition and management of iconic and premier quality shopping centres, offices and mixed-use projects in Mexico, issued long-term SLB trust certificates for an amount of 2,500 million Mexican pesos.
3. Arago Gestión, a company focused on active management of alternative assets and, particularly, the operation and management of public investment vehicles, has introduced itself to the Mexican capital markets by issuing its first CERPI in BIVA for an amount of US$300 million.
4. CABEI, a legal entity under public international law established to promote the economic integration and balanced economic development of Central American countries and the economic integration of beneficiary countries with Central American countries, issued 3,500 million Mexican peso floating rate notes through BIVA.
5. OMA, a company dedicated to the management and operation of airports in Mexico, issued long-term trust certificates for an amount of 2,560 million Mexican pesos.

ii Developments affecting derivatives, securitisations and other structured products

CKDs

Dating back almost 15 years, the first and most commonly used contemporary structured instrument in Mexico is the CKD. CKD funds resemble international private equity funds and they are incorporated through a Mexican trust agreement that issues trust certificates listed and traded on the Stock Exchange to invest in companies, as well as in infrastructure, real estate, private equity and industrial projects. CKDs grant their holders a right to participate in a portion of the proceeds, assets or rights that comprise the trust assets. The CKD trust carries a mandate of investing in projects or in equity of target companies.

CKDs are equity-like securities that do not provide an unconditional payment obligation of principal and interest. Applicable regulation imposes on CKDs certain corporate governance obligations similar to those of publicly traded companies. Provided that it is permitted under their respective investment regime, Mexican and foreign investors are allowed to invest in CKDs.

The majority of CKD issuances that have come to market in Mexico since inception have been aimed towards the infrastructure, private equity and real estate industries, although applicable law allows for the funds raised through CKDs to be invested in other areas. The success of a CKD fund is heavily dependent on the sponsor's (general partner's (GP's)) management team in charge of identifying and carrying out the fund's investments as well as on the business plan set forth by the sponsor. Some of the CKDs listed in the Stock Exchange are reaching the completion of their terms. This situation presents new considerations for investors and issuers, as well as opportunities for reinvestment and restructuring in the Mexican market.

CERPIs

CERPIs funds (similar to CKDs) resemble the model of international private equity funds, with corporate structures that rely heavily on the expertise and track record of the GP or fund manager. CERPIs funds typically invest in real estate, private equity, debt, energy and infrastructure, and potential sponsors are most commonly private equity funds, real estate developers, asset managers and energy services providers.

One of the key differences between CKDs and CERPIs is that CERPIs funds may invest outside Mexico, so long as at least 10 per cent of the fund's maximum authorised amount is invested in Mexico. Similarly, CERPIs provide for less stringent corporate requirements and approvals of investors than those of CKDs, thus granting GPs and fund managers more flexibility to manage a fund. However, sponsors are required to make a 2 per cent co-investment in each sponsored project and should have a proven track record.

FIBRAs

FIBRAs are established as a Mexican trust agreement (similar to CKDs and CERPIs) and resemble the real estate investment trusts (REITs) of the United States. FIBRAs allow parties to benefit from a specially tailored tax stimulus intended to promote real estate investment in the country.

The purpose of a FIBRA is the acquisition or construction of real estate destined to be leased or the acquisition of rights to receive rental income, as well as to grant mortgage financing, and the trust estate must comprise at least 70 per cent of such assets. Under applicable tax regulations, a FIBRA is required to distribute to its certificate holders at least 95 per cent of its net taxable income on an annual basis.

The current legal structure of a FIBRA stems from a series of reforms enacted over the past several years to the following:

1. various provisions of the Mexican tax laws and regulations;
2. securities legislation;
3. the investment regime of Mexican pension fund administrators enabling tax-friendly investment in FIBRAs by Mexican pension funds; and
4. annual omnibus tax regulations issued by the Ministry of Finance.

The main benefits of investment in a FIBRA (relative to other investments) are as follows:

1. the potential for a high return on investment (on a cash basis) owing to the requirements for distribution of net taxable income, and the potential for capital appreciation of real estate trust certificates, commensurate with increases in value of the real properties held by the FIBRA;

2. access to the Mexican real estate market as an investment option through a security that may be traded easily and has a readily identifiable market price;
3. broader diversification with respect to geographic exposure and property type for investors seeking to invest in the Mexican real estate market or generally for their investment portfolio; and
4. specific tax benefits.

A particularly positive aspect of FIBRAs (as opposed to CKDs and CERPIs) is that many of them have been structured with both a national listed tranche on a stock exchange and an international tranche offered abroad (usually relying on Rule 144A and Regulation S of the US Securities Act of 1933). The foregoing has allowed the diversification of the investor base, which is otherwise dominated by Mexican pension funds.

Recently, investors have pushed for a change in the management structure of FIBRAs to internalise their external advisers and managers following the United States model of REITs, most of which have an internal management structure. To date, four out of the 19 existing FIBRAs have undergone their internalisation process.

FIBRA-Es

FIBRA-Es are akin to US master limited partnerships. Under a FIBRA-E, a corporate sponsor securitises mature productive assets by contributing to the FIBRA-E equity interest in certain Mexican legal entities (promoted companies) that own and operate such assets for a specific set of activities, namely infrastructure, electricity (generation, distribution and transmission) and energy. The sponsor will receive cash or trust certificates (CBFEs) in return for its contribution to the FIBRA-E.

One of the key features of a FIBRA-E is the tax benefits that it provides to its investors, as the investment vehicle and the portfolio companies through which investments are held in such infrastructure and energy assets are deemed transparent from a tax perspective.

To structure the contribution of the applicable assets and the operation of the business of the FIBRA-E, relevant tax, legal and accounting issues must be taken into account. Regulatory and contractual approvals such as licences, permits, public grants and concessions, and debt covenants must also be taken into consideration.

SPACs

SPACs are publicly traded vehicles that are formed to facilitate a business combination. SPACs – also called 'blank cheque companies' or 'public shells' – provide a sponsor with immediate access to funding to conduct a specific transaction (merger, acquisition or asset sale that requires shareholder approval) typically within a 12 to 24-month time frame, resulting in a new publicly traded company.

SPACs issue units that are listed on a stock exchange, which consist of shares and warrants (or portions of warrants). Warrants have the shares of a public company as underlying assets. Each warrant entitles the holder to purchase one share of common stock upon a business combination at a preferential price. Warrants act as compensation for investors.

Primarily institutional (including Mexican pension funds) and retail investors participate in these kinds of offerings. A SPAC public offering may be carried out globally (Mexican public offering plus an international tranche, usually under Rule 144 A and Regulation S of the US Securities Act of 1933). Sponsors acquire founder or insider units, typically resulting in the ownership of a percentage of common stock of the company.

Some of the advantages of SPACs include:

1. timing: the time period for listing a SPAC is considerably faster than for listing an IPO (which can take around 10 months);
2. flexibility: the regulatory requirements for SPACs are more flexible and less restrictive than those of IPOs, so SPAC managers have more flexibility in conducting their business; and
3. tax structure: contributions for future capital increases are treated as debt for Mexican tax purposes, which facilitates reimbursement to investors in the event that the SPAC is not successful.

iii Cases and dispute settlement

From a statutory standpoint, the Ministry of Finance has final authority over securities markets, interpretation of the Securities Market Law and international treaties. In practice, the CNBV has the main direct jurisdiction regarding oversight and regulation of the activities of all capital market participants. Its supervisory authority includes powers to carry out investigations and to impose penalties and fines in cases of non-compliance, as well as powers to enforce them. Any resolution entered into by the CNBV may be appealed before federal administrative courts using a writ for *amparo* proceedings. However, any disputes that arise between financial firms and consumers must be first resolved by Condusef, the National Commission for the Defence of Users of Financial Services, Mexico's financial ombudsman.

Increased antitrust oversight

As a result of reforms introduced a few years ago to the antitrust law, Cofece, the Mexican Antitrust Commission, has enhanced powers, and has increased its oversight and investigative activity, with a number of investigations that have concluded with record fines.

iv Relevant tax and insolvency law

There are very specific rules that apply to Mexican trusts that should be carefully analysed when implementing a securitisation or a structured finance transaction. In the case of securitisations, it is generally intended that the transfer of assets into a trust is treated as a sale for legal but not for tax purposes, inasmuch as the settlor of the assets retains a right to reacquire the transferred assets once payment of the corresponding securities has been made. The trust should not be classified as a separate entity for tax purposes. Intermediaries and brokers must determine and withhold the income tax applicable on income earned by securities holders.

In general, the tax regime applicable to securitisations and structured finance transactions is defined by the terms and nature of the securities being issued, and tends to be the same as or similar to the regime applicable to the assets underlying the securities or type of structure.

v Role of exchanges, central counterparties and rating agencies

Role of exchanges

Any stock exchange operating in Mexico requires approval by the Ministry of Finance and the favourable opinion of the Central Bank and the CNBV. To date, two stock exchanges and one derivatives exchange system operate in Mexico: the traditional BMV and the relatively new BIVA (stock exchanges) and MexDer (the Mexican OTC derivatives exchange), all based in Mexico City.

As mentioned above, both stock exchanges are supervised by the CNBV and their own independent committees, and they each have the ability to sanction their members and even delist certain securities, subject to a prior opinion of the CNBV.

The two exchanges have issued their own internal regulations that establish their internal procedures for listings of all kinds of instruments, along with terms and conditions for trading, record-keeping, information publishing, and listing and maintenance fees.

In addition to the local exchange, BMV operates the international quotation system (SIC), which is an electronic conduit to trade shares listed on certain foreign stock exchanges recognised by the CNBV. The SIC, which allows foreign companies to be listed alongside local issuers in both stock exchanges, has been hugely successful, with a significant increase in the past five years, driven mainly by ETFs.

Central counterparties

The service of a central counterparty (CCP) is considered a public service under Mexican regulations; therefore, a public concession granted by the Ministry of Finance and the favourable opinion of the Central Bank and the CNBV are required. Only securities exchanges, securities depositories, broker-dealers and credit institutions (commercial and development banks) may be shareholders of a CCP.

Only two concessions by the federal government have been granted to operate CCPs in Mexico; Contraparte Central de Valores, which clears transactions on BMV and BIVA, and Asigna, Compensación y Liquidación, which is the CCP for the Mexican Derivatives Exchange (MexDer), for derivatives transactions. The Central Bank has exclusive powers to supervise all CCPs in Mexico, as well as to approve operations of any CCP.

Rating agencies

Rating agencies in Mexico must be incorporated as Mexican companies and require authorisation from the CNBV to operate as such. Their main purpose is the habitual and professional rendering of services consisting of the analysis, opinion, evaluation and reporting of the credit quality of securities. The authorisation granted by the CNBV is non-transferable under any circumstances.

Rating agencies are supervised by the CNBV and are subject to relevant provisions of the Securities Market Law and the applicable general rules issued by the CNBV applicable to rating agencies.

According to public information from the CNBV, seven rating agencies operate in Mexico, most of which are local branches of international rating agencies.[3]

Outlook and conclusions

The evolution of the Mexican capital markets over past years underscores a resilient and adaptable financial ecosystem. Amid global challenges such as the covid-19 pandemic and geopolitical tensions, the markets have showcased remarkable resilience. The Mexican peso's strength, buoyed by a combination of strategic interest rate management, robust international reserves and proactive institutional responses, positions Mexico favourably in the global arena.

The impending legislative amendments to the Securities Market Law (expected 4Q 2023), particularly the SSRP, are anticipated to further diversify participation, emphasising the importance of SMEs in the capital market dynamics. Moreover, the shift of supervisory responsibilities and the flexibility proposed for the SAB may streamline operations and governance, fostering a more dynamic and efficient capital market.

Endnotes

1 Julián J Garza and Gunter A Schwandt are partners and Nicolás Pacheco L is an associate at Nader, Hayaux & Goebel. ^ Back to section

2 Secrtaría de Hacienda y Crédito Público. 'Comunicado No. 10 El nearshoring es la oportunidad de impulsar el crecimiento económico de México, señala Ramírez de la O, 15 February 2023. Available at https://www.gob.mx/shcp/prensa/comunicado-no-10-el-nearshoring-es-la-oportunidad-de-impulsar-el-crecimiento-economico-de-mexico-senala-ramirez-de-la-o. ^ Back to section

3 Comisión Nacional Bancaria y de Valores. 'Instituciones Calificadoras de Valores,' 9 October 2017. Available at https://www.gob.mx/cnbv/articulos/instituciones-calificadoras-de-valores-icvs?idiom=es#:~:text=La%20CNBV%20supervisa%20en%20M%C3%A9xico,las%20Disposiciones%20en%20la%20materia. Last accessed on 26 August 2021. ^ Back to section

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