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Mexico

SECURITISATION

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This country-specific Q&A provides an overview of securitisation laws and regulations applicable in Mexico.

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MEXICO
SECURITISATION

1. How active is the securitisation market in your jurisdiction? What types of securitisations are typical in terms of underlying assets and receivables?

The securitisation market in Mexico, both with respect to, public and private placements, has been pretty active in the last several years. A series of reforms to the financial regulations and the amendment of certain federal and local laws dated 2014 has helped the development of this market. The public securitisations available in the Mexican capital markets are mostly carried out in the form of trust debts certificates (*certificados bursátiles fiduciarios*) issued by a Mexican trust. Most of the securitisation transactions in Mexico are related to consumer loans and leasing receivables.

The most commonly used assets in securitisation transactions in Mexico are collection rights, accounts receivable, leasing rights, mortgages, automotive loans and leases, credit card receivables, toll fees and taxes.

2. What assets can be securitised (and are there assets which are prohibited from being securitised)?

In general terms, any asset that can be assigned or transferred and generate cash flows may be securitised.

Although Mexican regulation does not provide a list of assets that can be securitised or a list of assets that are prohibited from being securitised, depending on the nature of the asset, there could be contractual restrictions that prohibit the holder of the asset to sell or assign such asset, as well as "non-negotiable" or "non-assignment" clauses included in the promissory notes (*pagarés*) or agreements that document the debtor's payment obligations, which can hinder the possibility of such asset being securitised.

3. What legislation governs securitisation in your jurisdiction? Which types of transactions fall within the scope of this legislation?

There are a number of laws and regulations that, together, govern different aspects of securitisation transactions in Mexico. The General Law of Negotiable Instruments and Credit Transactions (*Ley General de Títulos y Operaciones de Crédito*), regulates the Mexican trust, which is the most typical form of SPV used for Mexican securitisations. The Federal Civil Code (*Código Civil Federal*), local civil codes and the Commerce Code (*Código de Comercio*) provide the rules for the sale, assignment and transfer of the securitised assets. Furthermore, the main legislation governing public securitisations and the issuance of securities by Mexican SPVs are the Securities Market Law (*Ley del Mercado de Valores*) and the General Provisions Applicable to Issuers of Securities and Other Participants in the Securities Market (*Disposiciones de carácter general aplicables a las emisoras de valores y a otros participantes del mercado de valores*) (the "**Issuers Regulations**"), issued by the CNBV.

Following is a list of other laws and regulations that complement the legal framework applicable to securitisations in Mexico:

- National Banking and Securities Commission Law (*Ley de la Comisión Nacional Bancaria y de Valores*);
- General Provisions Applicable to Credit Institutions (*Disposiciones de carácter general aplicables a instituciones de crédito*) issued by the CNBV;
- General Law of Business Corporations (*Ley General de Sociedades Mercantiles*);
- Federal Tax Code (*Código Fiscal de la Federación*);
- Income Tax Law (*Ley del Impuesto Sobre la Renta*);
- Value Added Tax Law (*Ley del Impuesto al Valor Agregado*);
- Mexican Bankruptcy Law (*Ley de Concursos*

Mercantiles); and
- Internal rules of the Mexican Stock Exchange (*Reglamento interior de la Bolsa Mexicana de Valores*) or the internal rules of the Institutional Stock Exchange (*Reglamento interior de la Bolsa Institucional de Valores*).

4. Give a brief overview of the typical legal structures used in your jurisdiction for securitisations and key parties involved.

Securitisations in Mexico are carried out through special purpose vehicles. Due to its flexibility and tax advantages, the Mexican trust is the most typical form of SPV used for Mexican securitisations. A trust is an agreement through which the settlor (*fideicomitente*) transfers to a trustee (*fiduciario*) the ownership of certain rights or assets for its administration and for the benefit of a beneficiary (*fideicomisario*), thus, creating a segregated/bankruptcy remote estate. Trusts have been available in Mexico for several decades and very well known in Mexico. In addition, there is a substantial number of court precedents.

In securitisations using local trusts, the owner of the assets (the sponsor/originator) acts as settlor and transfers the ownership and/or collection rights of the assets being securitised to the trustee to form part of the trust estate. Only certain financial institutions are authorised to act as trustees. The trust, acting through the trustee, issues debt certificates in the form of *certificados bursátiles fiduciarios, certificados de participación* or notes. The securities are offered through public or private offerings and purchased by investors who become holders of the certificates and first-place beneficiaries (*fideicomisarios en primer lugar*) of the trust. In public securitisations, the holders of the securities are represented by a common representative (*representante común*), which is also a party to the trust agreement, and the debt certificates are registered in the National Securities Registry ("**RNV**") and listed in a Mexican stock exchange.

Key parties typically involved and their role:

***Originator/Sponsor*:** The owner of the underlying assets who acts as settlor in the trust, and usually as second-place beneficiary;

***Trustee*:** The financial entity (regularly a bank) in charge of controlling the trust, owns the assets/collections rights and issues the debt securities, acting following the provisions set forth in the trust agreement and instructions provided by the manager or common representative, as the case may be;

Holders/Investors: The investors who purchase the debt certificates from the issuer and become first-place beneficiaries to the trust;

***Underwriters*:** Broker-dealers (*casas de bolsa*) in charge of the placement of the debt certificates;

***Common Representative*:** Represents and protects the interests of the holders of the debt certificates. The common representative is a broker-dealer or a financial institution authorised to act in such role;

Manager/Servicer: In most securitisations, the originator/sponsor also acts as servicer (*administrador*) and provides services with respect to the assets/collections rights transferred to the trust;

Master Manager/Master Servicer: Acts as servicer to the trust and is in charge of the surveillance of the use and distribution of the cash flows.

5. Which body is responsible for regulating securitisation in your jurisdiction?

The CNBV is the governmental entity in charge of the surveillance and regulatory activities around public securitisation transactions and the involved parties.

6. Are there regulatory or other limitations on the nature of entities that may participate in a securitisation (either on the sell side or the buy side)?

There are no regulatory limitations to the nature of the entities that may participate in a securitisation on the sell side. However, as previously mentioned, since the most common SPV through which securitisations are carried out are trusts, the entity that participates as trustee (issuer) shall be a financial institution authorised to provide such services.

With respect to the buy side, there are no regulatory restrictions other than the particular investment restrictions that certain entities or institutional investors may have pursuant to its investment regime. If the securitisation is placed by means of a public offering, any person or entity may be an investor, as long as the latter's corporate investment regime allows these type of investments. If the offering were to be private, some investors would have to be excluded from buying (see question 8). Nevertheless, the most common investors on securitisations are sophisticated investors, such as institutional investors.

7. Does your jurisdiction have a concept of "simple, transparent and comparable" securitisations?

Mexico has not implemented the concept of "simple, transparent and comparable" securitisations.

8. Does your jurisdiction distinguish between private and public securitisations?

Yes, public and private securitisations are permitted in Mexico. Private securitisations are usually carried out with institutional investors. They are not regulated or authorised by the CNBV, nor listed on a stock exchange, and may only require registration to perfect the transfer of the assets to the SPV (*e.g.* registry with the relevant public registry of the sale/transfer of the corresponding asset).

Under the Securities Market Law, there is a distinction between private and public offerings of securities. Private offerings of debt certificates do not need to be registered in the RNV and may be carried out as an exception of public offerings under any private offering exception. The main offering exception applicable to securitisation refers to offerings made exclusively to institutional or qualified investors. Furthermore, an offering of securities in Mexico will be deemed to be a public offering if subscription or sale efforts with respect to securities are made in Mexico through the use of "massive means of communication" and to "undetermined persons". Public offerings require prior approval of the CNBV; securities shall be registered in the RNV and listed in a Mexican stock exchange.

9. Are there registration, authorisation or other filing requirements in relation to securitisations in your jurisdiction (either in relation to participants or transactions themselves)?

There are no general registrations, authorisations or filings that are required to carry out securitisations in Mexico. However, some aspects of the transactions could involve certain registrations (*e.g.* depending on the type of asset, registry with the relevant public registry of the sale/transfer of the corresponding asset).

Furthermore, in order for the debt certificates issued by a trust to be publicly offered and traded, they must be registered in the RNV managed by the CNBV and listed on a Mexican stock exchange prior to its offering and placement. The Issuers Regulations set forth the list of documents and information that the issuers and other participants must file and disclose as part of the authorisation process with the CNBV and the corresponding stock exchange. The following is a list of the most relevant documents:

- Prospectus and supplements: Main document containing the general information of the issuance, the trust, the securitised assets, the originator/sponsor, securitisation structure, financial information, as well as risk factors, among other information;
- Trust agreement, Purchase/Assignment Agreement and Servicing Agreements, as well as any other relevant agreements in the particular securitisation transaction;
- Underwriting agreement;
- Debt certificate (*título*);
- Legal opinion issued by external Mexican legal counsel; and
- At least one credit rating issued by an authorised rating agency in Mexico. Please note that several institutional investors require two credit ratings.

Recently, a reform decree was published to amend the Mexican Securities Market Law (*Ley del Mercado*), which incorporates a new simplified procedure for the registration of securities in the RNV. This simplified registration procedure may encourage the growth and depth of the Mexican stock market and may increase the volume of public securitisations.

Under the simplified registration procedure, the issuer and the underwriter will have to prepare a simplified prospectus and file a listing application to a Mexican stock exchange on which the securities are intended to be listed.

Under the Simplified Registration, broker-dealers acting as underwriters and the stock exchanges are responsible for reviewing the registration documentation, and the CNBV is released from its obligation to review and authorize the offering of the securities.

However, this simplified registration will be subject to certain requirements and limitations to be set forth by the CNBV through secondary regulation which has not been issued to date and therefore, may not be applicable for all securitisations.

10. What are the disclosure requirements for public securitisations? How do these compare to the disclosure requirements to

private securitisations? Are there reporting templates that are required to be used?

In addition to the information disclosed as part of the authorization process with the CNBV and the relevant stock exchange referred in question 9 above, once the debt certificates are issued, the trustee is subject to a series of periodic obligations under the Securities Market Law and the Issuers Regulations. Such regulations set forth periodic disclosure requirements in connection with financial and corporate information. Submissions are made through the electronic portals of the CNBV and the stock exchange in which the certificates are listed. Among others, issuers are required to disclose (i) quarterly and annual internal and audited financial information, along with the corresponding reports and letters from the external auditors; (ii) resolutions regarding corporate acts and resolutions; (iii) an annual report containing financial, business and corporate information about the issuer, in this case, the trust and the securitised assets; and (iv) file reports of any relevant event. Furthermore, the Issuers regulations establish that certain templates must be used in order to report quarterly and annual information, as well the mentioned annual report, which must be prepared in accordance to Exhibit N BIS 1 of the Issuers Regulations.

For securitisations with simplified registration, the stock exchanges must set the rules for the disclosure of periodic information, in accordance with the secondary regulation to be issued by the CNBV.

There is no standard with respect to disclosure requirements in private securitisations. However, it is common that the disclosure requirements in private securitisations targeted to several investors to follow the standard for public securitisations.

11. Does your jurisdiction require securitising entities to retain risk? How is this done?

Mexican regulations do not require sponsors/originators to retain risk in securitisation transactions. As previously mentioned, securitisations in Mexico are generally carried out through SPVs in the form of trusts. In this regard, when transferring or assigning the assets and/or collection rights to the trust, risk is transferred from the sponsor/originator to the trust.

12. Do investors have regulatory obligations to conduct due diligence before investing?

As a general rule, except for the general fiduciary duties of institutional investors, there are no particular legal or regulatory obligations for investors to conduct a due diligence before investing in Mexican securitisations. However, regularly institutional investors carry out due diligence of the structure, functionality of the structure and assets involved in a particular transaction.

13. What penalties are securitisation participants subject to for breaching regulatory obligations?

In the context of public securitisations, the penalties for securitisation participants for breaching the Securities Market Law and the Issuers Regulations will vary on the type of breach, party at breach and repetition of the breach. The penalties include, among others, the imposition of substantial fines and even imprisonment.

For example, article 383, section I of the Securities Market Law, states that any person who, personally or through any third party, discloses false or misleading information or omits relevant information regarding certain securities or the financial, administrative, economic or legal situation of an issuer through prospectuses, supplements, informative memorandums, material events (*eventos relevantes*) or any other disclosure documents and in general through massive media, shall be punished with up to ten years of prison. In such regard, article 388 of the Securities Market Law further indicates that in order for such actions to be pursued and punished, they must have been performed with willful misconduct (*con dolo*).

Note that criminal liabilities are different from any potential fines and/or general civil responsibilities that may arise from any conduct of the individuals or the participants in securitisations for their lack of diligence when performing their activities. In such regard, pursuant to the Securities Market Law, a fine up to 100,000 Units of Measurement and Update (*Unidades de Medida y Actualización*) (approximately USD$546,000) is applicable to the person who contravenes any provisions set forth in the Securities Market Law and/or the Issuers Regulations that does not have a specific penalty provided thereto.

14. Are there regulatory or practical restrictions on the nature of securitisation SPVs? Are SPVs within the scope of regulatory requirements of securitisation in your jurisdiction? And if so, which

requirements?

In Mexico, there are no regulatory restrictions on the nature of the securitisation SPVs. In practice, as mentioned in question four above, due to its flexibility and tax advantages, the trust is the most typical form of SPV used for Mexican securitisations.

15. How are securitisation SPVs made bankruptcy remote?

Bankruptcy remoteness in securitisation SPVs is achieved through a combination of the following measures:

- Incorporation of a trust, which is the issuer of the debt securities. A trust, in principle, provides the benefit of bankrupt remoteness, as when the transfer of certain rights or assets is made to the trustee, a segregated estate or patrimony is created;
- True sale of the assets (see question 17);
- Transfer of assets must be perfected. As a general rule, the approval of debtor for the transfer is not required, except when such approval is stipulated in the original agreement. Furthermore, notice to the obligors is not regularly required when the sponsor/originator maintains the management of the assets; and

If applicable, filings with the relevant public registry of the sale/transfer of the corresponding asset shall be carried out. Generally, the sale/transfer of assets must be registered in the Sole Registry of Movable Guarantees (*Registro Único de Garantías Mobiliarias*).

16. What are the key forms of credit support in your jurisdiction?

Securitisation transactions in Mexico are generally structured with a series of credit support/credit enhancement methods in order to provide additional protections to investors. Among others, the following are common credit support/credit enhancement techniques used in securitisation transactions in Mexico:

- Over-collateralisation: The value of the assets transferred to the trust is greater than the outstanding principal that would be owed to the investors;
- Partial guarantee: Third party guarantees that will cover payment obligations (interest or principal) in certain events;
- Cash reserve accounts: One or more reserve accounts are created and opened in the name of the trust, in which the excess spread is deposited until the sums deposited reach a certain minimum amount. The reserve accounts are used to pay interests or principal to the investors in stressed situations, or to replenish certain trust accounts when such reach a pre-determined floor;
- Acceleration/early redemption: Trust agreements generally include certain events that could trigger an acceleration or early redemption of the debt certificates (*g.* removal/substitution of the servicer, the credit rating of the debts certificates is lowered, *etc*); and
- Pledges. The sponsor/originator may grant a pledge in favor of the trustee of the trust over assets that are the source of the securitised receivables.

17. How may the transfer of assets be effected, in particular to achieve a 'true sale'? Must the obligors be notified?

Under Mexican law, the true sale is effected through an assignment agreement, purchase agreement, factoring agreement, or similar agreement between the originator/sponsor and the trust ("**SPV**"), through which the corresponding assets are transferred to the trustee. Depending on the assets being transferred and the type of agreement used to document the transfer, certain requirements and formalities must be met. As previously mentioned, as general rule, the approval of obligors is not required so that the transfer of the assets is perfected, except when such approval is stipulated in the original agreement. Furthermore, notice to the obligors is not regularly required when the sponsor/originator maintains the management of the assets.

Additionally, depending on the type of asset being securitised, a registration in local/federal registries of the transfer of the asset shall be made so that the transfer is considered valid and enforceable against third parties. For the transfer of movable assets, the Commerce Code (*Código de Comercio*) and relevant regulation set forth the obligation to register the transfer in the Sole Registry of Movable Assets (*Registro Único de Garantías Mobiliarias*).

18. In what circumstances might the transfer of assets be challenged by a court in your jurisdiction?

As described in question 17 above, the transfer shall be made with certain formalities in order to be valid, effective and enforceable against third parties and a true sale can be achieved. A transfer of assets may be challenged in a Mexican court when any of the required formalities are not met. For example, a transfer of assets made disregarding a "non-negotiable" or "non-assignment" clause included on the relevant agreements may be subject to a challenge in court. Furthermore, in the context of an insolvency/bankruptcy proceeding of the originator/sponsor, the transfer of the assets could be challenged if, among others, in accordance to the provisions of the Mexican Bankruptcy Law (*Ley de Concursos Mercantiles*), acts are presumed to be carried out in fraud of creditors or other third parties, including transactions outside of market standards.

19. Are there data protection or confidentiality measures protecting obligors in a securitisation?

There are no specific data protection regulations applicable to securitisations in Mexico. However, Mexican laws regarding data protection and confidentiality protect any personal data, financial or sensitive information that obligors share with any party of any transaction (private and/or public entities). Therefore, regularly, sensitive information of the obligors contained in the relevant agreements of the securitised assets shall be considered confidential and not disclosed to other parties of the transaction or, in the case of public securitisations, to the public.

The Data Protection Law (*Ley de Protección de Datos Personales en Posesión de Particulares*) is applicable to originators/sponsors. In addition, when originators/sponsors are regulated entities such must comply with additional regulations regarding confidentiality and data protection pursuant to the "*Financial Secrecy*". Financial institutions are subject to a highly regulated regime regarding confidentiality of personal and financial information from their clients.

As a general rule, personal or sensitive data shall not be subject to any kind of use, processing or transfer to third parties, if the disclosure of such was not included in the corresponding privacy notice, or if the owner of such data does not authorise its disclosure.

20. Is the conduct of credit rating agencies regulated?

Yes. Rating agencies in Mexico are regulated and supervised by the CNBV. The Securities Market Law and the General Provisions Applicable to Securities Rating Institutions (*Disposiciones generales aplicables a las instituciones calificadoras de valores*) regulate such rating agencies.

There are a limited number of rating agencies that are authorised by the CNBV and only those agencies may issue valid and recognised credit ratings in Mexico.

The regulation applicable to the rating agencies include, among others, the guidelines on the content to be included in the ratings they issue, having an authorised code of conduct, as well as revealing the methodologies and procedures they use to carry out the corresponding analysis to be able to issue a credit rating.

21. Are there taxation considerations in your jurisdiction for originators, securitisation SPVs and investors?

As the typical securitisation transaction in Mexico is structured through the transfer of the securitised assets to a trust (a pass through vehicle), a specific tax and accounting treatment has to be designed in order to avoid withholdings and any other adverse tax consequences.

Typically, the intention would be that the transfer of assets into a trust is not considered as a sale for income tax purposes and, therefore, such trust is not considered as a separate business entity (*fideicomiso de actividades empresariales*). If the trust is considered as a separate business entity, then it becomes subject to taxation on its business activities. In this regard, it is very important that the activities carried out by the trust do not fall within the business activities scope. As a general principle, a trust will not be considered as a business trust if it is merely a vehicle for financial transactions, rather than for carrying out commercial activities.

As this type of trusts are disregarded for tax purposes, income or loss obtained through a trust is attributed to its beneficiaries. In general, interest arising from securities is subject to the same rules as those applicable to interest payable on ordinary loans. Interest is computed as it accrues and is subject to the income tax rate of 30%.

Tax withholding for interests earned by non-Mexican residents as investors in the securities traded in a Mexican stock exchange or through a financial institution of a country that has entered into a double taxation treaty with Mexico, are subject to income tax rates that vary depending on the type of investor, within a range of 4.9 % to 40% (the latter when the investor is considered to be a resident of a preferential tax regime). In general,

the applicable rates are as follows:

- Subject to a preferential 4.9% withholding rate, if securities are registered on the national register of securities and intermediaries. Otherwise, the rate is 10%;
- Tax exempt, provided the actual beneficiaries, either directly or indirectly, individually or together with related persons, receive more than 5% of the interest payable on the securities in question and are: (i) shareholders holding more than 10% of voting shares in the issuer; or (ii) legal entities in which more than 20% of shares are held by the issuer;
- Tax exempt, if the effective beneficiary is a foreign pension or retirement fund that complies with certain requirements.

22. To what extent does the legal and regulatory framework for securitisations in your jurisdiction allow for global or cross-border transactions?

There are no legal restrictions in Mexico for carrying out cross-border securitisation transactions. The Mexican legal framework governing securitisations fully permits cross-border transactions. Securitisation transactions including a Mexican SPV (trust) to issue securities to be listed and offered outside of Mexico are common, as well as the participation of a Mexican originator/sponsor transferring assets to a foreign SPV.

The Issuers Regulations set forth that any offering of Mexican securities offered offshore or issued by Mexican issuers directly or through a trust or other SPVs, shall notify such transaction to the CNBV for information purposes.

23. To what extent has the securitisation market in your jurisdiction transitioned from IBORs to near risk-free interest rates?

In the international context of transition from IBORs to near risk free interest rates, in order to obtain a near risk-free reference rate (RFR) aligned to international standards and representative of the Mexican overnight secured interbank funding market for Mexican pesos, Banco de México, as of 2020, started calculating and providing to the general public the Overnight TIIE Funding Rate (*TIIE de Fondeo*).

In this regard, in this regard, as of 2021, the Ministry of Finance created and started issuing a new class of Mexican bonds as part of the effort to increase the depth of the market referenced to the Overnight TIIE Funding Rate (*TIIE de Fondeo*). The Federal Government Development Bond are named BONDES F, are denominated in Mexican pesos and with coupon payments indexed to the overnight benchmark TIIE funding rate.

Furthermore, in 2022, corporations, including banks and development trusts, started offering debt instruments in the Mexican Securities Market referenced to the Overnight TIIE Funding Rate (*TIIE de Fondeo*) and it is expected that the Overnight TIIE Funding Rate is used more often as a reference in any type of financing.

As of today, the securitisation market in Mexico has slowly transitioned from traditional TIIE to near risk-free interest rates (*TIIE de Fondeo*).

24. How is the legal and regulatory framework for securitisations changing in your jurisdiction? How could it be improved?

Besides the reform to the Securities Market Law (*Ley del Mercado de Valores*) (see question 9), there have not been relevant changes to the regulations that govern securitization transactions in Mexico.

Although there is always room for improvement in areas such as the efficiency of the public registries in Mexico, we do not think there are any urgent pending legal reforms related to securitisations.

25. Are there any filings or formalities to be satisfied in your jurisdiction in order to constitute a true sale of receivables?

As mentioned in Question 17 above, in order for the transfer of assets to be valid and enforceable against third parties, depending on the type of asset being securitised, a registration in local/federal registries of the transfer of the corresponding asset shall be made. For the transfer of movable assets, the Commerce Code (*Código de Comercio*) and relevant regulation set forth the obligation to register the transfer in the Sole Registry of Movable Assets (*Registro Único de Garantías Mobiliarias*).

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