



ICLG

The International Comparative Legal Guide to: **Lending & Secured Finance 2019**

7th Edition

A practical cross-border insight into lending and secured finance

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Editorial Chapters:

1	Loan Syndications and Trading: An Overview of the Syndicated Loan Market – Bridget Marsh & Tess Virmani, Loan Syndications and Trading Association	1
2	Loan Market Association – An Overview – Nigel Houghton & Hannah Vanstone, Loan Market Association	6
3	Asia Pacific Loan Market Association – An Overview – Andrew Ferguson, Asia Pacific Loan Market Association (APLMA)	12

General Chapters:

4	An Introduction to Legal Risk and Structuring Cross-Border Lending Transactions – Thomas Mellor & Marcus Marsh, Morgan, Lewis & Bockius LLP	15
5	Global Trends in the Leveraged Loan Market in 2018 – Joshua W. Thompson & Corey Fevzi, Shearman & Sterling LLP	20
6	Developments in Delayed Draw Term Loans – Meyer C. Dworkin & Samantha Hait, Davis Polk & Wardwell LLP	26
7	Commercial Lending in a Changing Regulatory Environment, 2019 and Beyond – Bill Satchell & Elizabeth Leckie, Allen & Overy LLP	30
8	Acquisition Financing in the United States: Will the Boom Continue? – Geoffrey R. Peck & Mark S. Wojciechowski, Morrison & Foerster LLP	34
9	A Comparative Overview of Transatlantic Intercreditor Agreements – Lauren Hanrahan & Suhred Mehta, Milbank LLP	39
10	A Comparison of Key Provisions in U.S. and European Leveraged Loan Agreements – Sarah M. Ward & Mark L. Darley, Skadden, Arps, Slate, Meagher & Flom LLP	46
11	The Global Subscription Credit Facility and Fund Finance Markets – Key Trends and Forecasts – Michael C. Mascia & Wesley A. Misson, Cadwalader, Wickersham & Taft LLP	59
12	Recent Developments in U.S. Term Loan B – Denise Ryan & Kyle Lakin, Freshfields Bruckhaus Deringer LLP	63
13	The Continued Growth of European Covenant Lite – James Chesterman & Jane Summers, Latham & Watkins LLP	70
14	Cross-Border Loans – What You Need to Know – Judah Frogel & Jonathan Homer, Allen & Overy LLP	73
15	Debt Retirement in Leveraged Financings – Scott B. Selinger & Ryan T. Rafferty, Debevoise & Plimpton LLP	82
16	Analysis and Update on the Continuing Evolution of Terms in Private Credit Transactions – Sandra Lee Montgomery & Michelle Lee Iodice, Proskauer Rose LLP	88
17	Secondments as a Periscope into the Client and How to Leverage the Secondment Experience – Alanna Chang, HSBC	95
18	Trade Finance on the Blockchain: 2019 Update – Josias Dewey, Holland & Knight	98
19	The Global Private Credit Market: 2019 Update – Jeff Norton & Ben J. Leese, Dechert LLP	104
20	Investment Grade Acquisition Financing Commitments – Julian S.H. Chung & Stewart A. Kagan, Fried, Frank, Harris, Shriver & Jacobson LLP	109
21	Acquisition Financing in Latin America: Navigating Diverse Legal Complexities in the Region – Sabrena Silver & Anna Andreeva, White & Case LLP	114
22	Developments in Midstream Oil and Gas Finance in the United States – Elena Maria Millerman & John Donaleski, White & Case LLP	121
23	Margin Loans: The Complexities of Pre-IPO Acquired Shares – Craig Unterberg & LeAnn Chen, Haynes and Boone, LLP	127
24	Credit Agreement Provisions and Conflicts Between US Sanctions and Blocking Statutes – Roshelle A. Nagar & Ted Posner, Weil, Gotshal & Manges LLP	132
25	SOFR So Good? The Transition Away from LIBOR Begins in the United States – Kalyan (“Kal”) Das & Y. Daphne Coelho-Adam, Seward & Kissel LLP	137

Continued Overleaf ➔

Further copies of this book and others in the series can be ordered from the publisher. Please call +44 20 7367 0720

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General Chapters:

26	Developments in the Syndicated Term Loan Market: Will Historical Distinctions from the High-Yield Bond Market Be Restored? – Joseph F. Giannini & Adrienne Sebring, Norton Rose Fulbright US LLP	141
27	Green Finance – Alex Harrison & Andrew Carey, Hogan Lovells International LLP	144
28	U.S. Tax Reform and Effects on Cross-Border Financing – Patrick M. Cox, Baker & McKenzie LLP	149

Country Question and Answer Chapters:

29	Angola	Bravo da Costa, Saraiva – Sociedade de Advogados / PLMJ: Bruno Xavier de Pina & Joana Marques dos Reis	159
30	Argentina	Marval, O'Farrell & Mairal: Juan M. Diehl Moreno & Diego A. Chighizola	165
31	Australia	King & Wood Mallesons: Yuen-Yee Cho & Elizabeth Hundt Russell	174
32	Austria	Fellner Wratzfeld & Partners: Markus Fellner & Florian Kranebitter	183
33	Belgium	Astrea: Dieter Veestraeten	193
34	Bermuda	Wakefield Quin Limited: Erik L Gotfredsen & Jemima Fearnside	199
35	Bolivia	Crales & Urcullo: Andrea Mariah Urcullo Pereira & Daniel Mariaca Alvarez	207
36	Botswana	Kelobang Godisang Attorneys: Wandipa T. Kelobang & Laone Queen Moreki	214
37	Brazil	Pinheiro Neto Advogados: Ricardo Simões Russo & Leonardo Baptista Rodrigues Cruz	221
38	British Virgin Islands	Maples Group: Michael Gagie & Matthew Gilbert	230
39	Canada	McMillan LLP: Jeff Rogers & Don Waters	237
40	Cayman Islands	Maples Group: Tina Meigh	247
41	Chile	Carey: Diego Peralta	255
42	China	King & Wood Mallesons: Stanley Zhou & Jack Wang	262
43	Colombia	Lloreda Camacho & Co.: Santiago Gutiérrez & Juan Sebastián Peredo	269
44	Costa Rica	Cordero & Cordero Abogados: Hernán Cordero Maduro & Ricardo Cordero B.	276
45	Croatia	Macesic & Partners LLC: Ivana Manovel	284
46	Cyprus	E & G Economides LLC: Marinella Kilikitas & George Economides	292
47	Denmark	Nielsen Nørager Law Firm LLP: Thomas Melchior Fischer & Peter Lyck	300
48	England	Allen & Overy LLP: David Campbell & Oleg Khomenko	307
49	Finland	White & Case LLP: Tanja Törnkvist & Krista Rekola	316
50	France	Orrick Herrington & Sutcliffe LLP: Emmanuel Ringeval & Cristina Radu	324
51	Germany	SZA Schilling, Zutt & Anschutz Rechtsanwalts-gesellschaft mbH: Dr. Dietrich F. R. Stiller & Dr. Andreas Herr	335
52	Greece	Sardelas Liarikos Petsa Law Firm: Panagiotis (Notis) Sardelas & Konstantina (Nantia) Kalogiannidi	344
53	Hong Kong	King & Wood Mallesons: Richard Mazzochi & Khin Voong	352
54	Indonesia	Walalangi & Partners (in association with Nishimura & Asahi): Luky I. Walalangi & Siti Kemala Nuraida	360
55	Ireland	Dillon Eustace: Conor Keaveny & Richard Lacken	366
56	Israel	E. Schaffer & Co.: Ehud (Udi) Schaffer & Shiri Ish Shalom	375
57	Italy	Allen & Overy Studio Legale Associato: Stefano Sennhauser & Alessandra Pirozzolo	381
58	Ivory Coast	IKT Law Firm: Annick Imboua-Niava & Osther Tella	390
59	Japan	Anderson Mori & Tomotsune: Taro Awataguchi & Yuki Kohmaru	396
60	Jersey	Carey Olsen Jersey LLP: Robin Smith & Laura McConnell	404
61	Luxembourg	Loyens & Loeff Luxembourg S.à r.l.: Antoine Fortier-Grethen	414
62	Mexico	Gonzalez Calvillo, S.C.: José Ignacio Rivero Andere & Jacinto Avalos Capin	422
63	Mozambique	TTA – Sociedade de Advogados / PLMJ: Gonçalo dos Reis Martins & Nuno Morgado Pereira	430

Country Question and Answer Chapters:

64	Netherlands	Ploum: Tom Ensink & Alette Brehm	437
65	Portugal	PLMJ Advogados: Gonalo dos Reis Martins	445
66	Romania	Trofin & Asociaii: Valentin Trofin & Mihaela Atanasiu	452
67	Russia	Morgan, Lewis & Bockius LLP: Grigory Marinichev & Alexey Chertov	462
68	Serbia	JPM Jankovi Popovi Miti: Nenad Popovi & Nikola Poznanovi	470
69	Singapore	Drew & Napier LLC: Pauline Chong & Renu Menon	477
70	Slovakia	Škubla & Partneri s. r. o.: Marin Šulik & Zuzana Moravikov Kolenov	487
71	Slovenia	Jadek & Pensa: Andra Jadek & Žiga Urankar	494
72	South Africa	Allen & Overy LLP: Lionel Shawe & Lisa Botha	504
73	Spain	Cuatrecasas: Manuel Folla & Iigo Vrez	514
74	Sweden	White & Case LLP: Carl Hugo Parment & Tobias Johansson	525
75	Switzerland	Pestalozzi Attorneys at Law Ltd: Oliver Widmer & Urs Kloti	532
76	Taiwan	Lee and Li, Attorneys-at-Law: Hsin-Lan Hsu & Odin Hsu	541
77	UAE	Morgan, Lewis & Bockius LLP: Victoria Mesquita Wlazlo & Amanjit K. Fagura	549
78	USA	Morgan, Lewis & Bockius LLP: Thomas Mellor & Rick Eisenbiegler	564
79	Venezuela	Rodner, Martnez & Asociados: Jaime Martnez Estvez	576

EDITORIAL

Welcome to the seventh edition of *The International Comparative Legal Guide to: Lending & Secured Finance*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of lending and secured finance.

It is divided into three main sections:

Three editorial chapters. These are overview chapters and have been contributed by the LSTA, the LMA and the APLMA.

Twenty-five general chapters. These chapters are designed to provide readers with an overview of key issues affecting lending and secured finance, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in lending and secured finance laws and regulations in 51 jurisdictions.

All chapters are written by leading lending and secured finance lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editor Thomas Mellor of Morgan, Lewis & Bockius LLP for his invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.com.

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José Ignacio Rivero Andere



Jacinto Avalos Capin

Gonzalez Calvillo, S.C.

1 Overview

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

The outlook for the lending markets in Mexico is yet to be fully assessed and must be analysed jointly with multiple factors, including the current political landscape.

On the positive side, the newly agreed USMCA (United States–Mexico–Canada Agreement) has halted the uncertainty that the cancellation of NAFTA would have caused and is expected to bring new business opportunities and to enhance business activity in Mexico.

Also, Mexico's significant underbanked middle class – one of the largest in Latin America – is an attractive target for the development of lending markets in our country.

Likewise, there is still confidence that the structural reforms passed by Mexico's former administration will continue to set the foundation for new deal opportunities in our lending market.

Other positive but less relevant developments are: (a) the enactment of the highly praised Law for the Regulation of Financial Technology Institutions (the "Fintech Law"), which seeks to regulate crowdfunding, electronic payment funds, and cryptocurrencies; and (b) the potential liberalisation of the trade of cannabis, which is expected to create opportunities in the creation and development of this market.

Notwithstanding the foregoing and on the negative side, there is growing uncertainty and negative economic forecasts in Mexico, mainly as a result of new policies and initiatives undertaken by Mexico's new president Andres Manuel Lopez Obrador. These include, among others:

- The unilateral cancellation of infrastructure projects such as the new Mexico City Airport.
- The interruption of pending rounds for oil blocks in the Gulf of Mexico and the uncertainty regarding PEMEX's future.
- The significant reduction in the government payroll, the relocation of multiple government agencies, and the potential departure from government of its human talent as a result of the above.
- The potential implementation of policies against the autonomy of the central bank and other Mexican constitutional autonomous bodies that constitute essential checks and balances for the executive branch.
- A general pattern of populism in government decisions that has resulted in poor economic results so far.

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

Below are some significant lending transactions that have taken place in our jurisdiction in recent years and in which we (Gonzalez Calvillo) have acted as counsel:

Macquarie Capital and Techint, as sponsors, in the highly complex US\$1.2 billion acquisition, development and project financing of the landmark 907MW Norte III power plant in Mexico, which will generate power for the Federal Electricity Commission pursuant to a 25-year PPA. *This transaction was bestowed with the "LATAM Power Deal of the Year" award by Project Finance International (Thompson Reuters); the "Latin American Power & Overall Deal of the Year" award by IJ Global (Euromoney); the "Project Finance Deal of the Year" award by Latin Lawyer; and the "Best Power Financing Deal" award by Latin Finance in the Project & Infrastructure Finance Awards 2018.*

Mexican Development Banks BANORTE, BANCOMEXT and NAFIN, as lenders, in the Pesos \$17,750 million senior loan financing granted in favour of Altan Redes for the development of the Red Compartida Project. *This transaction was bestowed with the "Best Loan (LATAM)" and "Best Infrastructure Financing: Mexico" award by Latin Finance for the 2017 Project & Infrastructure Finance Awards; the "Latin America Telecoms Deal of the Year" award by IJ Global (Euromoney); and shortlisted for "Project Finance Deal of the Year" by IFLR for the 2018 Americas Awards.*

The consortium of Huawei and Nokia, as lenders, in the US\$850 million finance to Altan Redes through EPC agreements, infrastructure and service financing for the development of the Red Compartida Project. *This transaction was bestowed with the "Best Loan (LATAM)" and "Best Infrastructure Financing: Mexico" award by Latin Finance for the 2017 Project & Infrastructure Finance Awards; the "Latin America Telecoms Deal of the Year" award by IJ Global (Euromoney), and shortlisted for the "Project Finance Deal of the Year" award by IFLR for the 2018 Americas Awards.*

Citigroup, Sumitomo Mitsui Banking Corporation, BNP Paribas, JPMorgan Chase, and The Bank of Nova Scotia, acting as Joint Lead Arrangers and Joint Bookrunners, in a simultaneous syndicated credit facility and a Rule 144A / Reg. S bond offering to allow private equity fund Actis to successfully complete its acquisition of global power-generation company InterGen's business interests in Mexico, including the purchase of 2,200 MWs in operation with six combined-cycle power generation projects, a 155 MW wind project with partner IEnova, a 65-kilometre natural-gas pipeline, and three natural gas-compression stations, for an enterprise value of US\$1.256 billion. This is the first time that a project acquisition in Mexico of this size

has been executed with the use of bond proceeds. *This transaction was bestowed with the “Best Infrastructure Financing in Mexico” award by Latin Finance in the Project & Infrastructure Finance Awards 2018; and the “Mexico Structured Bond Deal of the Year” award by GFC Media Group in the Bonds & Loans Awards 2019.*

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, it can. Pursuant to both Mexican and foreign law, and provided that in the case of the latter, certain provisions regarding, among others, representations of the Mexican guarantor, choice of law/forum, waiver of certain specific remedies set forth in Mexican law and due service of process, must be included in the documentation to ensure enforceability of a judgment under a foreign guarantee in Mexico.

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 guarantees and/or collateral in Mexico may be limited by bankruptcy (*concurso mercantil*), insolvency, dissolution and liquidation, reorganisation, moratorium, labour, and tax, among other laws of general application affecting the rights of creditors and obligations of debtors.

As per director liability, there is no specific concern regarding the benefit to the guaranteeing company. However, directors of a securing company, when assessing and approving a specific transaction, must comply with their statutory duties.

Such duties in private companies entail that a director must refrain from voting in any meetings on matters in which they have or may have a conflict of interest.

In the case of public companies, directors must meet the duties of loyalty and care. The duty of care consists of directors acting in good faith and in the best interest 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?

Yes. The validity of guarantees/collateral granted by a Mexican securing company both under Mexican law or foreign law is subject to: (a) the bylaws/articles of incorporation of the securing company providing as part of its corporate purpose the authority to act as guarantor or grantor of third-party obligations; (b) certain corporate approvals being complied with; and (c) the securing company executing (directly or through a joinder agreement) the relevant guarantee/collateral documentation through a duly appointed legal representative with sufficient powers and authorities pursuant to Mexican law. Additional requisites may apply for regulated Mexican securing companies.

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

Corporate authorisations, including BOD and/or shareholder approvals, may be required under the bylaws of the securing company.

Third-party consents may be required depending on the contractual obligations assumed by the securing company.

Except for regulated securing companies, governmental authorisations are not generally required. Notwithstanding the foregoing, depending on the type of collateral being granted, certain formalities and filings may apply (please refer to question 3.2 below).

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

No. However, limitations on the enforceability of a guarantee must be taken into consideration.

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

No exchange controls apply.

If enforcement of a foreign judgment is sought before a Mexican court, certain requirements (set forth in article 1347-A of the Mexican Commerce Code) would need to be met. These requirements are: (a) the foreign judgment having to comply with the formalities set forth in the international treaties to which Mexico and the country issuing the judgment is a party; (b) the foreign judgment being issued based on an *in rem* action (as opposed to an *in personam* action); (c) the judge or court rendering the foreign judgment being competent to hear and judge on the subject matter of the case in accordance with accepted rules of international law that are compatible with Mexican law; (d) service of process related to the foreign judgment being carried out personally on the parties or on their duly appointed process agents; (e) the foreign judgment being final in the jurisdiction where it was obtained; (f) the action in respect of which the foreign judgment was rendered not being the subject matter of a lawsuit among the same parties which is pending before a Mexican court; (g) the foreign judgment not contravening Mexican law or public policy (*orden público*); and (h) the foreign judgment complying with all necessary requirements to be considered as authentic.

In addition to the foregoing, other Mexican law limitations may come into play in any enforcement procedure, including, among others: (a) the possibility for debtors to discharge their obligations in Mexican Pesos, notwithstanding such obligations being in a foreign currency; (b) the inability of lenders to collect interest-on-interest; (c) the impossibility to waive procedural rights protected under public policy; (d) the impossibility of enforcing claims outside the applicable statutes of limitations; and (e) the need of 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?

As a general rule and except for public domain assets or analogues, collateral can be created over any type of asset, with the most common being pledges (over equity interests or movable assets), security trusts, and mortgages (over real estate).

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?

Except in the case of the collateral form described in point 3 of this question, the use of general security agreements is not a common practice in Mexico, mainly to prevent contamination between the different types of collateral, the formalities for their implementation, their remedies, and the enforcement thereof. The usual way for creating collateral in Mexico is through the following:

1. **Pledge over equity interests/shares.** Equity interests that represent the capital stock of limited liability companies can be granted as collateral to guarantee payment obligations. To fulfil the requirements set forth in the applicable law, the following actions must be carried out.

A pledge agreement must be executed between the lender/security agent as pledgee and the borrower/securing company (holder of the issuing entity's capital quotas) as pledgor, with the appearance of the issuing entity.

The pledge must be registered in the corporate book of the issuing entity.

In case it is deemed convenient for the pledge to have priority over tax credits, the pledge agreement must be ratified before a Mexican notary public and registered before the *Registro Único de Garantías Mobiliarias*.

In the case of corporations, the foregoing must be complied with, on the understanding that the stock certificates of the issuing company must be delivered and endorsed (*endosados*) in favour of the pledgee.

Finally, a recommended practice is for a power-of-attorney to be granted to the pledgee to exercise the voting powers of the pledged equity interests/shares in the event of a default.

2. **Pledge over movable assets.** There are two ways to create pledges over movable assets: (a) a regular pledge (possession of the pledged assets is transferred to the pledgee); or (b) a floating/non-possessionary pledge (possession of the pledged assets remains with the pledgor); the latter being more common in the implementation of Mexican collateral as it is less intrusive with the operations of the pledgor.

In both cases, a pledge agreement must be executed and thereafter ratified before a Mexican notary public. Finally, the agreement must be registered before the *Registro Único de Garantías Mobiliarias* ("RUG"), in order for the collateral to be publicly registered and thus enforceable *vis-à-vis* third-parties. Please consider that other consents or registrations may be required depending on the specific collateral and/or grantor (e.g. in the case of pledges over IP, the pledge will need to be registered before the Mexican Institute of Industrial Property).

3. **Security trust.** This is one of the most flexible structures as it allows for a single securing assembly to be implemented pursuant to which different kinds of assets may be granted as collateral. Likewise, it may encompass all (or most) of the assets of the grantor.

Under this structure, the grantor transfers title of the collateralised assets to a trust (to be managed by a Mexican financial institution as trustee) for the benefit of the secured party. In other words, it has the purpose of securing the relevant payment obligations with the trust assets and of providing a servicing mechanism for the corresponding debt.

The formalities to implement a security trust depend on the assets being contributed thereto as collateral; however, these generally include (i) the implementation of a trust agreement, (ii) the granting/ratification of the agreement before a Mexican notary public, and (iii)

filing of the trust with the applicable Mexican authorities/registries, provided that the nature of the filing depends on the type of assets being transferred to the trust (generally speaking, the trust has to be filed with the RUG; however, filing with other registries may apply (e.g. real estate assets – public registry of property, IP – Mexican Institute of Industrial Property, etc.)).

The main benefits of a security trust (*versus* a combination of pledges and mortgages) are: (i) the collateralised assets will be bankruptcy remote, thus protecting the secured party in the event of the grantor's bankruptcy or insolvency; (ii) the secured parties can exert a higher degree of control over the trust assets; and (iii) a non-judicial enforcement procedure may be agreed by the parties to the trust, thus allowing for a more efficient and structured enforcement of the collateral to take place.

That being said, the implementation of a trust agreement will imply a more expensive structure (given the applicable trustee, notarial and registration fees) and may in some ways interfere with the day-to-day operations of the borrower/guarantor.

This collateral structure is very common in project finance and is convenient to isolate the collateralised/project assets from the sponsor, and to have a greater control over these assets in an event of default.

4. **Mortgage.** Mortgages are used to create collateral over real estate (e.g. land, buildings, etc.). Mortgages must be executed in a public instrument before a Mexican notary public. For a mortgage to be effective *vis-à-vis* third-parties, it must be duly registered in the public registry of property corresponding to the collateralised asset's location. Registration fees may vary depending on the secured amount and the Mexican state in which the corresponding asset is located.

Please note that other forms of security are applicable to regulated assets (e.g. airplanes and vessels).

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 security trust governed under Mexican law (please refer to question 3.2, items 3 and 4, above). Regarding the creation of a security interest over machinery and equipment, this can be done through a pledge or a security trust (please refer to question 3.2, items 2 and 3, above).

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

Yes, through a pledge or a security trust (please refer to question 3.2, items 2 and 3, above).

It is important to note that debtors are not required to be notified for the perfection of collateral over receivables to be valid; however, it is convenient to do so, so that they can acknowledge (i) the existence of the collateral, and (ii) that, in an event of foreclosure, they must pay any amounts under the receivables to the lenders. Otherwise, debtors would be released from their obligations by paying to the pledgor.

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

Yes, by means of a pledge (please refer to question 3.2, item 2, above).

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?

Security can be taken over shares issued by a Mexican entity through a pledge agreement or a security trust (please refer to question 3.2, items 1 and 4, above). Note that in the case of security over shares being created through a trust, the relevant shares are transferred to the trust and thus the trust becomes a shareholder of the issuing entity.

It is not possible to create collateral over shares issued by a Mexican entity through foreign documents.

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

Yes; through a pledge or a security trust (please refer to question 3.2, items 2 and 4, above).

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)?

Yes, it can. In the understanding that, as set forth above, in order to do so, it should be permitted under its corporate purpose.

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?

When granting collateral under Mexican law, the participation of a notary public is usually required. 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 could represent large amounts, on the understanding that, in large transactions, notaries are usually amenable to granting fee discounts.

Registration fees are generally required for security granted over real estate, can be material, and are associated with the registration of the collateral before the public registries of property of the place where the assets are located. In most cases, these registration fees are capped by local authorities, and, in cases where the transaction is associated with benefits for the population or state, special discounts may apply.

Also, registration fees are generally required for security over movable assets, are not material, and are associated with the registration of the collateral before the RUG.

Please note that, in addition to the above, in some other cases and with respect to certain local jurisdictions, additional taxes or fees may be required to be paid for the perfection and/or registration of a security. Moreover, other forms of registration could be applicable to regulated assets (e.g. airplanes and vessels).

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 significantly vary on a case-by-case basis but, generally speaking and except in the case of real state collateral, they should not be significant.

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

It depends if the collateral or overall financing involves regulated entities/assets. For example, security over permits, concessions, procurement contracts, licences and other regulated assets (such as pipelines, water treatment plants, energy plants, mining properties, highways, airports, and generally public infrastructure), or over companies or entities that use, procure, manage and/or operate such assets, will typically require prior governmental approval to create a security interest over them (or, at best, prior notice to the relevant authorities). If no regulated entities/assets are involved, then no regulatory consents are required.

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

No special priority or concerns apply.

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 apply.

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; it is customary in cross-border transactions involving Mexico. Depending on the transaction structure, the granting by the corresponding secured parties of a power-of-attorney to the agent is advisable.

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?

For the transfer to be effective, contractual requirements and obligations must be met. Also, unless Mexican entities are notified of such assignment, they would be released of their payment obligations by paying any amounts under the loan to Lender A.

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?

Withholding taxes apply as a general rule to interest payable by borrowers to foreign lenders and Mexican entities that are not banks or financial entities. The foregoing is also applicable to the proceeds of a claim or to the proceeds of an enforcement of security which are destined for payment of amounts other than principal (i.e. interests, commissions or fees). The withholding rate will strictly depend on the type and nationality of the lender, the nature of the transaction itself and the applicability of international treaties regarding double taxation, among others.

Withholding taxes do not apply to Mexican banks and financial entities. Such entities will calculate and pay their taxes in accordance with applicable Mexican tax laws.

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?

Any tax incentives, privileges, restrictions, fees, or, exemptions thereof are provided for under specific international treaties entered into by Mexico to avoid double taxation and will depend on their applicability to a specific foreign lender.

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 are required to pay income tax if they have a permanent establishment within the Mexican territory, or when the income comes from sources 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 explained before, there are several costs and fees that will apply when structuring, implementing and perfecting collateral in Mexico. For a more detailed explanation, please refer to section 3 above.

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 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 law allows for the parties to contractually agree to governing law and forum in Mexico or abroad, provided that, for this submission to be valid, it must comply with the applicable requirements under Mexican law.

Mexican judicial authorities would enforce a foreign judgment so long as the requirements for such enforcement are met (please refer to 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, subject to: (i) the submission to the foreign court being valid (please refer to question 7.1 above); and (ii) the foreign judgment complying with the specific Mexican law-related requirements (please refer to question 2.6 above).

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?

Timing depends on the circumstances of the particular cases, applicable foreign governing laws, and applicable foreign jurisdictions, as well as on its consistency with Mexican law principles.

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, there are.

Foreclosure on a mortgage or “regular” pledge (i.e. where possession is effectively transferred to the creditor as depository) will typically require a summary judicial procedure that would ultimately result in public auctions to sell (or transfer) the collateral as payment to the lenders. For non-possessory pledges and security trusts, it is possible to choose between a judicial and a non-judicial procedure.

Regarding regulatory consents, generally, the same consents required for the creation of security will apply to its foreclosure.

In addition, enforcement can be significantly affected or impacted in case of reorganisations or bankruptcy under applicable law.

Finally, foreign lenders may be restricted from owning certain assets (including stock) as result of limitations on foreign investment, or in the case of regulated assets. That said, lenders may foreclose on Mexican collateral looking to sell off the underlying asset to a third party without ever becoming the legal owner thereof.

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?

Not generally. However, as set forth in question 7.4 above, certain restrictions will apply to foreign lenders looking to foreclose on restricted 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 Mexico’s Federal Bankruptcy Law (*Ley de Concursos Mercantiles*), as of the date of the bankruptcy judgment and until the end of the reorganisation stage, 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. Under Mexican law, courts have a legal binding obligation to recognise arbitration clauses and the contractual submission of potential controversies to arbitration. The foregoing will be subject to compliance with procedural and formal requirements under the Mexican Constitution, the Mexican Commerce and Civil Codes and applicable international treaties.

In connection with the foregoing, please note that enforcement of an arbitral award may not be granted if, among others: (a) one of the parties to the arbitration agreement did not have adequate or sufficient legal capacity to enter into such arrangement or such arrangement is not valid under the laws chosen by the parties; (b) service of process is not correctly and legally carried out; (c) the award refers to a controversy which, under the terms of the arbitration agreement, was not subject to arbitration or contains a decision that exceeds the terms of such arbitration agreement; (d) the subject matter of the arbitration procedure cannot be arbitrated or the enforcement of the award is contrary to Mexican law or public policy, international treaties or

agreements binding upon Mexico; or (e) 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?

Mexico’s Federal Bankruptcy Law is the general statute governing reorganisation and bankruptcy proceedings in Mexico. Reorganisation and/or bankruptcy proceedings will directly affect enforcement of a security by a lender, but such affectation will significantly vary depending on the kind of security interest granted to such lender and its robustness.

Subject to applicable exemptions and specific rights, the aforementioned statute treats a lender secured under a security structure as a secured creditor. There are some important benefits afforded to a secured creditor, generally including priority ranking, continued ordinary interest accrual, loan currency protection and (subject to some exemptions) ability to participate or not in the eventual creditor agreement that concludes the reorganisation procedure. In the event no agreement is reached, and the relevant company becomes bankrupt, secured creditors have the right to foreclose on their security, and they have the same right if such an agreement is validly reached but not signed by the relevant creditor.

It is also important to note that, given that under a security trust structure, title to the assets that form the trust estate is transferred to the relevant trustee and, therefore, subtracted from the estate of the relevant grantor, lenders secured by or through a trust have, through this form of security, a vehicle that is remote to the bankruptcy of the grantor under applicable law. Please note, however, that in recent cases, while this remoteness has been generally accepted by Mexican courts, precautionary measures issued by Mexican courts have temporarily frozen enforcement and foreclosure of assets under trusts on the basis that, among others, the company subject to the reorganisation procedure needs to use such assets for its survival.

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. The Federal Bankruptcy Law and its associated regulations generally provide for a 270-day clawback period to protect creditors from fraudulent conveyance by the company subject to the reorganisation procedure.

Likewise, such statute, subject to exemptions and interpretation, sets forth the following ranking for creditor priority: (a) singularly privileged creditors (i.e. burial and sickness expenses); (b) secured creditors (those secured with an *in rem* guarantee, such as the pledges and mortgages); (c) specially privileged creditors; and lastly (d) unsecured creditors.

Please note that credits against the asset mass, such as certain tax or labour credits, debts incurred while at the reorganisation process, asset maintenance and other similar costs, may have higher ranking than secured credits and will typically be paid first.

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

Governmental entities (i.e., the union, states, municipalities, and certain government entities) are not subject to the Federal Bankruptcy

Law. That said, governmental entities have implemented trust structures to, among multiple others, guarantee debt instrument offerings 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; nevertheless, Mexican law does not allow the actual seizing or taking possession of assets through out-of-court proceedings; thus such seizure or taking possession of must be undertaken and approved by 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, subject to compliance with certain requirements (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?

A 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?

There are no licensing or other eligibility requirements under Mexican law as a general rule.

11 Other Matters

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

No, there are not.



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