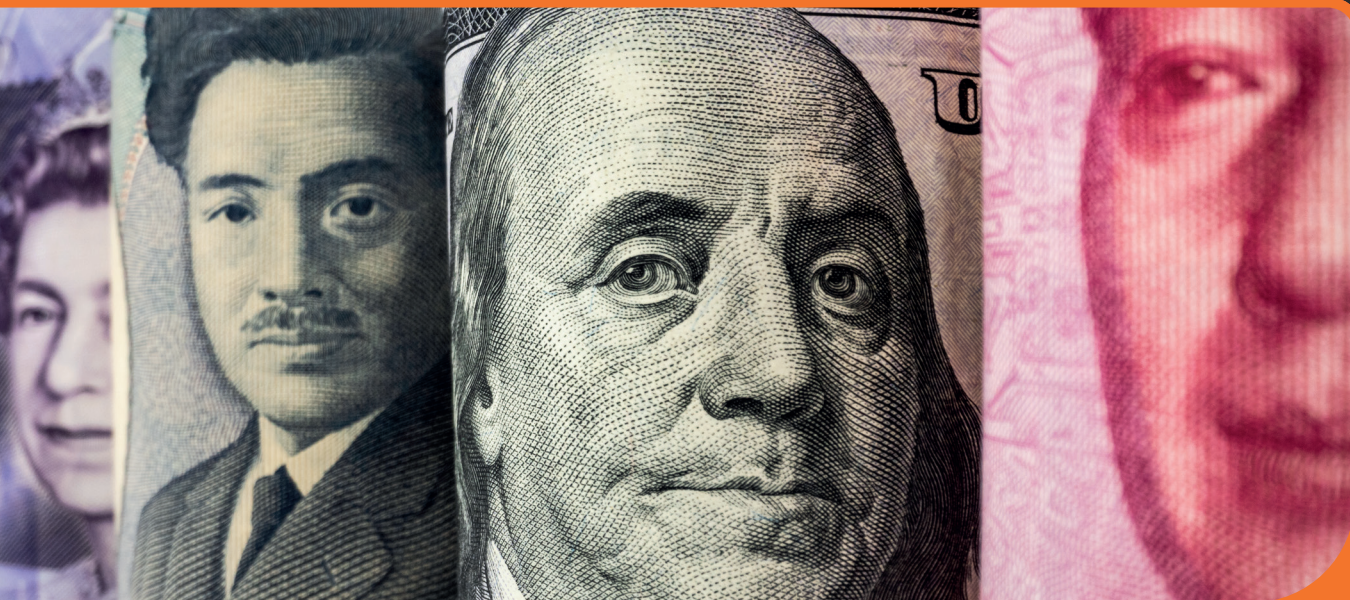


International Comparative Legal Guides



Practical cross-border insights into lending and secured finance

Lending & Secured Finance 2022

10th Edition

Contributing Editor:

Thomas Mellor
Morgan, Lewis & Bockius LLP

LSTA

LMA | Loan
Market
Association

APLMA
Asia Pacific Loan Market Association

ICLG.com

Editorial Chapters

- 1** **Loan Syndications and Trading: An Overview of the Syndicated Loan Market**
Bridget Marsh & Tess Virmani, Loan Syndications and Trading Association
- 7** **Loan Market Association – An Overview**
Hannah Vanstone, Loan Market Association
- 13** **Asia Pacific Loan Market Association – An Overview**
Andrew Ferguson & Rosamund Barker, Asia Pacific Loan Market Association

Expert Analysis Chapters

- 16** **An Introduction to Legal Risk and Structuring Cross-Border Lending Transactions**
Thomas Mellor, Marcus Marsh & Jasmine Badreddine, Morgan, Lewis & Bockius LLP
- 21** **Global Trends in Leveraged Lending**
Joshua Thompson, James Crooks & Bryan Robson, Sidley Austin LLP
- 32** **Looking Back at the Year in SPACs**
Michael Steinberg & Alain Dermarkar, Shearman & Sterling LLP
- 39** **The Increasing Use of Preferred Equity in Financing Acquisitions**
Meyer Dworkin, Scott Herrig, Randy Dorf & Phoebe Jin, Davis Polk & Wardwell LLP
- 43** **2022: A Regulatory Perspective**
Bill Satchell & Elizabeth Leckie, Allen & Overy LLP
- 49** **Acquisition Financing in the United States: A Strong Recovery**
Geoffrey Peck & Mark S. Wojciechowski, Morrison & Foerster LLP
- 55** **A Comparative Overview of Transatlantic Intercreditor Agreements**
Miko Bradford & Benjamin Sayagh, Milbank LLP
- 63** **A Comparison of Key Provisions in U.S. and European Leveraged Loan Agreements**
Tracey L. Chenoweth & Clive J. Wells, Skadden, Arps, Slate, Meagher & Flom LLP
- 81** **Fund Finance: The Transition to 2022**
Michael C. Mascia, Cadwalader, Wickersham & Taft LLP
- 84** **Recent Developments in U.S. Term Loan B**
Denise Ryan & Kyle Lakin, Freshfields Bruckhaus Deringer LLP
- 93** **The Continued Prevalence of European Covenant Lite**
Jane Summers, Daniel Seale, Karan Chopra & Robert Davidson, Latham & Watkins LLP
- 98** **Analysis and Update on the Continuing Evolution of Terms in Private Credit Transactions**
Sandra Lee Montgomery & Michelle L. Iodice, Proskauer Rose LLP
- 108** **Trade Finance on the Blockchain: 2022 Update**
Josias Dewey, Holland & Knight LLP
- 115** **Financing Your Private Debt Platform**
Global Finance Group, Dechert LLP
- 125** **Developments in Midstream Oil and Gas Finance in the United States**
Elena Maria Millerman & Derrick Sweeney, White & Case LLP
- 134** **More Money, More Problems: Considerations for Perfection and Control of Virtual Currency**
Kalyan (“Kal”) Das, Anthony Tu-Sekine, Gregg Bateman & Y. Daphne Coelho-Adam, Seward & Kissel LLP
- 140** **2022 Private Credit and Middle Market Update: Key Trends and Developments**
Jeff Norton, Sung Pak, Jennifer Taylor & Adam Longenbach, O’Melveny & Myers LLP
- 144** **Core-Plus Infrastructure and Leveraged Financing: The Continued Convergence of Terms**
Ben Thompson, Travers Smith LLP
- 148** **Recent Trends in Sustainable Finance**
Lara M. Rios, Kevin L. Turner & Allison N. Skopec, Holland & Knight LLP

Expert Analysis Chapters Continued

156 **SONIA: Transitioning to a New Era**
Tim Rennie, Darren Phelan, Katharine Tuohy & Sarah Curry, Ashurst LLP

162 **Hedging the Refinanced Cross-Border Credit Agreement**
Felicity Caramanna, Credit Agricole Corporate and Investment Bank

Q&A Chapters

165 **Argentina**
Marval O'Farrell Mairal: Juan M. Diehl Moreno & Diego A. Chighizola

176 **Austria**
Fellner Wratzfeld & Partners: Markus Fellner, Florian Kranebitter & Mario Burger

188 **Belgium**
Astrea: Dieter Veestraeten

195 **Bermuda**
Wakefield Quin Limited: Erik L. Gotfredsen & Jemima Fearnside

203 **Bolivia**
Criales & Urcullo: Luis Valda Yanguas, Adrián Barrenechea Bazoberry & Andrea Mariah Urcullo Pereira

211 **Brazil**
Pinheiro Neto Advogados: Ricardo Simões Russo & Leonardo Baptista Rodrigues Cruz

220 **British Virgin Islands**
Maples Group: Michael Gagie & Matthew Gilbert

228 **Canada**
McMillan LLP: Jeff Rogers, Don Waters, Maria Sagan & Christina Kim

239 **Cayman Islands**
Maples Group: Tina Meigh & Bianca Leacock

247 **Chile**
Carey: Diego Peralta, Fernando Noriega & Alejandro Toro

256 **Croatia**
Macesic and Partners LLC: Ivana Manovelo

265 **England**
Allen & Overy LLP: Oleg Khomenko & Jane Glancy

276 **Finland**
White & Case LLP: Tanja Törnkvist & Henna Viljakainen

285 **France**
Orrick Herrington & Sutcliffe LLP: Carine Mou Si Yan

295 **Germany**
SZA Schilling, Zutt & Anschutz
Rechtsanwalts-gesellschaft mbH:
Dr. Dietrich F. R. Stiller

305 **Greece**
Sardelas Petsa Law Firm: Panagiotis (Notis) Sardelas & Aggeliki Chatzistavrou

314 **Ireland**
Dillon Eustace LLP: Conor Keaveny, Jamie Ensor & Richard Lacken

326 **Italy**
Allen & Overy Studio Legale Associato:
Stefano Sennhauser & Alessandra Pirozzolo

336 **Japan**
Mori Hamada & Matsumoto: Yusuke Suehiro

344 **Jersey**
Carey Olsen Jersey LLP: Robin Smith, Kate Andrews, Peter German & Nick Ghazi

355 **Luxembourg**
SJL Jimenez Lunz: Antoine Fortier Grethen & Iulia Gay

364 **Malawi**
Ritz Attorneys-at-Law: John Chisomo Kalampa, Chifundo Ngwira & Lozindaba Mbvundula

373 **Mexico**
Chevez Ruiz Zamarripa: Ana Sofía Ríos, Jimena González de Cossío & María Martínez Escobar

383 **Netherlands**
Freshfields Bruckhaus Deringer LLP: Mandeep Lotay & Tim Elkerbout

391 **Nigeria**
Famsville Solicitors: Dayo Adu, Woye Famojuro, Adeyemi Ayeku & Elu-Ojor Okoka

401 **Singapore**
Drew & Napier LLC: Pauline Chong, Renu Menon, Blossom Hing & Ong Ken Loon

413 **South Africa**
Allen & Overy (South Africa) LLP: Ryan Nelson & Cynthia Venter

425 **Spain**
Cuatrecasas: Héctor Bros & Manuel Follía

437 **Sweden**
White & Case LLP: Carl Hugo Parment & Magnus Wennerhorn

445 **Switzerland**
Bär & Karrer Ltd.: Frédéric Bétrisey, Lukas Roesler & Micha Schilling

455 **Taiwan**
Lee and Li, Attorneys-at-Law: Hsin-Lan Hsu & Odin Hsu

464 **United Arab Emirates**
Morgan, Lewis & Bockius LLP: Amanjit Fagura & Tomisin Mosuro

480 **USA**
Morgan, Lewis & Bockius LLP: Thomas Mellor, Katherine Weinstein & Rick Denhup

493 **Venezuela**
Rodner, Martínez & Asociados: Jaime Martínez Estévez

Mexico



Ana Sofía Ríos



Jimena González de Cossío



María Martínez Escobar

Chevez Ruiz Zamarripa

1 Overview

1.1 What are the main trends/significant developments in the lending markets in your jurisdiction?

The COVID-19 pandemic represented an unprecedented disruptive event. At its beginning in 2020, the effects of COVID-19 triggered a recession that impacted financing markets globally. Early in 2020, the Mexican government declared a health emergency, implemented a series of measures, including travel restrictions, social distancing and school closures, and shut down non-essential activities to slow the spread of the virus. Mexican banking and other financial institutions, as well as banking institutions internationally, implemented crisis response plans, which included strict testing tools, close monitoring, and the implementation of refinancing alternatives for their clients. In this regard, the Mexican Banking and Securities Commission (*Comisión Nacional Bancaria y de Valores* or CNBV) enacted special – and temporary – accounting principles applicable to regulated entities with respect to consumer lending, mortgages and commercial loans, the performance of which was affected as a result of the pandemic. Such special regulations allowed banks to refinance consumer lending, mortgage loans and commercial loans for up to six months, without affecting their non-performing loans. Besides said special accounting guidelines, the CNBV also issued official recommendations which limited banks' capacity to pay dividends, as a prudent measure during the circumstances brought about by COVID-19.

As a result of COVID-19, the banking sector limited loan origination and built up prudential reserves, some of which were released in 2021 and which are expected to continue to be released in 2022. The effects of COVID-19 on traditional banks forced the development and consolidation of non-bank financial institutions (NBFIs) in their role of financing sectors of the economy that were not fully served by the banking industry, increasing competition between banks and other market participants. *Sociedades financieras de objeto múltiple* (SOFOMEs), Issuer Trusts of Capital Development Certificates (*Certificados de Capital de Desarrollo* or CKDs), other private equity funds, as well as a large number of new fintech-related lenders, are currently very active in the market, offering alternative financing solutions which include mezzanine lending and other structured loans.

As Mexico is undergoing a steady recovery from the COVID-19 pandemic, the OECD expects the Mexican economy to expand by 3.3% in 2022 and 2.5% in 2023. Expanding access to financial services is a key driver for investment by SMEs and large corporations to promote growth and increase productivity. We expect an increase in loan demand and origination, with highly capitalised banks focusing on corporate and public-sector lending, and NBFIs serving SMEs and individuals.

1.2 What are some significant lending transactions that have taken place in your jurisdiction in recent years?

Notwithstanding 2021 being a challenging year for Mexico's lending market, there were some noteworthy lending transactions, including significant re-financing transactions brought about by the effects of COVID-19, other cross-border syndicated transactions, as well as a proportion of environmental, social and governance (ESG)-supported facilities. Below is a brief description of a number of recent public transactions:

- Unifin Financiera, S.A.B. de C.V. successfully concluded an exchange offer for a principal amount of up to US\$200 million, targeting three series of outstanding senior notes due in 2022, 2023 and 2025 previously issued by the company, and the issuance of a US\$400 million principal amount of 9.875% senior notes due in 2029.
- During 2021, Unifin Financiera, S.A.B. de C.V. completed several cross-border syndicated financing transactions led by Barclays Bank, Nomura Securities, Banco BTG Pactual S.A. and Banco Latinoamericano de Comercio Exterior, S.A., among others, for an aggregate approximate amount of US\$285 million.
- One of the most relevant financing transactions during 2021 involved Cemex, where the company closed a US\$3.25 billion syndicated credit agreement, consisting of a US\$1.5 billion five-year amortising term loan and a US\$1.75 billion five-year committed revolving facility.
- In May 2021, Corporación Inmobiliaria Vesta, S.A.B. de C.V. announced the successful closing of its inaugural Sustainability-Linked Bond offering, placing US\$350 million in 10-year sustainability-linked notes at an interest rate of 3.625%.
- In June 2021, Hoteles City Express finalised a syndicated financing facility for US\$191.7 million in order to refinance its indebtedness.

- In July 2021, Fibra SOMA, a Mexican real estate investment trust focused on the acquisition, leasing, and management of for-lease properties in Mexico, issued a US\$600 million senior unsecured bond on the international markets.
- In July 2021, Terrafina, a Mexican industrial real estate investment trust, closed a syndicated US\$485 million sustainability credit facility comprised of an unsecured revolving credit facility for an amount of US\$300 million and an unsecured term loan for an amount of US\$185 million, due in July 2026.
- In September 2021, Grupo Bimbo S.A.B. de C.V. renewed its committed revolving credit facility in the current amount of US\$1.75 billion; such facility is sustainability-linked and marked the company's debut in sustainable financing.

Our firm advises, on a regular basis, Mexican companies both as lenders and borrowers in domestic and cross-border secured and unsecured financing and capital market transactions.

2 Guarantees

2.1 Can a company guarantee borrowings of one or more other members of its corporate group (see below for questions relating to fraudulent transfer/financial assistance)?

Yes, both in domestic and cross-border transactions, subject to foreign law.

Under Mexican law, there are no restrictions on a Mexican company guaranteeing or granting collateral for the obligations of a subsidiary or any other affiliate or related party. Such guarantee or collateral may be granted subject to the generally applicable rules on fraudulent conveyance (see question 2.2 below).

Under Mexican law, there are three main capacities under which a third party can secure a debtor's obligations: (1) joint obligor or co-obligor; (2) guarantor (*obligado solidario*); and/or (3) *avalista* (an entity that executes a promissory note – *pagaré* – or another negotiable instrument delivered by a debtor, as a guarantor).

Lenders' approach as regards due diligence is to confirm that third parties acting as guarantors, co-obligors or *avalistas* are authorised to do so under their organisational documents.

2.2 Are there enforceability or other concerns (such as director liability) if only a disproportionately small (or no) benefit to the guaranteeing/securing company can be shown?

Enforceability of a guarantee in Mexico is subject mainly to bankruptcy, insolvency, dissolution and liquidation, labour and tax regulations affecting the rights of creditors generally. Pursuant to the Insolvency Law (*Ley de Concursos Mercantiles*), guarantee transactions that are gratuitous, that provide no benefit or a disproportionately small benefit to the guaranteeing/securing company, can constitute a fraudulent conveyance in the event of company insolvency. In this regard, transactions in which a guarantor has not received fair consideration for granting a guarantee can be deemed fraudulent if the guarantee was created within the statutory look-back period of 270 days before the date on which the guarantor is declared insolvent by a Mexican court. For these reasons, close analysis should be carried out regarding monetary considerations or corporate benefits by any entity of a corporate group acting as guarantor of another related entity (see question 8.1).

Director liability is governed by general corporate laws and regulations. Regarding private companies, director liability is mainly related to actions adopted by any director or the board itself, whereby a conflict of interest exists and has not been

disclosed. In the case of public companies, directors shall comply with the duties of loyalty and care. The duty of care consists of directors acting in good faith and in the best interests of the company, while the duty of loyalty consists of (i) maintaining the confidentiality of information received in connection with the performance of a director's duties while such information is not made publicly available, and (ii) abstaining from discussing or voting on matters where a director has a conflict of interest.

2.3 Is lack of corporate power an issue?

The General Law of Commercial Companies (*Ley General de Sociedades Mercantiles*) provides that all commercial entities are entitled to carry out all actions required for the fulfilment or development of its corporate purpose. The corporate purpose of a Mexican corporation shall include the company's authority to carry out financing transactions and to secure obligations/grant collateral, including obligations of third parties. Additionally, the bylaws of a Mexican corporation may require additional corporate approvals to carry out the aforementioned transactions, such as shareholder or board approval. Financing or guarantee transactions shall be executed by a duly appointed legal representative with sufficient powers and authorities pursuant to Mexican law, which may include powers of domain, administration and execution of negotiable instruments.

Other consents or requirements may apply, including authorisations from other lenders and governmental authorities (see question 2.4 below).

2.4 Are any governmental or other consents or filings, or other formalities (such as shareholder approval), required?

Regarding internal approvals, as mentioned above, certain corporate authorisations, including board and/or shareholder approvals, are usually required under the bylaws of a securing company.

Third-party consents may be required depending on the contractual obligations assumed by the securing company, including authorisations from other lenders pursuant to the covenants agreed under other financing transactions.

Governmental authorisations may be required depending on the type of company (i.e. regulated entities), or the type of assets (i.e. concession titles). In addition, depending on the type of collateral, certain formalities and filings with public registries may apply.

2.5 Are net worth, solvency or similar limitations imposed on the amount of a guarantee?

There are no legal or statutory net worth, solvency or other limitations imposed on the amount of a guarantee, except for insolvency or bankruptcy limitations.

2.6 Are there any exchange control or similar obstacles to enforcement of a guarantee?

As at the time of writing, Mexico has no exchange controls regulations in force. The Mexican peso is freely convertible into all other currencies and there are no restrictions on the remittance of profits abroad or the repatriation of capital. Notwithstanding the foregoing, pursuant to the Mexican Monetary Law (*Ley Monetaria de los Estados Unidos Mexicanos*), payment obligations

denominated in foreign currency may be discharged by the borrower or the respective guarantor by paying any due amounts in Mexican currency at the rate of exchange published by the Bank of Mexico (*Banco de México* or *Banxico*) in Mexico and in effect on the date such payment is made.

Regarding cross-border financing transactions, foreign judgments would be enforceable in Mexico against Mexican borrowers and guarantors in competent Mexican courts, without re-examination of the merits, provided that the following requirements are met, in accordance with the Mexican Commercial Code (*Código de Comercio*) and the Mexican Federal Code of Civil Procedure (*Código Federal de Procedimientos Civiles*):

- (i) such judgment is obtained in compliance with the legal requirements of the jurisdiction of the court rendering such judgment and in compliance with all legal requirements of the financing documents under which relief is being sought;
- (ii) such judgment is strictly for the payment of a certain sum and is rendered in an *in personam* (as opposed to an *in rem*) action;
- (iii) service of process was made personally on the defendants, and as a result of such service of process, the defendants were given an opportunity to answer any lawsuit, be heard and provide evidence in connection therewith;
- (iv) the applicable procedure under the laws of Mexico with respect to the enforcement of foreign judgments (including, but not limited to, the issuance of a letter rogatory by the competent authority of a foreign jurisdiction) is complied with;
- (v) such judgment is final and non-appealable in the jurisdiction where it was obtained;
- (vi) the action in respect of which such judgment is rendered is not the subject matter of a lawsuit among the same parties pending before a Mexican court;
- (vii) such judgment does not contravene a final judgment of a Mexican court on the same subject between the parties thereto;
- (viii) the courts of such jurisdiction recognise the principles of reciprocity in connection with the enforcement of Mexican judgments in such jurisdiction;
- (ix) the judgment and related documents are translated into Spanish by an expert duly authorised as admissible before the Mexican courts before which enforcement is requested, such translation being subject to approval by the Mexican court after the defendant has been given an opportunity to be heard with respect to the accuracy of the translation, and such proceedings would thereafter be based upon the translated documents; and
- (x) such judgment does not contravene Mexican law, the public policy of Mexico, international treaties or agreements that are binding upon Mexico or generally accepted principles of international law, and the judge or court rendering the judgment was competent to hear and judge on the subject matter of the case in accordance with the accepted principles of international law that are compatible with Mexican law.

In addition to the foregoing, other Mexican law limitations must be considered in any enforcement procedure, including, among others: (i) the inability of lenders to collect interest-on-interest; (ii) the impossibility of enforcing claims outside the applicable statutes of limitations; and (iii) the need for judicial intervention for the taking of possession, entry or removal of property, or similar actions.

3 Collateral Security

3.1 What types of collateral are available to secure lending obligations?

Mexican law allows for the creation of a security interest on virtually any kind of asset, except for public domain assets and certain rights pertaining to individuals under civil rights. The most common types of security interests are mortgages, pledges and guarantee trust agreements (see question 3.2).

3.2 Is it possible to give asset security by means of a general security agreement or is an agreement required in relation to each type of asset? Briefly, what is the procedure?

Mexican legislation does not provide for a general security agreement covering all or almost all of the assets of a security provider. Certain forms of security interests regulated by Mexican law may compromise several assets of a debtor, such as a non-possessory pledge, an industrial mortgage (regulated by banking law), a guarantee trust agreement and certain types of industrial credit agreements (*créditos refaccionarios y de habilitación y avío*).

When structuring the guarantee package on a financing transaction in Mexico, close analysis should be carried out with respect to the types of assets that are available as collateral (i.e. tangible or intangible, real estate or personal property, present and/or future assets), the nature of the lender and the borrower (i.e. if the lender is a banking institution or has an affiliate in Mexico), if the borrower is an individual or an entity, the borrower's core business, and the costs of the perfection of the security (i.e. notarial fees, trustee fees and registration costs).

Below is a description of the main guarantee forms regulated in Mexico with respect to real estate and other movable assets.

Mortgage

A mortgage creates a security interest over real estate assets located in Mexico to secure the obligations of a borrower for the benefit of the lender. Mexican procedural laws provide for a special foreclosure procedure for mortgages. When a borrower is found by a court to be insolvent (*in concurso mercantil*) and the lender is a secured creditor, the lender enjoys certain rights, including: (i) the right to foreclose on the secured assets under the supervision of the insolvency court; and (ii) payment priority as against unsecured and subordinated creditors.

The guarantee or mortgage agreement shall be executed in a public deed before a Mexican notary public. A mortgage will be effective *vis-à-vis* third parties upon its registration in the Public Registry of Property (*Registro Público de la Propiedad*) of the jurisdiction in which the real estate is located.

Mortgages may be constituted in other assets such as vessels and other maritime structures (such as offshore platforms), which shall be effective upon registration in the relevant registry (i.e. mortgages on vessels shall be registered in the National Maritime Public Registry (*Registro Público Marítimo Nacional*)).

Pledge on movable assets (commercial and non-possessory)

There are two ways to create pledges over movable assets: (a) a regular or commercial pledge (possession of the pledged assets is transferred to the pledgee); or (b) a floating/non-possessory pledge (possession of the pledged assets remains with the pledgor), the latter being more common in the implementation of Mexican collateral when pledging several assets which may be of different kinds.

The creation and perfection of a commercial pledge requires the execution and delivery of a pledge agreement between the pledgor and the pledgee, and delivery of possession of the pledged assets to the pledgee or a third party appointed by the parties to maintain the assets in deposit for the benefit of the pledgee. Additional requirements may have to be satisfied to perfect the pledge for certain movable assets. For example, pledged negotiable securities must be endorsed in a guarantee (“*en prenda*”) in favour of the pledgee and certain registrations before private and public registries may apply (such as, for shares, registration in the shareholder register (*Libro de Registro de Acciones*) of the issuing company). A commercial pledge can be enforced through a special judicial procedure that allows the pledgee to request judicial authorisation (which does not require a formal trial) to sell the pledged assets at maturity of the secured obligations without additional judicial intervention.

The creation and perfection of a non-possessory pledge requires the execution and delivery of a non-possessory pledge agreement between the pledgor and the pledgee, which must be ratified before a Mexican notary public and registered in the Public Registry of Guarantees on Movable Assets (*Registro Único de Garantías Mobiliarias*). Mexican law allows for an extrajudicial foreclosure procedure for a non-possessory pledge. This process is initiated by a formal request made by the pledgee to the pledgor before a Mexican notary public for the delivery of the pledged assets. Valuation and sale of the pledged assets shall be made in accordance with the terms and conditions agreed by the parties in the pledge agreement. However, an extrajudicial foreclosure can only be carried out if there are no disputes among the parties with respect to: (i) maturity of the secured obligations; (ii) the amount being claimed by the pledgee; and (iii) delivery of the pledged assets.

If there is disagreement, it would be necessary to follow a special judicial foreclosure procedure that takes place before the Mexican courts.

It should be noted that other consents or registrations may be required depending on the specific collateral and/or grantor (i.e. in the case of pledges over intellectual property assets, the pledge will need to be registered before the Mexican Institute of Industrial Property (*Instituto Mexicano de la Propiedad Industrial*)).

Additionally, pledges on shares or other publicly traded assets may be granted through a securities pledge (*prenda bursátil*). Pledged securities under this security interest are deposited in an account held by the Institute for the Deposit of Securities (*Institución para el Depósito de Valores* or *Indeval*) in the name of a third party acting as the administrator of the pledge, who will take any foreclosure actions required upon an event of default, including sale of the securities on the open market. A securities pledge may also be structured by transferring title of the pledged securities to the lender, which will be regarded as a repurchase transaction.

Guarantee trust

A Mexican guarantee trust (*fideicomiso de garantía*) is a contract that allows a grantor, acting as settlor, to transfer and convey title to the collateral to a financial institution (usually a bank), acting as trustee, for the benefit of the secured parties. The trustee will hold title to the collateral and be acknowledged as the owner thereof for all Mexican legal (other than tax) and insolvency purposes, creating a preferential right to foreclose on the collateral and a right to be paid with the proceeds deriving therefrom, in favour of the secured parties. The guarantee trust is a bankruptcy-remote vehicle whereby title to the assets conveyed and transferred to it will be segregated from the settlors’ assets in an insolvency proceeding.

Guarantee trusts shall be executed before a Mexican notary or commercial notary public (*notario* or *corredor público*), and shall be registered in the Public Registry of Guarantees on Movable Assets if it is created with respect to personal property, and/or with the Public Registry of Property if it is created with respect to real estate assets. Certain assets may require further action to perfect their transfer to the trustee. For example, the transfer of certain accounts receivable or collection rights requires notice of the transfer to be given to the payers of the receivables in the presence of a Mexican notary public, or two witnesses.

A guarantee trust can be enforced through an extrajudicial foreclosure procedure (see above for the extrajudicial process described for a non-possessory pledge).

3.3 Can collateral security be taken over real property (land), plant, machinery and equipment? Briefly, what is the procedure?

Yes, collateral over real property can be created by means of a mortgage or a guarantee trust governed under Mexican law. Regarding the creation of a security interest over machinery and equipment, this can be done through a pledge or guarantee trust, as described above.

Alternatively, a security interest may be created on land, machinery and equipment through a loan agreement executed for the purpose of acquisition of said assets. This is known as a *crédito refaccionario*, which shall be executed before a Mexican notary public and registered in the Public Registry of Guarantees on Movable Assets.

3.4 Can collateral security be taken over receivables? Briefly, what is the procedure? Are debtors required to be notified of the security?

Security over receivables can be taken in two different manners: through a pledge, or through a guarantee trust. In the case of a guarantee trust, the debtors shall be notified of the transfer and conveyance of the accounts receivables to the trust or the trustee, as this kind of security interest implies the legal transfer of property to the trust. If the debtors are not notified of the transfer of the accounts receivables, they would be released from their obligations by paying the lender. In the event of a pledge, there is no legal requirement to notify the debtors of the creation of the collateral; however, it is advisable to do so in order for the debtors to acknowledge the existence of the collateral and to make payments directly to the secured party upon an event of default.

3.5 Can collateral security be taken over cash deposited in bank accounts? Briefly, what is the procedure?

Yes, it is common to create security interests over cash and cash deposits. The most common forms of security interests are pledge agreements and guarantee trust agreements.

3.6 Can collateral security be taken over shares in companies incorporated in your jurisdiction? Are the shares in certificated form? Can such security validly be granted under a New York or English law-governed document? Briefly, what is the procedure?

Yes, collateral security can be taken over shares in companies incorporated in Mexico through a Mexican commercial or non-possessory pledge, or Mexican guarantee trust. As mentioned above, in the case of a guarantee trust, the relevant shares are transferred to the trust and therefore the trust becomes a shareholder of the issuing entity. In the case of a

commercial or non-possessory pledge, the company shall register the creation of the pledge on the relevant shares in the company's shareholder register.

Since the pledge assets are governed under Mexican law, any security interest agreement on shares of Mexican companies shall be governed by Mexican law.

3.7 Can security be taken over inventory? Briefly, what is the procedure?

Yes, security can be taken over inventory, either through a non-possessory pledge, an industrial mortgage, or a guarantee trust agreement.

3.8 Can a company grant a security interest in order to secure its obligations (i) as a borrower under a credit facility, and (ii) as a guarantor of the obligations of other borrowers and/or guarantors of obligations under a credit facility (see below for questions relating to the giving of guarantees and financial assistance)?

Subject to insolvency and bankruptcy limitations, there are no restrictions regarding the granting of security interests to secure a company's own obligations, the obligations of its subsidiaries or other related/third parties. The corporate purpose or organisational documents of a security provider must expressly contemplate the possibility of creating security interests to secure a debt owed by a third party.

3.9 What are the notarisation, registration, stamp duty and other fees (whether related to property value or otherwise) in relation to security over different types of assets?

The perfection and formalities applicable to security instruments in Mexico vary depending on the type of collateral. The perfection of a security interest between the parties is differentiated from its perfection *vis-à-vis* third parties.

When granting collateral under Mexican law, the participation of a Mexican notary or commercial notary public (*notario* or *corredor público*) is usually required, taking into consideration that certain security instruments must be granted or ratified before such individuals (i.e. mortgages, certain guarantee trusts and non-possessory pledges). The corresponding notarial fees will depend on the type of asset being collateralised and on the total value of the secured obligation. These fees are usually capped but, in some cases, can represent proportional amounts. The fees are usually paid by the borrower.

There are no fees for registration in the Public Registry of Guarantees on Movable Assets, as it is an electronic registry. However, there are fees related to the registration of security interests over real estate assets in the Public Registry of Property in the jurisdiction where the assets are located. These fees vary from jurisdiction to jurisdiction and are generally calculated as a percentage of the secured obligations.

Please note that, in addition to the above, depending on the type of assets subject to collateral, other forms of registration could be applicable (i.e. aircraft, vessels, intellectual property rights).

3.10 Do the filing, notification or registration requirements in relation to security over different types of assets involve a significant amount of time or expense?

The timing and expenses involved in the filing and registration

of Mexican collateral can vary significantly on a case-by-case basis and can depend on the workload of the corresponding registries. Generally speaking, the timing for registration of collateral is not significant in a financing transaction, as several public registries in Mexico have been digitalised, with the exception of registries for real estate properties. It is important to note that, as a result of COVID-19, the timeframe for registration of security interests on real estate properties has become significantly longer.

3.11 Are any regulatory or similar consents required with respect to the creation of security?

The creation of a security interest on certain assets may be subject to the authorisation or consent of, or prior notice to, the governmental authorities in Mexico, in consideration of the type of asset or the type of entity. Generally, the creation of a security interest on regulated assets, such as concession titles and other permits, collection rights derived from contracts executed by governmental authorities, assets related to regulated sectors such as highways, telecom infrastructure assets and energy plants, among others, will require the prior authorisation of the relevant regulator.

3.12 If the borrowings to be secured are under a revolving credit facility, are there any special priority or other concerns?

No, there are not.

3.13 Are there particular documentary or execution requirements (notarisation, execution under power of attorney, counterparts, deeds)?

Please refer to questions 3.2, 3.9 and 3.10 above.

4 Financial Assistance

4.1 Are there prohibitions or restrictions on the ability of a company to guarantee and/or give security to support borrowings incurred to finance or refinance the direct or indirect acquisition of: (a) shares of the company; (b) shares of any company which directly or indirectly owns shares in the company; or (c) shares in a sister subsidiary?

Generally, no prohibitions or restrictions are applicable, except for the internal or corporate authorisations required pursuant to the bylaws of the relevant companies. With respect to publicly traded companies, these kinds of transactions may be subject to significant disclosure requirements and authorisations regarding related party transactions.

5 Syndicated Lending/Agency/Trustee/Transfers

5.1 Will your jurisdiction recognise the role of an agent or trustee and allow the agent or trustee (rather than each lender acting separately) to enforce the loan documentation and collateral security and to apply the proceeds from the collateral to the claims of all the lenders?

Yes. The concept of an agent is recognised in Mexico. An agency relationship may be established by granting a power of attorney pursuant to Mexican civil law, or otherwise through

an agency agreement (*comisión mercantil*) governed by commercial law. It is most common to use an agency agreement in syndicated loan transactions, which may be provided within the credit agreement or as a separate financing document.

Trusts are recognised and governed under Mexican law; however, they are not generally used for syndicated loan transactions.

5.2 If an agent or trustee is not recognised in your jurisdiction, is an alternative mechanism available to achieve the effect referred to above, which would allow one party to enforce claims on behalf of all the lenders so that individual lenders do not need to enforce their security separately?

This is not applicable in Mexico.

5.3 Assume a loan is made to a company organised under the laws of your jurisdiction and guaranteed by a guarantor organised under the laws of your jurisdiction. If such loan is transferred by Lender A to Lender B, are there any special requirements necessary to make the loan and guarantee enforceable by Lender B?

In Mexico, both loans and security interests can be transferred by means of an assignment agreement. Due to the accessory nature of security interests under Mexican law, any assignment of a loan, or a participation thereof, would automatically entail the assignment of the security interests or a proportional part of said interests. Assignment of a loan and the related guarantees shall be made with the same formalities as the original loan and guarantees. Certain types of guarantees, as mentioned above, require registration with the competent public registries for their formalisation and perfection against third parties; in this sense, assignment of guarantees shall also be recorded in such registries, save for certain exceptions provided in Mexican law with respect to the securitisation of real estate mortgage loans by banking institutions. Notice of the assignment of the loan shall be made to the debtor for the purpose of payment in favour of the new lender. If notice is not made to the debtor, the debtor would be released of its payment obligations by paying any amounts due under the loan to the original lender.

6 Withholding, Stamp and Other Taxes; Notarial and Other Costs

6.1 Are there any requirements to deduct or withhold tax from (a) interest payable on loans made to domestic or foreign lenders, or (b) the proceeds of a claim under a guarantee or the proceeds of enforcing security?

Income withholding tax applies, as a general rule, to interest payable by borrowers to foreign lenders and, in certain cases, when paid to non-Mexican banks or financial entities. Interest is defined as any credit yield, encompassing the claims or proceeds of the enforcement of a security that are destined for payment of amounts other than principal (i.e. guarantee fees, interests, commissions). In the case of interest payments to non-residents, as a general rule, withholding tax rates range from 4.9% to 40%, depending on the kind of debtor, the kind of beneficial owner of the interest, the type of debt instrument, and the potential application of tax treaty benefits.

Normally, no value-added tax (VAT) applies on the interest received by a non-resident, as these transactions are considered an importation of services. VAT may apply to interest payments in domestic credit transactions between non-bank, Mexico-resident parties.

6.2 What tax incentives or other incentives are provided preferentially to foreign lenders? What taxes apply to foreign lenders with respect to their loans, mortgages or other security documents, either for the purposes of effectiveness or registration?

As a yearly renewable tax policy, Mexico has adopted a preferential 4.9% income tax withholding rate to interest paid to banks resident in a country with which Mexico has a tax treaty in force. Please note that Mexico has enacted more than 40 double tax treaties and is in the process of negotiating more. This same reduced rate applies to debt placed through publicly traded instruments, subject to certain restrictions.

Please note that interest payments made to export/import banks granting or guaranteeing loans may be exempt from withholding, provided the requirements set forth by the law are complied with.

Additionally, a withholding tax exemption may be granted in a variety of cases, including the following: (a) interest derived from securities issued by the federal government or the central bank, provided that the beneficial owner of the interest is a non-resident for tax purposes; (b) interest derived from loans granted to the federal government, the central bank or derived from bonds issued by them; and (c) interest derived from loans granted under preferential conditions, payable to foreign development financial institutions.

6.3 Will any income of a foreign lender become taxable in your jurisdiction solely because of a loan to, or guarantee and/or grant of, security from a company in your jurisdiction?

Foreign lenders will be subject to income tax in Mexico on interest income earned (as defined by statute) and derived from a Mexican source through the applicable withholding over such interest. See the answers to questions 6.2 and 6.3. Foreign lenders would be subject to income tax in Mexico if they have a permanent establishment within the Mexican territory.

6.4 Will there be any other significant costs which would be incurred by foreign lenders in the grant of such loan/guarantee/security, such as notarial fees, etc.?

As noted above, there are several costs and fees that will apply when structuring, implementing and perfecting collateral in Mexico, such as notarial fees, trustee fees and registration costs.

6.5 Are there any adverse consequences for a company that is a borrower (such as under thin capitalisation principles) if some or all of the lenders are organised under the laws of a jurisdiction other than your own? Please disregard withholding tax concerns for the purposes of this question.

No, there are not.

7 Judicial Enforcement

7.1 Will the courts in your jurisdiction recognise a governing law in a contract that is the law of another jurisdiction (a "foreign governing law")? Will courts in your jurisdiction enforce a contract that has a foreign governing law?

Yes. Mexican civil and commercial law provide for a clear legal framework that allows choice of law provisions and submission

to foreign courts. For a submission to be valid, it must comply with the applicable requirements under Mexican law, including an irrevocable submission to the foreign governing law and courts, and a waiver to any other jurisdiction to which the relevant party may be entitled.

The Mexican judicial authorities would enforce a foreign judgment so long as the requirements for such enforcement are met (please see question 2.6 above).

7.2 Will the courts in your jurisdiction recognise and enforce a judgment given against a company in New York courts or English courts (a “foreign judgment”) without re-examination of the merits of the case?

Yes, Mexican courts regularly enforce judgments delivered, and awards rendered, abroad, often in the United States (US) and the United Kingdom (UK).

Please note that Mexico has been a member (by accession) of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, since 14 April 1971, and therefore the Mexican Commercial Code includes provisions from the main international arbitration conventions.

Ordinarily, in order to enforce a US or UK court final judgment, the interested party must submit a recognition and enforcement request before a Mexican court. The Mexican court will notify the defendant of the filing and set a hearing with the parties; later, the court shall deliver a judgment, granting or denying recognition and enforcement of such foreign judgment (please refer to questions 2.6 and 7.1 above).

In relation to orders from certain authorities or bodies, their enforcement or applicability would be subject to the international treaties to which Mexico is a party and the reciprocal relationship between the corresponding countries.

7.3 Assuming a company is in payment default under a loan agreement or a guarantee agreement and has no legal defence to payment, approximately how long would it take for a foreign lender to (a) assuming the answer to question 7.1 is yes, file a suit against the company in a court in your jurisdiction, obtain a judgment, and enforce the judgment against the assets of the company, and (b) assuming the answer to question 7.2 is yes, enforce a foreign judgment in a court in your jurisdiction against the assets of the company?

The timeframe for a judicial process in Mexico is uncertain and COVID-19 has extended any reasonable expectations for judicial resolutions in Mexico. Several factors should be considered when assessing a reasonable timeframe for a judicial process in Mexico, which are mainly: (i) whether the enforcement action is grounded on an executive title, such as public instruments (i.e. a public deed or a negotiable instrument or *pagare*), or on an ordinary title, such as private contracts; (ii) the particular circumstances of the case; (iii) applicable foreign governing laws, and jurisdictions; and (iv) coherence with Mexican legislation.

7.4 With respect to enforcing collateral security, are there any significant restrictions which may impact the timing and value of enforcement, such as (a) a requirement for a public auction, or (b) regulatory consents?

Yes. Different processes are carried out to enforce different security interests, as follows:

- **Mortgage.** As mentioned above, Mexican procedural law provides for a special mortgage foreclosure process initiated before the courts of the jurisdiction where the

real estate security is located, by means of which a public auction is carried out to sell and transfer the real estate property to obtain payment in favour of the lender.

- **Commercial pledge.** A regular pledge is enforced through a specific judicial process that permits the pledgee to request judicial authorisation to sell the pledged assets upon an event of default without a formal judicial trial.
- **Non-possessory pledge.** The pledgee initiates an extrajudicial foreclosure procedure for a non-possessory pledge by filing a formal request for delivery of the pledged assets before a Mexican notary public. The parties may agree to the pledge agreement upon certain terms and conditions regarding the appraisal and sale of the pledged assets, which may include, among others, valuation by third-party appraisers or other experts and sale through a public or private auction. It is important to note that such extrajudicial foreclosure process can only take place if there are no disagreements among the parties regarding: (i) maturity of the secured obligations; (ii) the amounts being claimed by the pledgee; or (iii) the manner in which the pledged assets are delivered. If there is a dispute, the pledge must be enforced through a special judicial foreclosure procedure before the Mexican courts.
- **Guarantee trust.** A guarantee trust permits a borrower and a lender to agree on the terms and conditions to conduct an extrajudicial or out-of-court foreclosure procedure, which may consist of a sale process to third parties or a direct transfer of collateral to a lender/first beneficiary, provided the borrower is notified of the event of default, and is given the opportunity to either cure the default, or present evidence of compliance, novation or extension of the secured obligations.
- **Securities pledge (*prenda bursátil*).** For this kind of pledge, in which the parties agree to transfer title of the pledged securities to the pledgee, the pledgee is entitled to maintain legal title to the pledged securities and, upon an event of default, the pledgee will only be required to deliver to the pledgor securities in an amount exceeding the outstanding loan amount, if any. However, if the securities are deposited with a Mexican foreclosure agent (*ejecutor*), a bank or brokerage firm, such as Indeval, can be appointed and the event of default is updated in the financing documents or the securities pledge agreement, the pledgee can request the foreclosure agent to sell the pledged securities on the open market.

Please note that foreign investment restrictions may apply and, consequently, foreign lenders may be restricted from owning certain assets, including capital stock and/or regulated assets. Therefore, lenders may foreclose on Mexican collateral and sell the underlying asset to a third party without ever becoming the legal owner thereof. For example, under the provisions of the Mexican Constitution, foreign entities are prohibited from holding real estate within the “Restricted Zone” (a 50km-wide strip along Mexico’s coastline and 100km-wide area along Mexico’s borders). If a foreign lender intends to take a security interest within the Restricted Zone, appropriate mechanisms should be implemented to address this prohibition.

7.5 Do restrictions apply to foreign lenders in the event of (a) filing suit against a company in your jurisdiction, or (b) foreclosure on collateral security?

Generally, there is no distinction between domestic and foreign entities when it comes to foreclosing Mexican security. However, as set forth under question 7.4 above, certain restrictions will apply to foreign lenders looking to foreclose on restricted or regulated assets.

7.6 Do the bankruptcy, reorganisation or similar laws in your jurisdiction provide for any kind of moratorium on enforcement of lender claims? If so, does the moratorium apply to the enforcement of collateral security?

Yes. Under the Insolvency Law (*Ley de Concursos Mercantiles*), as of the date of the bankruptcy judgment and until the end of the reorganisation process, no claim or foreclosure will be enforceable against a company.

7.7 Will the courts in your jurisdiction recognise and enforce an arbitral award given against the company without re-examination of the merits?

Yes. Mexico has integrated the UNCITRAL Model Arbitration Law into the Mexican Commercial Code. Consequently, under Mexican regulation, courts shall recognise the submission of a future dispute to arbitration and the final decision issued by an arbitral tribunal, both on merit or in matters of its own jurisdiction. Such recognition will be subject to compliance with the Mexican Constitution and the Commercial and Civil Codes and, where applicable, international treaties, on the understanding that courts in Mexico are not entitled to review the merits of a final arbitration award.

They can, however, refuse enforcement if any of the following events occurs:

- (i) the opposing party is able to prove that (1) one of the arbitration agreement parties lacks the legal capacity to execute the agreement, and therefore such agreement is not valid under the governing laws or, if no other governing laws were designated, it is not valid under Mexican legislation, (2) the party was not timely notified of the appointment of one of the arbitrators or of the arbitration procedure, or was prevented for any reason from exercising its rights, (3) the award refers to a matter not included in the arbitration agreement or contains decisions that exceed the terms of the arbitration agreement. Nevertheless, if the provisions of the award that refer to matters subject to arbitration can be separated from those that are not, only the latter will be annulled, or (4) the arbitral tribunal or arbitration proceedings were not conducted in accordance with the agreement between the parties, unless the agreement conflicts with provisions of the Commercial Code that the parties may not waive, or, in the absence of an agreement, the procedures will not conform to the provisions;
- (ii) the Mexican judge determines that, under Mexican legislation, the subject matter of the arbitration procedure is not arbitrable or the enforcement of the award is contrary to Mexican public policy; or
- (iii) the award is not final in the jurisdiction where it was obtained.

8 Bankruptcy Proceedings

8.1 How does a bankruptcy proceeding in respect of a company affect the ability of a lender to enforce its rights as a secured party over the collateral security?

The Insolvency Law (*Ley de Concursos Mercantiles*) governs reorganisation and bankruptcy procedures in Mexico. Depending on the kind of security interest, reorganisation and/or bankruptcy procedures will have a direct impact on the lender's ability to enforce the security, exercise its rights and recover any payment from the corresponding debtor.

Moreover, in accordance with the Insolvency Law, creditors of an entity in *concurso mercantil* or bankruptcy have a priority preference based on a set of priorities established by law, taking into account the type of credit and/or the collateral.

In addition, if an insolvency process is updated by any debtor, unsecured obligations in foreign currency must be converted into Mexican currency (pesos) at the exchange rate in effect on the date of the relevant court's judgment, and then converted into inflation-indexed monetary units on the same date.

Please note that any transactions that the insolvency law and courts deem to be fraudulent conveyances may be declared null. The foregoing is on the understanding that if an insolvent entity intentionally defrauds its creditors, and the third-party transferee had actual knowledge of fraudulent intent, the transaction will be deemed as fraudulent. Even if the third party has no direct knowledge of the fraud, if the action is gratuitous, the action is deemed fraudulent. Furthermore, any transactions made by the insolvent entity within 270 days before the date on which the insolvency judgment is issued (the look-back period) are considered as fraudulent when, among other things: (i) the insolvent entity received no consideration; (ii) the consideration received or paid by the insolvent entity, or the terms and circumstances of the transaction, were considerably below arm's length (market value); or (iii) the insolvent entity made a payment of indebtedness not yet due, or excused sums owed to it.

Also, certain related party transactions can be deemed fraudulent.

8.2 Are there any preference periods, clawback rights or other preferential creditors' rights (e.g., tax debts, employees' claims) with respect to the security?

Yes. As mentioned under question 8.1 above, the Insolvency Law provides for a clawback period applicable to fraudulent transactions of 270 calendar days prior to the date of the judgment declaring a bankruptcy. The 270-day period can be extended by the court at the request of the mediator appointed in the proceeding, or any creditor. Certain transactions are deemed to be fraudulent conveyances, as described in question 8.1 above.

Such law sets forth the priority of claims as follows: (a) singularly privileged creditors; (b) secured creditors (those secured with an *in rem* guarantee, such as for pledges and mortgages); (c) specially privileged creditors; (d) unsecured creditors; and (e) subordinated creditors. Please note that creditors from a lower priority will not recover their debts until all creditors from the higher priority have been paid in full.

Regardless of the foregoing, secured creditors' claims would be paid on a high-priority basis up to the amount of the relevant collateral, provided, however, that the following claims have priority over the amount of such collateral as follows: (i) employment claims; (ii) judicial expenses related to the defence or recovery of secured assets; and (iii) expenses incurred for the maintenance, disposition and repair of the secured assets.

8.3 Are there any entities that are excluded from bankruptcy proceedings and, if so, what is the applicable legislation?

The Insolvency Law is not applicable to government entities, such as the union, states and municipalities. Consequently, trust structures have been established to, among others, guarantee debt instruments and other forms of financing.

8.4 Are there any processes other than court proceedings that are available to a creditor to seize the assets of a company in an enforcement?

Yes, extrajudicial foreclosure processes available for non-possessory pledges and guarantee trust agreements may result in the transfer of the possession of the pledged or trust assets if there is no disagreement between the parties regarding delivery of possession. Except for such extrajudicial processes, the actual seizing or taking of possession of assets must be undertaken and approved by the Mexican courts.

9 Jurisdiction and Waiver of Immunity

9.1 Is a party's submission to a foreign jurisdiction legally binding and enforceable under the laws of your jurisdiction?

Yes, it is, provided that certain conditions are complied with (please refer to question 7.1 above).

9.2 Is a party's waiver of sovereign immunity legally binding and enforceable under the laws of your jurisdiction?

Waiver of immunity is traditionally valid in Mexico; thus, sovereign immunity is not recognised.

10 Licensing

10.1 What are the licensing and other eligibility requirements in your jurisdiction for lenders to a company in your jurisdiction, if any? Are these licensing and eligibility requirements different for a "foreign" lender (i.e. a lender that is not located in your jurisdiction)? In connection with any such requirements, is a distinction made under the laws of your jurisdiction between a lender that is a bank *versus* a lender that is a non-bank? If there are such requirements in your jurisdiction, what are the consequences for a lender that has not satisfied such requirements but has nonetheless made a loan to a company in your jurisdiction? What are the licensing and other eligibility requirements in your jurisdiction for an agent under a syndicated facility for lenders to a company in your jurisdiction?

Under Mexican law, any corporation having corporate power may engage in credit or other financing transactions. Notwithstanding, an entity carrying out credit transactions as its primary activity may adopt the form of a non-banking financial institution as a regulated or non-regulated SOFOM, or otherwise may request a licence to act as a bank, if its financing activity also encompasses receiving deposits from the general public.

11 LIBOR Replacement

11.1 Please provide a short summary of any regulatory rules and market practice in your jurisdiction with respect to transitioning loans from LIBOR pricing.

In December 2021, Banxico officially announced the transition from LIBOR (London Interbank Offered Rate) to the newly established FSB (Financial Stability Council) and the IOSCO (International Organization of Securities Commissions) via a press release, as Banxico seeks to comply with new regulations to help with global financial stability. With the help of the FSB's Coordination Group of the Public Sector (OSSG), Banxico has actively participated in this important transition. According to Banxico, LIBOR rates will cease to be traded through consultation panels after 30 June 2023. However, some of these rates could continue to be published under a synthetic methodology that will be defined by the Financial Conduct Authority (FCA). Banxico announced that it will seek to begin a process to modify provisions corresponding to reference rates.

12 Other Matters

12.1 How has COVID-19 impacted document execution and delivery requirements and mechanics in your jurisdiction during 2021 (including in respect of notary requirements and delivery of original documents)? Do you anticipate any changes in document execution and delivery requirements and mechanics implemented during 2020/2021 due to COVID-19 to continue into 2022 and beyond?

The use of electronic signatures in Mexico is becoming more common, especially for business-to-business transactions and online sales. Additionally, in 2021, electronic signatures, electronic documents and video-conference shareholders'/partners' meetings were recognised as valid by the General Law of Commercial Companies (*Ley General de Sociedades Mercantiles*) and other laws.

Remote working is expected to be slowly but steadily implemented within the governmental administration (federal, state and local), and the more tech-focused, post-pandemic debtors and lenders will progressively demand financings to be negotiated, funded, materialised and terminated through electronic means.

Nevertheless, government offices, trustees and notaries public have not authorised the use of electronic or digital signatures, and require the delivery of a "wet-ink" signature.

Additionally, as a result of the pandemic, and the lack of online services for certain types of transactions, the workload of public registries has accumulated, so that ordinary registration times have lengthened, and the deadlines set forth in the applicable legislation cannot always be met.

12.2 Are there any other material considerations which should be taken into account by lenders when participating in financings in your jurisdiction?

There are no further materials considerations not already discussed above.



Ana Sofía Ríos's legal practice focuses on corporate law, banking and finance, including M&A and private equity, as well as providing advice to clients and family offices on wealth management matters. In addition, Ana Sofía advises public and private companies on corporate governance and regulatory compliance matters.

She has represented, among others, domestic and foreign issuers, underwriters, investors, purchasers, sellers, lenders and borrowers in securities offerings, stock and asset acquisitions, financing transactions, reorganisations and restructurings.

Ana Sofía has also focused on fintech law, advising technology companies, start-ups and investors across the sector on regulatory and financial matters. Ana Sofía has also advised domestic and foreign entrepreneurs and participated in financing new ventures and start-ups.

Chevez Ruiz Zamarripa

Vasco de Quiroga 2121
4° Piso, Peña Blanca Santa Fe
C.P 01210, Ciudad de México
Mexico

Tel: +52 55 5257 7248
Email: asrios@chevez.com.mx
URL: www.chevez.com



Jimena González de Cossío specialises in corporate and financial law, including stock market operations, international and structured financing, M&A, as well as private client wealth management and family offices. She also has experience in international and structured finance operations in various industries, including the infrastructure and energy sectors.

In the area of M&A, Jimena has participated in various operations representing sellers, buyers and private equity funds and other investors, national and international, in various M&A transactions and joint ventures. She also advises public and private companies on corporate governance and regulatory compliance. Jimena additionally acts as commercial notary public (*Corredor Público*) number 57 of Mexico City. In terms of wealth planning, Jimena advises, together with tax and financial specialists, family offices concerning the structuring and planning of equity investments, administrative and family business succession structures.

Chevez Ruiz Zamarripa

Vasco de Quiroga 2121
4° Piso, Peña Blanca Santa Fe
C.P 01210, Ciudad de México
Mexico

Tel: +52 55 5261 5672
Email: jgonzalez@chevez.com.mx
URL: www.chevez.com



María Martínez Escobar joined Chevez Ruiz Zamarripa in 2019 with the opening of its transactional practice. She focuses her professional practice on corporate and transactional law and capital markets, specialising in advising clients and family offices on wealth management matters. María participated in the international issuance of FibraHotel's shares at a value of US\$220 million, as published in *LexLatin* magazine in September 2017.

María advises Mexican and foreign entities regarding corporate restructures, including mergers, spin-offs, purchase and sale of shares and assets, among others. She has also provided comprehensive advice to Mexican and foreign clients regarding financing structures with and without collateral, including legal due diligence of debtors, drafting of credit agreements, trust agreements, mortgages and pledges, among others. She has assisted in negotiations with counterparties and provided advice until the closing of operations.

Chevez Ruiz Zamarripa

Vasco de Quiroga 2121
4° Piso, Peña Blanca Santa Fe
C.P 01210, Ciudad de México
Mexico

Tel: +52 55 5257 7000
Email: mmartineze@chevez.com.mx
URL: www.chevez.com

Chevez Ruiz Zamarripa is the leading firm in Mexico in advisory, consulting and tax litigation. According to the needs of our clients, we have been incorporating other practices such as anti-corruption, anti-money laundering, administrative and regulatory law, a specialised area in corporate law, M&A, financial and banking law, labour law and intellectual property, thus offering a comprehensive, specialised and high-quality multidisciplinary service. We have excellent recognition in the public and private sector within the academic and professional spheres, both in Mexico and abroad. Our hallmark is to remain leaders through constantly updating, focusing on our clients and personalising our services, which is guided by our vision of maintaining our high-quality standards to add value for our clients, placing a very important emphasis on the training, inclusion and development of

our people. We serve the needs of medium and large organisations, and are widely recognised in the business environment both in Mexico and abroad.

www.chevez.com

**Chevez
Ruiz
Zamarripa**

Celebrating

10 YEARS

Global Legal Group thanks all of its expert legal contributors from around the world for their support and dedication over the last decade in making the **International Comparative Legal Guide – Lending & Secured Finance a resounding success**

LSTA

LMA | Loan
Market
Association

 **APLMA**
Asia Pacific Loan Market Association

glg global legal group

ICLG.com