



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

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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Mexico

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1 Overview

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

Mexico and the U.S. are not only neighbours, but strategic partners, whose cultures, nationals and economies are extremely interlinked and interdependent. Among others: (a) Mexico is the second country worldwide in terms of exports to the U.S.; (b) low inflation in the U.S. is dependent on the low costs of the manufacturing industry in Mexico; and (c) 36.3 million out of the 323.1 million U.S. population are identified as having full or partial Mexican ancestry.

2017 was the first year of the Trump administration, which has adopted policies that deeply affect Mexico. Amid these policies are:

- the U.S. tax reform, which will require Mexico to revisit its own tax framework to make it competitive and attractive for U.S. companies doing business in the country;
- the current renegotiation of NAFTA, the result of which may deeply influence both the Mexican and the U.S. economies; and
- in immigration, the building of a wall between the Mexican and U.S. borders, and the termination of DACA.

Furthermore, in 2018 Mexico will have presidential elections, and thus far the left-wing candidate is expected to win, a circumstance which will generate anxiety in the Mexican economy as his policies seem to be antagonistic to the *status quo*.

Despite the foregoing, the structural reforms carried out in the current administration of Enrique Peña Nieto continue to materialise, particularly in the Telecommunications, Infrastructure, Energy, and Gas sectors, which have witnessed significant foreign and domestic investments and thus, notwithstanding the nervousness being generated by the U.S.-Mexico relations and the forthcoming elections, we expect to continue seeing a great deal of economic activity during 2018.

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

Over the last six years, since the beginning of the current administration, Mexico has witnessed the enactment of several structural reforms that are transforming the country and are generating significant investments and a relatively good amount of economic activity in the context of the world's economy.

In line with the foregoing, Mexico has seen and will continue to see important financial transactions in the Telecommunications,

Infrastructure, Energy, and Gas sectors, such as: (a) the USD\$2 billion financing of the Red Compartida (the Mexican public telecommunications network), which is one of the largest infrastructure and telecommunications projects in Mexico in recent years, and in which I acted as counsel to the lenders; (b) the financing of the new airport of Mexico City, which is expected to be one of the largest and most sophisticated airports in the world; and (c) several multimillion dollar lending transactions in the Energy and Gas sectors.

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. Guarantees can be created either under Mexican or foreign law, provided that, when created under foreign law, certain provisions shall be included in the foreign documents to ensure enforceability of a judgment thereof in Mexico against the Mexican guarantor.

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?

Regarding director's liability, there is none from a legal perspective so long as, to the extent applicable, in approving the transaction the directors comply with their statutory duties, which generally are: (a) in private companies, refrain from voting in matters with respect to which they have a conflict; and (b) in public entities, duties of loyalty and care.

In connection with enforcement, there are no concerns except that enforceability can be limited by bankruptcy (*concurso mercantil*), insolvency, liquidation, reorganisation, moratorium, labour, tax and other laws of general application relating to, or affecting the, obligations of debtors and the rights of creditors.

2.3 Is lack of corporate power an issue?

Yes. For a guarantee to be valid (a) the purpose of the company as per its bylaws must include authority for the company to guarantee third-party obligations, (b) as applicable, corporate approvals have to be implemented, and (c) the relevant documents have to be entered into by a duly appointed representative of the Mexican guarantor.

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

Corporate approvals may be required depending on the bylaws of the company.

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

Generally, no governmental consents/approvals/filings would be required, except for some regulated entities.

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

No; however, it is important to note that the enforceability of a guarantee can be limited as provided in question 2.2 above.

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

No exchange control.

Regarding enforcement of foreign guarantees, please refer to answers above and note that provisions of article 1347-A of the Mexican Commerce Code, will need to be fulfilled for a foreign judgment to be enforced in Mexico.

3 Collateral Security

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

Generally, and except for certain type of public assets, collateral can be created over any type of assets, through security trusts, pledges, and mortgages.

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?

1. Pledge over Equity Interests: To perfect collateral in Mexico over equity interests issued by a Mexican company, a Mexican stock/partnership interests pledge agreement needs to be implemented, jointly with the delivery to the pledgee of (i) if applicable, stock certificates duly endorsed in guarantee, (ii) evidence of registration of the pledge in the shareholders'/partners' registry book of the issuer, and (iii) stock powers to be exercised upon the occurrence/continuance of an enforcement event.

2. Pledge over Movable Assets: To perfect collateral in Mexico over any type of assets (other than equity interests and real estate), a Mexican floating lien/regular asset pledge agreement needs to be implemented. When structured as a floating lien pledge, the possession of the pledged assets will remain with the pledgor; when structured as a regular pledge, the possession of the pledged assets will be transferred to the pledgee.

In connection with items 1 and 2 above, it is important to note that the signatures of the parties to the equity interests pledge (to ensure priority over tax credits) and the floating lien/regular asset pledge (to comply with perfection requirements under Mexican law), must be ratified before a Mexican notary public, and the

agreement shall be registered at the *Registro Único de Garantías Mobiliarias*. To accomplish the notarial ratification, representatives of such parties must be present at closing, to execute the agreement and the ratification deed in front of a Mexican notary public with a valid Mexican law power of attorney. Also, in case the floating lien/regular asset pledge covers any trademarks or other intellectual property registered in Mexico, such pledge shall also be registered at the Mexican Institute of Industrial Property (IMPI). Additional formalities and third-party consents may apply depending on the nature of the grantor and the collateral assets.

3. Security Trust: As an alternative to the pledge structures referred in items 1 and 2 above, and to the mortgage structure referred in question 3.3 below, a Mexican security trust structure can be implemented and used to create, among others, a general security structure encompassing all or a substantial number of the assets of a grantor or a relevant project.

In general, under a trust, the sponsors/security providers will transfer ownership/title of assets to a trustee (a Mexican bank or a financial entity authorised to act as such), with the purpose of (i) securing the payment and the performance of obligations under the relevant financing documents, (ii) managing the collateral assets, and/or (iii) serving as a source of payment of the relevant debt.

The formalities for incorporating, operating and transferring assets to a trust will depend on the nature of the sponsors/security providers and the assets involved. These formalities include the ratification of the signatures of the parties involved and of the trust agreement before a Mexican notary public, and the registration of the trust agreement at the *Registro Único de Garantías Mobiliarias*.

The primary advantages of the trust structure are that it makes the collateral assets remote to the bankruptcy of the sponsors/security providers as there is a "true sale" of the assets to the trustee, and that it gives additional control and enforcement capabilities over the assets in an enforcement event. The primary disadvantages of the trust structure are that it may interfere with the operations of the sponsors/security providers and affect third parties related to their business (as the assets are transferred to a third-party trustee), and that its implementation represents additional costs.

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

Collateral over Real Estate (land and buildings): To perfect collateral in Mexico over Mexican land and/or buildings, a Mexican mortgage shall be implemented.

- In terms of Mexican law, a mortgage must be granted through a notarial deed and thus representatives of the grantor shall be present at closing in Mexico to execute the same before a notary public with a valid Mexican law power of attorney.
- In addition, and in terms of Mexican law, for a mortgage to produce effects *vis-à-vis* third parties, it shall be registered at the *Registro Público de la Propiedad* of the place where the mortgaged assets are located.
- In connection with the creation of security over machinery and equipment, please refer to question 3.2, item 2.

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

Please refer to question 3.2, item 2.

Additionally, regarding debtors' notification, debtors are not required to be notified for the collateral to be perfected; however, it

is convenient to carry out notifications so that debtors acknowledge the existence of the collateral and the fact that once and if enforced, they must pay to the creditors resulting from the enforcement.

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

Please refer to question 3.2, item 2.

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?

Please refer to question 3.2, item 1.

Regarding certificate formalities, they depend on the corporate form of the issuer but generally shares are in certificated form.

Regarding the possibility of creating collateral over these assets through foreign documents, this is not possible.

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

Please refer to question 3.2, item 2.

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. Any collateral over assets located in Mexico must be governed by Mexican law.

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?

In most cases where security is granted, the participation of a notary public is required. Notarial fees are variable and will depend on the type of document and/or security interest being created; these fees are topped out in most cases but can be high (although, in large transactions or when topped fees are high, notaries can and will typically grant fee discounts).

Registration fees for security over real estate are associated with security registration at public registries. All security over real estate must be registered at the local public registry of property for the security to be perfected and opposable to third parties, and fees will also greatly vary from state to state. In most cases, registration fees are also topped out by local authorities, but in some cases special discounts may apply when the security is associated with benefits for the locality or state (i.e., infrastructure, investment, etc.).

While registration of security over assets other than from real estate, such as receivables, cash deposited in bank accounts, inventory and similar assets will typically be required (depending on the type of security being created), documents evidencing security over these movable assets are, as of recently, electronically registered at the *Registro Único de Garantías Mobiliarias*, and there are no material fees payable for such registration.

Please note that, in addition to the above, in some other cases and in certain local jurisdictions, additional taxes or fees may apply on perfection and/or registration of security.

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 time and/or expenses associated with creating, perfecting and registering security in Mexico vary on a case-by-case basis. The number of secured assets, type and extent of security, nature of the assets in security (i.e. real estate, receivables, etc.) all play a role in determining the amount of time and expense.

Registration of real estate-backed security can take anywhere from a few days to a couple of months, depending on the locality where it needs to take place. Registration of security over movable assets can be done in a matter of days and at marginal cost. As for costs associated with creation, notarisation and perfection, please refer to the foregoing answers.

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

There can be, if the project involves regulated entities/assets. Security over permits, concessions, procurement contracts, licences and other regulated assets (such as pipelines, water treatment plants, energy plants, mining properties), or over companies or entities that use, procure, manage and/or operate such assets, will typically require prior governmental approval to create security over them (or, at best, prior notice to the relevant authorities).

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.

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?

No, not generally.

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. Mexico would recognise the role of security agents. In some cases, the granting of a Power of Attorney to the agent by the secured parties to act as such may be 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?**

Specific contractual requirements may apply. Also, unless the Mexican borrower entity is notified of the assignment, it will be released of its obligations by paying 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?**

Yes. Withholding taxes generally apply to interest payable to foreign lenders, as well as to the proceeds of a claim or an enforcement of security that are destined for payment of interests, commissions or fees (and not principal). The withholding rate will depend on the underlying transaction, the characteristics and nature of the relevant lender, the applicability of international taxation treaties and other related factors.

Please note that withholding requirements do not apply to Mexican banks and financial entities, which 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?**

Mexico has entered into many treaties to avoid double taxation with different countries, and each treaty or agreement provides for

distinct types of privileges, restrictions, fees, and, in some cases, exemptions thereof.

- 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 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.?**

Please refer to section 3.

- 6.5 Are there any adverse consequences to 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 the parties to choose the governing law and submission to jurisdiction; also, Mexican courts will recognise a judgment under a foreign law governed agreement, so long as such foreign laws do not contravene Mexican law principles.

- 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?**

Please refer to question 7.1.

- 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 the 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. Foreclosure of a mortgage or a regular pledge 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.

As for regulatory consents, typically the same consents required, if applicable, for the creation of security will apply to its foreclosure (especially if the receiver or buyer of the assets is not the same entity as that which requested the original consent), but in many cases, the original consent would cover the ability to foreclose on the assets, subject in some cases to prior notice to the relevant authorities. Also, enforcement can be significantly affected or impacted in case of reorganisations or bankruptcy under applicable law.

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, no; however, restrictions applicable to foreign investors or creditors to own or operate certain assets (restrictions on foreign investment) will apply to foreign investors or creditors in the event of a foreclosure.

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. From the date of the bankruptcy judgment to the end of the reorganisation stage, no claim or foreclosure will be enforceable against the company pursuant to the Federal Bankruptcy Law.

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. Mexican courts have a legal obligation to recognise contractual submission of disputes to international arbitration, as well as international arbitral awards, subject to compliance with procedural and formal requirements under the Mexican Commerce Code and applicable international treaties. Please note that enforcement of an arbitral award may be denied, among other applicable matters if: (i) 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; (ii) service of process is not correctly and legally completed; (iii) 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; (iv) the subject matter of the arbitration procedure cannot be arbitrated or the enforcement of the award is contrary to Mexican law, public policy of Mexico, international treaties or agreements binding upon Mexico; or (v) 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 throughout Mexico. Reorganisation and/or bankruptcy proceedings will directly affect enforcement of a security for a lender, but the impact will greatly vary depending on the legal robustness of the security received by such lender.

In general terms, and subject to exemptions and rights, the Federal Bankruptcy Law treats a lender secured under a security structure created under a pledge or a mortgage as a secured creditor. Important benefits afforded to a secured creditor are 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 proceeding; 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.

Because, as explained above, under a trust title to the assets that form the trust estate is transferred to the relevant trustee and therefore subtracted from the patrimony of the relevant company, lenders secured by or through a trust have, through this agreement, a bankruptcy remote vehicle 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, among others, of the need for the company subject to the reorganisation procedure 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 establish clawback rights (general 270 clawback period for fraudulent conveyance) and also sets forth a list which, subject to exemptions and interpretation, sets forth the following ranking priorities for creditors: (i) singularly privileged creditors (i.e. burial and sickness expenses); (ii) secured creditors (those secured with an *in rem* guarantee, such as the pledges and mortgage agreements); (iii) specially privileged creditors; and (iv) common (typically unsecured) creditors. However, 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?

Yes. Governmental entities (i.e., states, municipalities, and certain government entities) are not subject to the Federal Bankruptcy Law. However, they can (and have) implemented trust structures to guarantee debt instrument offerings and other forms of financing, even governmental procurement, and ascertain that assets transferred to such trust are considered to be isolated from the reach of said governmental entity and could be subject to the Federal Bankruptcy Law.

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; however, please note that Mexican law does not allow the actual seizing or taking possession of assets through out-of-court proceedings; therefore, any actual seizure or taking possession of project assets prior to the conclusion of an out-of-court proceeding of foreclosure must be undertaken and approved by the applicable 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?

Please refer to question 7.1.

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

Sovereign immunity is not recognised in Mexico; thus, waiver of immunity is generally valid in Mexico.

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?

In general, there are no licencing or other eligibility requirements applicable under Mexican laws.

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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Mexico

Gonzalez Calvillo, S.C.

José Ignacio Rivero Andere



1 Overview

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

2016 was the year in which the world was witness to Brexit and the election of President Trump; two underdog events that represent a step back from globalisation and towards nationalism and protectionism, and that have created uncertainty and unease in financial markets around the world.

Particularly, in 2016, Mexico's financial markets were hit, among others, with a 30% devaluation of the Mexican Peso against the US Dollar that is expected to continue to some degree throughout 2017; as well as with the expectation of a renegotiation of NAFTA (North America Free Trade Agreement) that will redefine the rules of trade with Mexico's most important commercial partner, the United States of America.

Additionally, President Trump has shown a substantial amount of animosity toward our country and its people and, among others, has threatened to impose tariffs on Mexican goods and to build a wall along the US-Mexico border.

As a result of the above, 2017 is expected to be a challenging year for Mexico with little new capital coming into our country and a significant number of US Dollar-denominated debt restructurings and rearrangements with our US commercial and financial partners. That said, once the financial markets around the world find ease (if they do at all) and assuming Trump's radical positions are somehow softened, Mexico is expected to continue seeing the results of its recent structural reforms (2013–2016) with the injection of noteworthy capital in the energy and infrastructure sectors, which constitute the core of the growing potential of the Mexican economy and, in the case of the energy sector, the opening of an area that was closed for more than 50 years to private investment with a material potential to develop.

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

Trends have remained consistent over recent years, as the most significant lending transactions are those related to the construction, operation and maintenance of energy and infrastructure projects.

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, so long as the by-laws of the Mexican guarantor allow guarantee of the obligations of third parties. These guarantees can be created either under Mexican or foreign law, provided that, when created under foreign law, certain provisions shall be included in the foreign documents to ensure enforceability of a judgment thereto in Mexico against the Mexican guarantor (e.g. limitations on guarantee language; appointment of process agent; submission to jurisdiction; conditions precedent related to the Mexican guarantor; withholding taxes gross-up).

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?

No; however, directors must comply with their statutory duties in resolving any transaction that is subject to their review. Specific duties under Mexican law for directors acting for private entities are abstaining from voting in matters where they have a conflict of interest, and confidentiality; for public entities, these are the duty of loyalty and the duty of care.

2.3 Is lack of corporate power an issue?

Yes, for the validity of the guarantee (i) the Mexican guarantor shall be authorised under its by-laws to act as a guarantor of third party obligations, (ii) the Mexican guarantor, if applicable under its by-laws, shall obtain the necessary corporate approvals (shareholders/BoD), and (iii) a duly appointed representative of the Mexican guarantor with sufficient powers and authorities under Mexican law shall execute the guarantee.

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

Subject to the by-laws of the Mexican guarantor, corporate approvals may be required.

Subject to the contractual provisions applicable to the Mexican guarantor, third party consents may be required.

In general, no governmental consents are required (exception made for regulated entities and sectors where governmental approvals would apply).

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

No. However, please note that the enforceability of the guarantee may be limited or affected by statutory priorities or provisions established by: (i) laws imposing federal, state or municipal taxes, including taxes or amounts payable by Mexico that are considered as such under Mexican law, such as social security and payments of similar import owed to, or collectible by, a governmental authority with the power to collect fiscal contributions; (ii) Mexican federal labour laws regarding compensation of any kind owed by Mexico to persons covered by such laws; and (iii) reorganisation, insolvency, fraudulent transfer, bankruptcy, moratorium or other laws affecting creditors' rights generally.

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

No. On enforcement, see question 2.1 regarding the enforceability of foreign law guarantees.

3 Collateral Security

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

Security trusts, pledges and mortgages. These can be created over: (i) equity (shares, quotas, etc.); (ii) rights and/or any type of movable assets (receivables, cash deposited in bank accounts, inventory, IP, etc.); and (iii) real estate (land and buildings).

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?

1. Pledge over Equity: To perfect collateral in Mexico over equity issued by a Mexican company, a Mexican equity pledge agreement shall be implemented, jointly with the delivery of (i) if applicable, stock certificates duly endorsed in guarantee, (ii) evidence of an entry regarding the pledge in the shareholders/partners registry book of the issuer, and (iii) stock powers to be exercised upon the occurrence of an enforcement event.

2. Pledge over Movable Assets: To perfect collateral in Mexico over any type of assets (other than equity and real estate assets), a Mexican floating lien/regular asset pledge shall be implemented. When structured as a floating lien pledge, the possession of the pledged assets will remain with the pledgor; when structured as a regular pledge, the possession of the pledged assets will be transferred to the pledgee.

Additionally, collateral over equity or movable assets can be created through a security trust (referred to below).

In connection with (1) and (2) above, please note the following:

The signatures of the parties to the equity pledge (to ensure priority over tax credits) and the floating lien/regular asset pledge (to

comply with perfection requirements under Mexican law) shall be ratified before a Mexican notary public and registered at the Sole Registry of Movable Security. To accomplish the notarial ratification, representatives of such parties must be available at closing to execute these documents in front of a Mexican notary public with a valid Mexican law PoA. Also, in case the floating lien/regular asset pledge covers any trademarks registered in Mexico, such pledge shall also have to be registered at the Mexican Institute of Intellectual Property (IMPI). Additional formalities and third party consents may apply depending on the nature of the grantor and the collateral assets.

3. Security Trust: As an alternative to the pledge structures referred in 1 and 2 above and to the mortgage structure referred in question 3.3 below, a Mexican guarantee trust structure could be implemented and used to create, among others, a general security structure encompassing all or a substantial number of the assets of a grantor or a relevant project.

Generally speaking, under a trust, the sponsors/security providers will transfer title of assets to a trustee (a Mexican bank or a financial entity authorised to act in such capacity), with the purpose of (i) securing the payment and the performance of obligations under the relevant financing documents, (ii) managing the collateral assets, and/or (iii) serving as a source of payment of the relevant debt.

The formalities for incorporating, operating and transferring assets to a trust will depend on the nature of the sponsors/security providers and the assets involved. These formalities will be the ratification of the trust before a Mexican notary public, and its registration before the Sole Registry of Movable Security; to accomplish the notarial ratification, representatives of the parties to the trust must be available at closing to execute these documents in front of a Mexican notary public with a valid Mexican law PoA.

The primary advantage of the trust structure is that it makes all collateral remote to the bankruptcy of the sponsors/security providers as there is a "true sale" of the assets to the trustee, and that it gives additional control and enforcement capabilities over the assets in an EOD. The primary disadvantage of the trust structure is that it may interfere with the operations of the grantors and affect third parties related to the business (as the assets are transferred to a third party (trustee)), and that its implementation represents additional costs.

Any PoAs granted outside of Mexico must be notarised and apostilled or legalised in the country in which they were granted, and sent to Mexico for further notarisation.

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

Collateral over Real Estate Assets (land and buildings): To perfect collateral in Mexico over Mexican land and/or buildings, a Mexican mortgage agreement shall be implemented.

- In terms of Mexican law, this mortgage shall be granted through a notarial deed and thus representatives of the parties thereto shall be available at closing in Mexico to execute this document before a notary public.
- In addition, and in terms of Mexican law, for this mortgage to produce effects *vis-à-vis* third parties, it shall be registered in the public registry of property of the place where the assets are located.
- In relation with the creation of security over machinery and equipment, please refer to question 3.2, point 2.

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

It can be taken; see question 3.2, point 2.

Debtors are not required to be notified of the creation of the collateral for such collateral to be perfected; however, it is a good practice to notify such debtors so that they acknowledge the pledge and the fact that once and if enforced, they should pay to the parties acquiring the receivables as a result of enforcement.

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

It can be taken; see question 3.2, point 2.

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?

It can be taken; see question 3.2, point 1.

The form of the certificates depends on the corporate form of the issuer; generally, shares are in certificated form.

Such security can only be granted by means of Mexican collateral documents.

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

It can be taken; see question 3.2, point 2.

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, so long as the by-laws of the company allow the granting of security interests. These security interests should be created under Mexican law when the subject matter thereof are assets located in Mexico or governed by Mexican laws.

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?

In most cases where security is granted, the participation of a notary public is required to perfect the security interests being created; see question 3.2, points 1 and 2. In other cases, although not legally required for perfection, it may be advisable to ratify security documents with a notary public. Notarial fees are variable and will depend on the type of document and/or security interest being created; these fees are topped out in most cases but can be high (although, in large transactions or when topped fees are high, notaries can and will typically grant fee discounts).

Registration fees for security over real estate assets are associated with security registration at public registries. All security over real estate assets must be registered at the local public registry of property for the security to be perfected and opposable to third parties, and fees will also greatly vary from state to state. In most cases, registration fees are also topped out by local authorities, but in some cases special discounts may apply when the security is associated with benefits for the locality or state (i.e., infrastructure, investment, etc.).

While registration of security over assets other from real estate, such as receivables, cash deposited in bank accounts, inventory and similar assets will typically be required (depending on the type of security being created), documents evidencing security over these movable assets are, as of recently, electronically registered at the Sole Registry of Movable Security, and there is no fee payable for such registration (although associated notarial costs may apply).

Please note that, in addition to the above, in some other cases and in certain local jurisdictions, additional taxes or fees may apply on perfection and/or registration of security.

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 time and/or expenses associated with creating, perfecting and registering security in Mexico vary on a case-by-case basis. The number of secured assets, type and extent of security, nature of the assets in security (i.e. real estate, receivables, etc.) all play a role in determining the amount of time and expense.

Registration of real estate-backed security can take anywhere from a few days to a couple of months, depending on the locality where it needs to take place. Registration of security over movable assets was, until recently, also subject to time considerations but with the advent of electronic registration, it can now be done in a matter of days and at marginal cost. As for costs associated with creation, notarisation and perfection, please refer to the foregoing answers.

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

There can be, if the project involves a regulated activity. Security over permits, concessions, procurement contracts, licences and other regulated assets (such as pipelines, water treatment plants, energy plants, mining properties), or over companies or entities that use, procure, manage and/or operate such assets, will typically require prior governmental approval to create security over them (or, at best, prior notice to the relevant authorities).

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)?

See questions 3.2, 3.9 and 3.10.

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?**

No, not generally.

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. Mexico would recognise the role of security agents. In some cases, the granting of a PoA to the agent by the secured parties to act as such may be 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?**

Specific contractual requirements must be complied with. Also, unless the Mexican borrower entity is notified of the assignment, it will be released of its obligations by paying 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?**

Yes. Withholding taxes generally apply to interest payable to foreign lenders, as well as to the proceeds of a claim or an enforcement of security that are destined for payment of interests, commissions or fees (and not principal). The withholding rate will depend on the

underlying transaction, the characteristics and nature of the relevant lender, the applicability of international taxation treaties and other related factors.

Please note that withholding requirements do not apply to Mexican banks and financial entities, which 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?**

Mexico has entered into many treaties to avoid double taxation with different countries, and each treaty or agreement provides for distinct types of privileges, restrictions, fees, and, in some cases, exemptions thereof.

- 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 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.?**

See section 3.

- 6.5 Are there any adverse consequences to 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 generally allows the parties freedom in the choice of law and jurisdiction, and Mexican courts will recognise a judgment under a contract governed by a foreign law, provided such laws do not contravene Mexican law principles.

- 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?**

See question 7.1.

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 the 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. Foreclosure of a mortgage or a regular pledge 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 guarantee trusts, it is possible to choose between a judicial or a non-judicial procedure.

As for regulatory consents, typically the same consents required, if applicable, for the creation of security will apply to its foreclosure (especially if the receiver or buyer of the assets is not the same entity as that which requested the original consent), but in many cases the original consent would cover the ability to foreclose on the assets, subject in some cases to prior notice to the relevant authorities. Also, enforcement can be significantly affected or impacted in case of reorganisations or bankruptcy under applicable law.

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, no; however, restrictions applicable to foreign investors or creditors to own or operate certain assets (restrictions on foreign investment) will apply to foreign investors or creditors in the event of a foreclosure.

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. From the date of the bankruptcy judgment to the end of the reorganisation stage, no claim or foreclosure will be enforceable against the company pursuant to the Federal Bankruptcy Law.

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. Mexican courts have the legal obligation to recognise contractual submission of disputes to international arbitration, as well as international arbitral awards, subject to compliance with procedural and formal requirements under the Mexican

Commerce Code and applicable international treaties. Please note that enforcement of an arbitral award may be denied, among other applicable matters: if 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; if service of process is not correctly and legally completed; if 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; if the subject matter of the arbitration procedure cannot be arbitrated or the enforcement of the award is contrary to Mexican law, public policy of Mexico, international treaties or agreements binding upon Mexico; or if 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 throughout Mexico. Reorganisation and/or bankruptcy proceedings will directly affect enforcement of a security for a lender, but the impact will greatly vary depending on the legal robustness of the security received by such lender.

In general terms, and subject to exemptions and rights, the Federal Bankruptcy Law treats a lender secured under a security structure created under a pledge or a mortgage as a secured creditor. Important benefits afforded to a secured creditor are 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 proceeding; 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.

Because, as explained above, under a trust title to the assets that form the trust estate is transferred to the relevant trustee and therefore subtracted from the patrimony of the relevant company, lenders secured by or through a trust have, through this agreement, a bankruptcy remote vehicle 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, among others, of the need for the company subject to the reorganisation procedure 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 establish clawback rights (general 270 clawback period for fraudulent conveyance) and also sets forth a list which, subject to exemptions and interpretation, sets forth the following ranking priorities for creditors: (i) singularly privileged creditors (i.e. burial and sickness expenses); (ii) secured creditors (those secured with an *in rem* guarantee, such as the pledges and mortgage agreements); (iii) specially privileged creditors; and (iv) common (typically unsecured) creditors. However, 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?

Yes. Governmental entities (i.e., states, municipalities, and certain government entities) are not subject to the Federal Bankruptcy Law. However, they can (and have) implemented trust structures to guarantee debt instrument offerings and other forms of financing, even governmental procurement, and ascertain that assets transferred to such trust are considered to be isolated from the reach of said governmental entity, and could be subject to the Federal Bankruptcy Law.

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; however, please note that Mexican law does not allow the actual seizing or taking possession of assets through out-of-court proceedings; therefore, any actual seizure or taking possession of project assets prior to the conclusion of an out-of-court proceeding of foreclosure must be undertaken and approved by the applicable 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?

See question 7.1.

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

Sovereign immunity is not recognised in Mexico and, therefore, waiver of immunity is generally valid in Mexico.

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?

Generally, no.

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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Mexico

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1 Overview

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

In the last three years Mexico was able to conclude several structural reforms considered essential for the development of the Mexican economy.

One of these reforms was the Financial Reform, which had the main purposes of (i) guaranteeing access to credit to the Mexican people, (ii) creating a reliable banking and financial system, and (iii) eliminating financial transactions with unlawful money.

Also, as a result of these reforms, Mexico has tendered an important number of infrastructure projects that have required all types of financial structures and innovation.

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

The most significant project financings in Mexico in recent years are generally related to the construction, operation and maintenance of: power plants; oil and gas projects, including pipelines and storage facilities; dams; water treatment plants; and transportation infrastructure such as highways and toll roads.

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, so long as the by-laws of the Mexican guarantor permit the guarantee of obligations of third parties. These guarantees can be created either under Mexican or foreign law, provided that when created under foreign law, certain provisions are included in the foreign documents to ensure enforceability of a judgment of the foreign law guarantee in Mexico against the Mexican guarantor (e.g. limitations on guarantee language, appointment of a process agent and provisions for submission in the jurisdiction).

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?

No, guarantees are enforceable regardless of the benefit obtained by the Mexican guarantor.

2.3 Is lack of corporate power an issue?

Yes, for the validity of the guarantee, the Mexican guarantor (i) should be authorised under its by-laws to act as guarantor, (ii) if applicable under its by-laws, corporate approvals have to be obtained, and (iii) a duly appointed representative of the Mexican guarantor should execute the guarantee.

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

Subject to the by-laws of the Mexican guarantor, corporate approvals (e.g. shareholders, board of directors, etc.) may be required.

Subject to contractual provisions applicable to the Mexican guarantor, contractual consents may also be required.

Except for regulated entities, no governmental consents are required.

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

No; however, the enforceability of the guarantee may be limited or affected by statutory priorities or provisions established by: (i) laws imposing federal, state or municipal taxes, including taxes or amounts payable by Worldwide Mexico that are considered as such under Mexican law, such as social security and payments of similar import owed to, or collectible by, a governmental authority with the power to collect fiscal contributions; (ii) Mexican federal labour laws regarding compensation of any kind owed by Worldwide Mexico to persons covered by such laws; and (iii) reorganisation, insolvency, fraudulent transfer, bankruptcy, moratorium or other laws affecting creditors' rights generally.

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

No. On enforcement, see question 2.1 regarding the enforceability of foreign law guarantees.

3 Collateral Security

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

(i) Equity (shares, quotas, etc.), (ii) rights and/or any type of movable assets (receivables, cash deposited in bank accounts, inventory, IP, etc.), and (iii) real estate (land and buildings).

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?

- (i) **Collateral over Equity:** To perfect collateral in Mexico over equity issued by a Mexican company, a Mexican equity quotas pledge agreement would have to be implemented, jointly with the delivery of (a) if applicable, equity certificates duly endorsed, (b) evidence of the entry of the pledge in the partners registry book, and (c) equity quota powers to be exercised by the lender upon the occurrence of an enforcement event.
- (ii) **Collateral over Movable Assets:** To perfect collateral in Mexico over machinery, equipment, or any other type of movable assets located in Mexico, including trademarks registered in Mexico (either owned by the Mexican entity or by its affiliates), a Mexican floating lien pledge would have to be implemented. This type of security will provide for the creation of collateral without interfering with the operations of the Mexican entity as the possession of the pledged assets will remain with the pledgor.

In connection with the equity pledge and the floating lien pledge, please note the following:

- (a) The signatures of the parties to the equity pledge (to ensure priority over tax credits) and the floating lien pledge (to comply with perfection requirements under Mexican law) would need to be ratified before a notary public in Mexico. To accomplish this, representatives of such parties would need to be available at closing to execute these documents in front of a notary public. In case the collateral agent or the foreign grantors do not have representatives in Mexico, a PoA in terms of Mexican law would have to be granted for such purposes; if granted outside of Mexico, such PoA would need to be notarised, and, as applicable, apostilled or legalised, and sent to Mexico for further notarisation.
- (b) The equity pledge (to ensure priority over tax credits) and the floating lien pledge (to comply with perfection requirements under Mexican law and produce effects *vis-à-vis* third parties), would need to be registered in the Sole Registry of Movable Security. In addition, in case the floating lien pledge covers any trademarks registered in Mexico, such pledge would also have to be registered at the Mexican Institute of Intellectual Property (IMPI).
- (c) If granted outside of Mexico, the equity/stock powers to be delivered in terms of the equity quotas pledge would have to comply with the same formalities as a PoA described in (a) above.
- (iii) **Trust:** As an alternative to the mentioned pledges, a Mexican guarantee trust structure, whereby the collateral assets are transferred to a trustee to guarantee the secured obligations, could be implemented.

A trust is generally used when it is intended to create a general security agreement encompassing all or a substantial part of the relevant project assets. Generally speaking, under a trust, the project's companies, sponsors or security providers will transfer title of assets to a trustee, who is a Mexican

bank or financial entity authorised to act as trustee, with the purpose of securing payment and performance obligations of the project companies, sponsors and/or obligors towards the banks or entities granting the relevant financing, who will be principal beneficiaries of the trust. Depending on the type of trust and the assets involved, certain formalities for incorporating, operating and transferring assets to the trust may apply.

The primary advantage of the trust structure is that it makes all collateral remote to the bankruptcy of the grantors, as there is a "true sale" of the assets to the trustee, and it gives more control over the assets to the bank in the event of a default. The primary disadvantage of the trust structure is that it may interfere with the operations of the grantors (as the possession of the assets would need to be transferred to the trustee), and that its implementation could represent material costs (including trustee fees and costs, and tax implications).

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

- (i) **Collateral over Real Estate Assets (land and buildings):** To perfect collateral in Mexico over Mexican land and/or buildings, a Mexican mortgage agreement would have to be implemented.

In terms of Mexican law this mortgage would need to be granted through a notarial deed and thus, as in the case of the stock pledge and the floating lien pledge, representatives of the parties thereto would need to be available at closing in Mexico to execute this document before a notary public.

In addition and in terms of Mexican law, for this mortgage to produce effects *vis-à-vis* third parties, it will need to be registered in the public registry of property of the place where the assets are located.

In connection with security over machinery and equipment, please refer to question 3.2, points (ii) and (iii).

- (ii) **Trust:** As an alternative to the mortgage, a Mexican guarantee trust structure, whereby the mortgaged assets are transferred to a trustee to guarantee the secured obligations, could be implemented. Please refer to question 3.2, point (iii).

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

Yes. See question 3.2, points (ii) and (iii).

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

Yes. See question 3.2, points (ii) and (iii).

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. See question 3.2, points (ii) and (iii).

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

Yes. See question 3.2, points (ii) and (iii).

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, so long as the by-laws of the Mexican guarantor permit the granting of security interests. These guarantees have to be created under Mexican law when the subject matter thereof are assets located in Mexico or governed by Mexican laws.

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?

In most cases where security is granted, the participation of a notary public is required in order to perfect the security interests being created (i.e. security over real estate, guarantee trusts and floating lien pledges). In other cases, although not legally required for perfection, it may be advisable to ratify security documents with a notary public. Notarial fees are variable and will depend on the type of document or security interest being notarised; these fees are topped out in most cases but can be high (although, in large transactions or when topped fees are high, notaries can and will typically grant fee discounts).

Registration fees are associated with security registration at public registries for security over real estate assets. All security over real estate assets must be registered at the local public registry of property for the security to be perfected and opposable to third parties, and fees will also greatly vary from state to state. In most cases, registration fees are also topped out by local authorities, but in some cases special discounts may apply when the security is associated with benefits for the locality or state (i.e., infrastructure, investment, etc.).

While registration of security over assets other than real estate, such as receivables, cash deposited in bank accounts, inventory and similar assets will typically be required (depending on the type of security being created), documents evidencing security over these movable assets are, as of recently, electronically registered at the Sole Registry of Movable Security, and there is no fee payable for such registration (although associated notarial costs may apply).

Please note that, in addition to the above, in some other cases and in certain local jurisdictions, additional taxes or fees may apply on perfection and/or registration of security.

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 time and/or expenses associated with creating, perfecting and registering security in Mexico vary on a case-by-case basis. The number of secured assets, type and extent of security, nature of the assets in security (i.e. real estate, receivables, etc.) all play a role in determining the amount of time and expense.

Registration of real estate-backed security can take anywhere from a few days to a couple of months, depending on the locality where it needs to take place. Registration of security over movable assets was, until recently, also subject to time considerations but with the advent of electronic registration, it can now be done in a matter of

days and at marginal cost. As for costs associated with creation, notarisation and perfection, please refer to the foregoing answers.

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

There can be, if the project involves a regulated activity. Security over permits, concessions, procurement contracts, licences and other regulated assets (such as pipelines, water treatment plants, energy plants, mining properties), or over companies or entities that use, procure, manage and/or operate such assets, will typically require prior governmental approval to create security over them (or, at best, prior notice to the relevant authorities).

In addition, subject to the by-laws of the Mexican grantor, corporate approvals (e.g. shareholders, BOD, etc.) may be required. Also, subject to contractual provisions applicable to the Mexican grantor, contractual consents may also be required.

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)?

See questions 3.2, 3.9 and 3.10.

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?

No, so long as the by-laws of the Mexican guarantor permit it. Note that related party transactions derived from the financing will have to be executed on an arm's length basis and may require governmental, corporate and contractual approvals.

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. Mexico would recognise the role of security agents and it is valid to appoint such agents to act on behalf of financing parties, provided such appointment is done in writing and contains the specific authorisation and role of the agent by and on behalf of the relevant financing parties.

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. See question 5.1.

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?

Specific contractual requirements under the loan documents should be complied with. Also, in terms of Mexican law, unless the Mexican borrower and guarantor are notified of the assignment, they will be released of their obligations by paying 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?

Yes. Withholding taxes do generally apply to interest payable to foreign lenders, as well as to the proceeds of a claim or an enforcement of security that are destined for payment of interests, commissions or fees (and not principal). The withholding rate will depend on the underlying transaction, the characteristics and nature of the relevant lender, the applicability of international taxation treaties and other related factors, and the rates can vary from 4.9% to 40%, depending on different factors.

Please note that withholding requirements do not apply to Mexican banks and financial entities, which 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?

Mexico has entered into many treaties to avoid double taxation with different countries, and each treaty or agreement provides for distinct types of privileges, restrictions, fees, and, in some cases, exemptions thereof. They tend to reduce taxes of one treaty country for residents of the other treaty country in order to reduce double taxation of the same income, reducing the amount of tax withheld from interest.

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 Mexican territory, or when the

income comes from sources within the Mexican territory. A foreign lender will be considered to have a permanent establishment in Mexico if (a) any of its activities or services are performed in a place of business within the Mexican territory (e.g. branches, offices, facilities, or similar), or (b) it acts within the Mexican territory through a person or entity, other than an independent agent.

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.?

In most cases where security is granted, the participation of a notary public is required in order to perfect the security interests being created (i.e. security over real estate, guarantee trusts and floating lien pledges). In other cases, although not legally required for perfection, it may be advisable to ratify security documents with a notary public. Notarial fees are variable and will depend on the type of document or security interest being notarised; these fees are topped out in most cases but can be high (although, in large transactions or when topped fees are high, notaries can and will typically grant fee discounts).

6.5 Are there any adverse consequences to 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 no adverse consequences for a Mexican borrower if some or all of the lenders are foreign entities.

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 generally allows the parties freedom in the choice of law applicable to agreements and contracts, and Mexican courts will recognise a contract governed by a foreign law and will construe and solve any dispute applying such foreign law within the Mexican territory, provided such laws do not contravene Mexican law principles.

That said, creation of collateral over assets located in Mexico or governed by Mexican law can only be created and enforced through Mexican law-governed documents.

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. Loan documents and offshore security documents in which the lender or main group of lenders are offshore entities or are funded through foreign resources will typically be governed and construed under foreign law (such as, in many cases, New York or UK law). Mexican courts will recognise a foreign judgment and will enforce it in Mexico, provided such judgment does not contravene Mexican law principles, including if service of process is not correctly and legally completed.

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?

Enforcement and foreclosure procedures will depend on the type of security interest and the collateral being enforced. In most of these procedures, there can be special and other blocking procedures that can directly impact the timing and cost of enforcement.

Note that enforcement in Mexican Courts of a foreign judgment under a foreign law finance document will be much more efficient than trying to enforce the foreign law finance document itself.

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. Foreclosure of a mortgage or a regular pledge 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 guarantee trusts, it is possible to elect between a judicial or a non-judicial procedure.

As for regulatory consents, typically the same consents required, if applicable, for the creation of security will apply to its foreclosure (especially if the receiver or buyer of the assets is not the same entity as that which requested the original consent), but in many cases the original consent would cover the ability to foreclose on the assets, subject in some cases to prior notice to the relevant authorities. Also, enforcement can be significantly affected or impacted in case of reorganisations or bankruptcy under applicable law.

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 no; however restrictions applicable to foreign investors or creditors to own or operate certain assets (restrictions on foreign investment) will apply to foreign investors or creditors in the event of a foreclosure.

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. From the date of the bankruptcy judgment to the end of the reorganisation stage, no claim or foreclosure will be enforceable against the company pursuant to the Federal Bankruptcy Law.

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. Mexican courts have the legal obligation to recognise contractual submission of disputes to international arbitration, as

well as international arbitral awards, subject to compliance with procedural and formal requirements under the Mexican Commerce Code and applicable international treaties. Please note that enforcement of an arbitral award could be denied, among other applicable matters: if 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; if service of process is not correctly and legally completed; if 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; if the subject matter of the arbitration procedure cannot be arbitrated or the enforcement of the award is contrary to Mexican law, public policy of Mexico, international treaties or agreements binding upon Mexico; or if 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 throughout Mexico. Reorganisation and/or bankruptcy proceedings will directly affect enforcement of a security for a lender, but the impact will greatly vary depending on the legal robustness of the security received by such lender.

In general terms, and subject to exemptions and rights, the Federal Bankruptcy Law treats a lender secured under a security structure created under a pledge or a mortgage as a secured creditor. Important benefits afforded to a secured creditor are 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 proceeding; 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.

Because, as explained above, under a trust title to the assets that form the trust estate is transferred to the relevant trustee and therefore subtracted from the patrimony of the relevant company, lenders secured by or through a trust have, through this agreement, a bankruptcy remote vehicle 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, among others, of the need for the company subject to the reorganisation procedure 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 establish clawback rights (general 270 clawback period for fraudulent conveyance) and also sets forth a list which, subject to exemptions and interpretation, sets forth the following ranking priorities for creditors: (i) singularly privileged creditors (i.e. burial and sickness expenses); (ii) secured creditors (those secured with an *in rem* guarantee, such as the pledges and mortgage agreements); (iii) specially privileged creditors; and (iv) common (typically

unsecured) creditors. However, 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 actually 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?

Yes. Governmental entities (i.e., states, municipalities, and certain government entities) are not subject to the Federal Bankruptcy Law. However, they can (and have) implemented trust structures to guarantee debt instrument offerings and other forms of financing, even governmental procurement, and ascertain that assets transferred to such trust are considered to be isolated from the reach of said governmental entity and may be subject to the Federal Bankruptcy Law.

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. The trust structure offers the alternative of contractually agreeing to extrajudicial out-of-court proceedings for foreclosure of the secured assets. The floating lien pledge also offers an out-of-court procedure to the parties, subject to certain prior agreements. However, please note that Mexican law does not allow the actual seizing or taking possession of assets through out-of-court proceedings; therefore, any actual seizure or taking possession of project assets prior to the conclusion of an out-of-court proceeding of foreclosure must be undertaken and approved by the applicable 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. Submission to a foreign jurisdiction is legally binding and enforceable, so long as certain requirements are met when submitting to foreign jurisdiction (i.e., that the matter subject to jurisdiction is not exclusive of the Mexican courts – such as in real estate matters, that the choice of jurisdiction is solely for the benefit of one of the parties but not all of the parties, and that the parties have unequivocally waived their corresponding jurisdiction).

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

Sovereign immunity is not recognised in Mexico and, therefore waiver of immunity is generally valid in Mexico. However, please note that even though the entities of the Mexican federal and local government are not immune to resolutions and awards against them, they can have immunity against attachments (including in aid of execution) and foreclosure of certain assets or services of governmental property.

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? 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?

Generally speaking, no legal restrictions exist for any person within the Mexican territory to grant a loan to a company. The difference between banking institutions and unauthorised entities is that banking institutions are the only entities authorised to obtain funds from the general public.

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?

The Federal Public Private Partnership Act intends to regulate the legal structure of public-private partnerships to enable the provision of a wide array of services, including those that require the construction and financing of infrastructure, in order for the private sector to become a supplier for the Federal Public Administration by acquiring the obligation to build the infrastructure required to provide such services and proportionally assuming the risk of developing a project. This intends for new and more attractive projects to be tendered under a more secure scheme for project developers; therefore, it is intended to substantially increase the possibility of obtaining or providing improved financing deals for such projects.



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