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Securitisation

Mexico: Trends & Developments
Holland & Knight

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Trends and Developments

Contributed by Holland & Knight

Holland & Knight's securitisation team develops, structures and closes on a wide range of securitisation financing transactions. With an average of more than 20 years of structured finance experience, the core team members have the knowledge to assist in up and down markets throughout the life cycle of financial assets, including funding the origination or acquisition of financial assets through a warehouse credit facility, asset-backed commercial paper issuance or other funding structures; creating liquidity for financial assets through a securitisation transaction; manag-

ing the securitisation structure from initial closing through wind-up; and addressing unexpected and often complex restructuring and governance issues when transactions do not perform according to plan. The Mexico City office plays a critical role in the firm's Latin America practice, providing legal services to domestic and international clients doing business in Mexico and throughout the USA, working closely with colleagues in New York, Miami, Washington, Houston, Dallas and Bogotá.

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Alejandro Landa Thierry is the head of Holland & Knight's financial services practice in Mexico and has a wide range of experience in representing Mexican and foreign companies and financial institutions in all matters related to

finance transactions, including domestic and cross-border financings, project finance, asset-backed and future flow securitisations, aircraft and transportation financing, and leverage leasing. An equity partner of the firm, he is a member of the Association of International Petroleum Negotiators and the International Bar Association, and a board member of the Center for US and Mexican Law at the University of Houston. He has an LLM degree from Columbia University and a Juris Doctor degree from the Instituto Tecnológico Autónomo de México and an Engineering degree by the Instituto Tecnológico y de Estudios Superiores de Monterrey.



Emilio Cuevas is a member of the financial services practice in Mexico, and an associate who practises in the areas of corporate finance and financial services, with an emphasis on international and cross-border transactions. In addition, he

represents clients in all corporate finance transactions with transnational components and advises Mexican financial institutions in public finance, having assisted in several financial reorganisations of Mexican local governments in which he represented the main lenders. As part of his practice, Mr Cuevas advises on the development and financing stages of infrastructure projects, including renewable energy projects.

During the last few years, through a series of legislative and regulatory reforms, Mexico has tailored a legal and regulatory framework that has allowed different entities to access funding through the securities market.

In general, the legal and regulatory framework that has allowed the creation and growth of the securities market in Mexico is comprised of the following laws and regulations:

- the Law on the Stock Exchange (*Ley de Mercado de Valores*, or LMV);
- the General Provisions Applicable to Issuers and Other Participants of the Securities Market (*Disposiciones de Carácter General Aplicables a las Emisoras de Valores y a Otros Participantes del Mercado de Valores*, or CUE);

- the General Law of Negotiable Instruments and Credit Transactions (*Ley General de Títulos y Operaciones de Crédito*), which contains the regulation for trusts and participation certificates;
- the Law on Income Taxes (*Ley de Impuesto Sobre la Renta*); and
- the Law on Value Added Tax (*Ley del Impuesto al Valor Agregado*).

Such laws and regulations have been amended from time to time to allow new innovative structures and instruments that have fulfilled the needs of local and foreign issuers and investors such as the Mexican pension funds (*Administradora de Fondos para el Retiro*, or AFORES).

In 2005, the LMV was amended to incorporate the trust certificates (*certificados bursátiles fiduciarios*) that are key in the securitisation structures. Furthermore, in 2014, the Law was amended to incorporate the real estate trust certificates (*certificados bursátiles inmobiliarios*) known as Real Estate Investment Trusts (*Fideicomiso de Inversión en Bienes Raíces*, or FIBRAs) and Development Fiduciary Securitisation Certificates (*certificados de capital de desarrollo*, or CKDes), which is the vehicle that has allowed the AFOREs to invest in several types of projects. In 2015, the CUE was modified for the regulation and creation of Investment Project Fiduciary Securitisation Certificates (*Certificados Bursátiles Fiduciarios de Proyectos de Inversión*, or CERPIs), which are instruments to finance projects, for investments in shares or company financing.

Range of Products to Capitalise on Legal and Regulatory Framework

In general, structured products are found in Mexico that take advantage of the foregoing legal figures, such as (i) a CDO, which is a structured financial product backed by a pool of loans given usually by a bank before it is sold to an investment bank and repackaged into an investment product; (ii) an MBS, which is a financial security collateralised by a pool of mortgages; and (iii) future flow (FF) securities, which are debt instruments issued by companies whose repayment of principal and interest is secured by payments on future flow receivables.

In such regard, and due to the reforms above-mentioned, securitisations in Mexico have mainly been implemented through an administration trust (*fideicomiso de administración*), although Mexican companies may be used as a special-purpose acquisition company. Such a trust does not have legal personality and all acts are conducted by the financial institution in its capacity as trustee, making the administration more transparent for investors. It also provides the benefit of bankruptcy remoteness and the conveyance of the underlying assets implies a true sale for legal purposes. The transfer of these assets usually takes place under a purchase or assignment agreement between the originator and the trust.

The applicable tax regime to securitisations is usually defined by the securities and underlying assets, along with the kind of trust used in the structure, which, if properly implemented, should be considered as a fiscally transparent vehicle.

As for the Mexican debt securities market, in 2018, there are currently 328 structured issuances listed, which represents 39.1% (MXN494,788 million) of the total amount in circulation. During 2017, these types of issuances held 40.0% (MXN481,887 million). In December 2018, of the aforementioned issuances in circulation, 36.2% was concentrated in two types of instruments: ABS, with 16.5%, and future flow securities, with 19.7%. The pending 60.9% is equivalent to

251 issuances that correspond to non-structured debt distributed in several sectors, such as telecommunications, infrastructure, foods, automotive, federal agencies, retail and State-owned companies.

Of the long-term debt issuances, 47.8% is integrated by ten issuers, of which the State-owned companies *Petróleos Mexicanos* (PEMEX), *Comisión Federal de Electricidad* (CFE), *Fondo de la Vivienda del Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado* (FOVISSSTE) and *Instituto del Fondo Nacional de la Vivienda para los Trabajadores* (INFONAVIT) have 33.1% of the total amount in circulation. PEMEX and CFE are first and second in the whole market, respectively. Moreover, 69.9% of the long-term debt in circulation in the sector is distributed within the following six sectors: infrastructure, telecommunications, housing support, federal agencies, financial services and State-owned companies.

Decree Aims to Stimulate Corporate Bond Market

After the global financial crisis, the main issuers of MBSs have been two governmental entities, FOVISSSTE and INFONAVIT. History has shown that presidential election years tend to be atypical for the market and 2018 was not an exception to some extent, since the accumulated amount of what was issued in 2018 (MXD177,298 million) is 22.2% lower than what was registered in 2017. Nevertheless, the new federal administration issued a Presidential Decree on 8 January 2018 that grants certain tax incentives with the aim of boosting the market and encouraging the acquisition of corporate bonds.

In general, the two main tax incentives of the aforementioned Decree are (i) a 100% credit of the income tax to be withheld in Mexico, generally by financial intermediaries acting as withholding agents, from the interest payments to foreign investors resident in a country with which Mexico has a double tax treaty or a Broad Exchange of Information Agreement, if the interests derive from publicly traded bonds issued by Mexican residents; and (ii) the application of a 10% tax rate over the earnings realised during 2019 to 2021 from the sale of shares not yet registered in the National Securities Registry issued by a Mexican entity, held either directly or through a venture capital trust (FICAPs or similar vehicles), so long as the transaction is carried out through an IPO and other requirements are fulfilled.

New Stock Exchange Expected to Increase Securitisation Activity

In addition, as one of the relevant trends and developments in securitisations, on 25 July 2018, the Mexican government approved the operations of a new stock exchange, the *Bolsa Institucional de Valores* (BIVA), which became the second exchange market to operate in Mexico and is expected to compete with the *Bolsa Mexicana de Valores* (BMV). BIVA

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will trade the same instruments as the BMV, and the filing and listing process is very similar to the BMV.

The entrance of BIVA is expected to make the Mexican stock markets more attractive and easier for companies to become listed and develop these types of vehicles. This creates a positive expectation for securitisations and the possibility of the incorporation of an important number of these instruments during 2019.

In conclusion, the structured finance market in Mexico has developed over the past decade to the point where structures may now be implemented in accordance with international industry standards. The Mexican legislative landscape provides a strong fundamental statutory and regulatory framework for transactions. Structured finance transactions provide flexibility to allow the creation and implementation of innovative, workable solutions that help companies access different sources of funding.

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