
CHAMBERS GLOBAL PRACTICE GUIDES

Project Finance 2025

Definitive global law guides offering
comparative analysis from top-ranked lawyers

Contributing Editor

Pablo Sorj
Mattos Filho



Chambers

Global Practice Guides

Project Finance

Contributing Editor

Pablo Sorj

Mattos Filho

2025

Chambers Global Practice Guides

For more than 20 years, Chambers Global Guides have ranked lawyers and law firms across the world. Chambers now offer clients a new series of Global Practice Guides, which contain practical guidance on doing legal business in key jurisdictions. We use our knowledge of the world's best lawyers to select leading law firms in each jurisdiction to write the 'Law & Practice' sections. In addition, the 'Trends & Developments' sections analyse trends and developments in local legal markets.

Disclaimer: The information in this guide is provided for general reference only, not as specific legal advice. Views expressed by the authors are not necessarily the views of the law firms in which they practise. For specific legal advice, a lawyer should be consulted.

Content Management Director Claire Oxborrow
Content Manager Jonathan Mendelowitz
Senior Content Reviewers Sally McGonigal, Ethne Withers,
Deborah Sinclair and Stephen Dinkeldein
Content Reviewers Vivienne Button, Lawrence Garrett, Sean Marshall,
Marianne Page, Heather Palomino and Adrian Ciechacki
Content Coordination Manager Nancy Laidler
Senior Content Coordinators Carla Cagnina and Delicia Tasinda
Content Coordinator Joanna Chivers
Head of Production Jasper John
Production Coordinator Genevieve Sibayan

Published by
Chambers and Partners
165 Fleet Street
London
EC4A 2AE
Tel +44 20 7606 8844
Fax +44 20 7831 5662
Web www.chambers.com

Copyright © 2025
Chambers and Partners

CONTENTS

INTRODUCTION

Contributed by Pablo Sorj and Bernardo Môcho, Mattos Filho p.4

BANGLADESH

Law and Practice p.7

Contributed by Doulah & Doulah

BRAZIL

Law and Practice p.23

Contributed by Machado Meyer

Trends and Developments p.40

Contributed by Machado Meyer

CAYMAN ISLANDS

Law and Practice p.46

Contributed by Maples Group

D. R. CONGO

Law and Practice p.58

Contributed by Janson

EGYPT

Law and Practice p.70

Contributed by Matouk Bassiouny & Hennawy

GREECE

Law and Practice p.81

Contributed by Koutalidis Law Firm

Trends and Developments p.97

Contributed by Koutalidis Law Firm

GUINEA

Law and Practice p.104

Contributed by Icarus Legal

Trends and Developments p.122

Contributed by YAC & Partners

INDONESIA

Law and Practice p.128

Contributed by ABNR Counsellors at Law

JAPAN

Law and Practice p.144

Contributed by Mori Hamada

KENYA

Law and Practice p.157

Contributed by Ahmednasir Abdullahi Advocates LLP

Trends and Developments p.178

Contributed by Ahmednasir Abdullahi Advocates LLP

MEXICO

Law and Practice p.186

Contributed by Ritch Mueller

Trends and Developments p.204

Contributed by Ritch Mueller

NORWAY

Law and Practice p.208

Contributed by BAHR

Trends and Developments p.219

Contributed by BAHR

PHILIPPINES

Law and Practice p.225

Contributed by SyCip Salazar Hernandez & Gatmaitan

PORTUGAL

Law and Practice p.242

Contributed by PLMJ

Trends and Developments p.258

Contributed by PLMJ

SWITZERLAND

Law and Practice p.263

Contributed by Walder Wyss Ltd

TAIWAN

Law and Practice p.276

Contributed by LCS & Partners

Trends and Developments p.288

Contributed by LCS & Partners

TÜRKIYE

Law and Practice p.293

Contributed by TANSEL Attorneys at Law

Trends and Developments p.306

Contributed by TANSEL Attorneys at Law

TURKS & CAICOS

Law and Practice p.310

Contributed by Misick & Stanbrook

USA

Trends and Developments p.320

Contributed by DLA Piper

ZIMBABWE

Law and Practice p.325

Contributed by Mushoriwa Moyo



Law and Practice

Contributed by:

Jorge Oria and Santiago Zardain

Ritch Mueller

Contents

1. Project Finance Panorama p.188

- 1.1 Sponsors and Lenders p.188
- 1.2 Public-Private Partnership Transactions p.188
- 1.3 Structuring the Deal p.189
- 1.4 Active Industries and Sectors p.189

2. Guarantees and Security p.191

- 2.1 Assets Available as Collateral to Lenders p.191
- 2.2 Charges or Interest Over All Present and Future Assets of a Company p.193
- 2.3 Registering Collateral Security Interests p.193
- 2.4 Granting a Valid Security Interest p.193
- 2.5 Restrictions on the Grant of Security or Guarantees p.194
- 2.6 Absence of Other Liens p.194
- 2.7 Releasing Forms of Security p.194

3. Enforcement p.194

- 3.1 Enforcement of Collateral by Secured Lender p.194
- 3.2 Foreign Law p.195
- 3.3 Judgments of Foreign Courts p.196
- 3.4 A Foreign Lender's Ability to Enforce p.196

4. Foreign Investment p.197

- 4.1 Restrictions on Foreign Lenders Granting Loans p.197
- 4.2 Restrictions on the Granting of Security or Guarantees to Foreign Lenders p.197
- 4.3 Foreign Investment Regime p.197
- 4.4 Restrictions on Payments Abroad or Repatriation of Capital p.198
- 4.5 Offshore Foreign Currency Accounts p.198

5. Structuring and Documentation Considerations p.198

- 5.1 Registering or Filing Financing of Project Agreements p.198
- 5.2 Licence Requirements p.199
- 5.3 Agent and Trust Concepts p.199
- 5.4 Competing Security Interests p.199
- 5.5 Local Law Requirements p.199

6. Bankruptcy and Insolvency p.200

- 6.1 Company Reorganisation Procedures p.200
- 6.2 Impact of Insolvency Process p.200
- 6.3 Priority of Creditors p.200
- 6.4 Risk Areas for Lenders p.201
- 6.5 Entities Excluded From Bankruptcy Proceedings p.201

7. Insurance p.201

- 7.1 Restrictions, Controls, Fees and/or Taxes on Insurance Policies p.201
- 7.2 Foreign Creditors p.201

8. Tax p.202

- 8.1 Withholding Tax p.202
- 8.2 Other Taxes, Duties, Charges p.202
- 8.3 Limits to the Amount of Interest Charged p.202

9. Applicable Law p.202

- 9.1 Project Agreements p.202
- 9.2 Financing Agreements p.203
- 9.3 Domestic Laws p.203

Ritch Mueller is a top-tier multidisciplinary transactional firm committed to offering high-value legal advice to national and international clients in the structuring, development and financing of their private businesses and public sector projects in Mexico. The firm represents national and international lenders, investors, developers and contractors in connection with projects in the infrastructure, road, energy, power, oil and gas, airport, ports and data centre industries in Mexico. The projects team – which is comprised of approximately 20 dedicated profes-

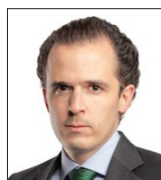
sionals and has the support of the firm's environmental, social, tax and dispute resolution practice groups – is able to provide comprehensive services to clients and regularly participates in all stages of projects in which the firm is involved. This includes project development, permitting, land and asset acquisition, equity investment and divestiture, negotiation of offtake agreements and concessions, project financing and refinancing, dispute resolution and negotiation of project contracts.

Authors



Jorge Oria joined Ritch Mueller in 1999 and has been a partner since 2014. Over the past 25 years, his practice has focused primarily on advising clients in the infrastructure and energy and power industries on

acquisition, divestiture, equipment finance, project financing, contract negotiation and dispute resolution matters. Jorge regularly represents sponsors, offtakers and local, multilateral and regional lenders, as well as equity and mezzanine investors in transactions and disputes within the aforementioned industries.



Santiago Zardain joined Ritch Mueller as a senior associate in 2019 and was promoted to counsel in 2025. His main practice focuses on the energy and infrastructure sector, with extensive experience working in the

drafting and negotiation of power purchase agreements, regulatory analysis and general advice to private and public entities operating in the electricity industry. He also has significant experience in transactions involving acquisition, investment and financing of assets in the energy and infrastructure space in Mexico.

Ritch Mueller

Av. Pedregal 24
10th Floor
Molino del Rey
11040
Mexico City
Mexico

Tel: +52 55 9178 7000
Email: contacto@ritch.com.mx
Web: www.ritch.com.mx

RITCH
M U E L L E R

1. Project Finance Panorama

1.1 Sponsors and Lenders

Limited and non-recourse financing schemes, commonly referred to as “project finance,” have been widely used in Mexico over the past few decades as a means of providing financial resources to many large-scale infrastructure projects. As many sectors of the Mexican economy were liberalised over the past few decades, up to and including the 2013 implementation by the Mexican government of sweeping reforms in the power and hydrocarbons industries, Mexico’s project financing market experienced several years of steady growth and sophistication.

As the market for public-private projects has developed in Mexico, the type of sponsors interested in participating in the market has also evolved. The “traditional” sponsors – such as industrial construction companies and operators of assets with a long-term ownership objective – have now been joined by other short- and long-term investors and developers that are willing to participate in projects at an early stage (as providers of initial development efforts and seed capital), as well as by longer-term equity investors with a view to forming a long-term asset base.

Auction processes for infrastructure projects in all industries commonly include strict equity, operational and expertise requirements aimed at ensuring that projects reach commercial operation. Therefore, it is not uncommon for projects to be developed by sponsors forming consortiums with parties having those different capabilities and expertise.

On the lending side, as with many other similar jurisdictions, the project finance space was largely reserved for Mexican development banks and multilateral, bilateral and regional financing institutions, such as the International Finance Corporation, the Inter-American Development Bank and the North American Development Bank. As the market has evolved, both Mexican and international commercial lenders have been increasingly interested in financing projects.

International lenders have traditionally gravitated towards projects in the power and hydrocarbons sectors, since many of these projects allow for payment

streams denominated in or indexed to US dollars. This has resulted in many of the toll-road and traditional infrastructure projects being left to Mexican lenders that are better suited to providing financing in Mexican currency.

The market for project bonds and private placement structures is the focus of significant recent attention with respect to the financing or refinancing of Mexican infrastructure assets. Although many toll-road projects have issued project bonds, they commonly do so in the Mexican market and in Mexican currency. A few project bonds have been issued in the past few years in relation to projects in the energy industry; however, construction risk continues to be a key issue that needs to be addressed prior to a successful bond issuance. Therefore, project bonds and private placement structures still seem to be more suitable for long-term refinancing of projects once commercial operation has been achieved and the construction risk has been mitigated.

In addition to the traditional senior project financing lenders, the industry has seen the development of a market for bridge, mezzanine and back-leveraged financing. Lenders commonly include specialised private equity firms that have a clear understanding of the project and are willing to lend at a higher cost in order to provide the project with the additional “quasi-equity” necessary to reach the ready-to-finance stage or to monetise dividends payable to sponsors during the operation of the project.

Mexican commercial and development banks actively provide financing of VAT costs incurred by the project during construction. Such financing is typically a shorter-term financing that is parallel to the senior project finance debt, and recourse is limited to the VAT refunds payable by the Mexican Ministry of the Treasury and, in some instances, to excess cash flows once the scheduled project finance debt has been repaid.

1.2 Public-Private Partnership Transactions

PPPs in Mexico at a federal level are regulated by the Public-Private Partnership Law (*Ley de Asociaciones Público Privadas*) and its regulations. Many states of Mexico also have their own PPP laws, which are applicable to PPPs sponsored by the state governments

that do not rely on federal funding in whole or in part and only consider state taxes or federal revenues payable to the Mexican states.

Many projects, such as in the power and hydrocarbons industries, are not conducted through the PPP legal framework but are instead developed according to specific rules applicable to those industries. These commonly involve ownership of assets by private parties and are operated under offtake agreements or concessions that are granted by the federal government.

At a federal level, pursuant to the Public-Private Partnership Law and its regulations, any ministry or agency can act as the procuring authority. A procuring authority interested in the development of a PPP project must conduct a number of studies and analyses to determine the viability of the proposed PPP, including the social profitability of the project and the economic and financial viability of the project.

Considering the nature of PPP projects, it is not uncommon for assets subject to the PPP structure to be considered part of a public service or to remain owned outright by the government. As such, lenders financing these projects are often prevented from taking security over those assets and must rely solely on a cash-flow-based security structure that is implemented through an assignment of the rights of the project company to receive payments under the relevant contract or concession.

1.3 Structuring the Deal

Project finance transactions in Mexico require sponsors and lenders to navigate complex regulations that vary depending on the particular industry to which they relate. These regulations govern the ability of the lenders to take security over certain project assets and outline the challenges and risks relating to the construction and operation of the project, including the acquisition of land rights required for the project.

The development of the PPP space in Mexico has also been influenced in large part by the requirements of project finance lenders. As such, projects suitable for a project financing structure typically require a con-

cession or long-term offtake or service contract that allows for:

- a stable cash flow;
- payments in hard currency – typically US dollars, or otherwise payments in Mexican pesos that reflect adjustments to costs incurred by the project in US dollars; and
- termination payments that allow for repayment of at least the investment component of the project in the event of a default by the offtaker or concession entity, and, occasionally, the project company.

Many of the projects that have been awarded in Mexico over the years include the features described above, which ultimately result in such contracts being more attractive to investors and lenders.

Financing structures for projects in Mexico are generally conceived as mid- to long-term financings that have limited or no recourse to the project sponsors and that rely solely on the ability of the project company to generate the cash flow necessary to repay the project finance debt. Therefore, it is important to ensure that the project assets are shielded from claims of third parties, which is generally achieved by creating a security package that only benefits the project finance lenders, with limited exceptions.

1.4 Active Industries and Sectors

The strong demand for the development of infrastructure, power, energy and related investment in Mexico continues to be a focus of attention. A key driver for this demand – in addition to the existing and growing demands of the Mexican market – is the continued growth of nearshoring activity as companies seek to relocate manufacturing facilities from Asia to Mexico. However, the Mexican government's policy with respect to private investment in key sectors necessary to support those new industries has shifted since 2018.

The overwhelming majority of large-scale infrastructure projects that were built during the previous administration were assigned directly, in whole or in part, to the Mexican Ministry of Defence (through the Mexican Army Corp of Engineers), and were built

largely with funds from the federal budget. These projects included:

- the Maya Train in the Yucatan Peninsula;
- the Felipe Ángeles International Airport, which is intended to reduce congestion in the Mexico City Airport;
- several regional airports; and
- the Transisthmian Railroad, which is intended to be a railroad alternative to the congested Panama Canal by connecting the Port of Veracruz (in the Gulf of Mexico) with the Port of Salina Cruz, Oaxaca (on the Pacific Coast of Mexico).

The administration of Claudia Sheinbaum Pardo, the newly elected first female president of Mexico, commenced on 1 October 2024 for a six-year term. Ms Sheinbaum announced in her inauguration speech that she would continue supporting the Mexican public enterprises *Comisión Federal de Electricidad* and *Petróleos Mexicanos* in their activities in the power generation, distribution and transmission sectors, and in oil and gas exploration, refining and processing. Since her inauguration, this support has taken the form of affording such public enterprises preferential treatment and protection as state monopolies within their respective activities. Such policies will continue to have a significant impact on the Mexican budget and may result in the need for these public enterprises to raise private financing, whether at a corporate or project financing level.

Although a few large scale and significant private investments have been recently announced in Mexico, a series of additional constitutional and legal reforms enacted during the first year of the administration may result in future investments in strategic sectors in Mexico facing significant challenges.

Those reforms include profound constitutional amendments that seek to:

- reconstitute the federal and state judiciaries by removing existing judges and substituting them with publicly elected judges;
- strengthen and give preferential treatment to the Mexican State, through its public enterprises, in the power, oil and gas, and internet sectors; and

- simplify the administration by abolishing a number of autonomous regulators, including in matters of antitrust, energy regulation, hydrocarbons and transparency, and by shifting their authorities to existing ministries of the federal public administration.

These reforms have been perceived by investors and legal practitioners as modifications to the Mexican legal framework that could adversely affect the rule of law and business environment in Mexico, which may also affect the appetite for private investors to continue their investments in Mexico. The governments of the United States of America and Canada have already signalled that some of these reforms may also be contrary to the spirit or the letter of the United States-Mexico-Canada Agreement (USMCA or T-MEC), which is scheduled to be reviewed in 2026.

Ms Sheinbaum has strongly endorsed the development of renewable power in Mexico and has acknowledged that private investment, both foreign and local, will be protected. The rules and regulations pertaining to the constitutional reforms described seek to provide certainty regarding these assurances and may lead to the creation of new forms of public-private partnerships for projects in Mexico, including much anticipated growth in the distributed generation space.

The recent developments in the political and legislative landscape have reignited interest among private investors and project finance lenders across all sectors of the project development and project financing market in Mexico, following a period where such interest diminished during the previous administration. Investors and project finance lenders continue to monitor their current investments closely, with a view to preserving value and protecting their investments from government actions that may prioritise public investments over private investments. Some projects were able to take advantage of refinancing opportunities and also underwent a period of consolidation through investment by equity investors.

Based on the changes currently being implemented by the Sheinbaum administration, activity in the project financing sector is likely to continue to be focused on restructuring, refinancing and leveraged acquisi-

tions, as projects may need to continue to revisit their base case and repayment profiles to adapt to the changes in policy. The changes may also trigger additional opportunities in the M&A space, which may result in the need for acquisition financing as new equity investors replace existing sponsors in operating projects. If the challenges resulting from the recent policy shifts are adequately addressed, activity in the development space for projects sponsored by Mexican state-owned enterprises may resume, both in the debt and equity financing spaces.

Another potential avenue for growth continues to be in the development and financing of digital infrastructure, including hyperscale data centres. However, the key challenge for these projects continues to be their ability to obtain clean power from the Mexican grid or private suppliers.

Although much has changed in the regulatory framework applicable to privately sponsored projects in Mexico, private investors continue to show interest in debt and equity participation in projects, albeit under heightened scrutiny of the rules and regulations relating to those projects and investments, which are still being developed by the administration.

If Mexico is to take advantage of the opportunities that may arise from companies relocating their industrial facilities from Asia to regions closer to the United States, the Sheinbaum administration will need to continue implementing policies and regulations that provide investors with confidence that they will be able to access reasonable protections, including adequate infrastructure, clean and renewable power, water and energy.

2. Guarantees and Security

2.1 Assets Available as Collateral to Lenders

The assets available to project finance lenders as security for the obligations of the project company will vary, depending on the nature of the project itself. As a general rule, lenders expect that the project company will create security over all the assets owned by the project company in relation to the project, includ-

ing over the shares, equity interests and shareholder loans of the sponsor in the project company.

These assets include:

- real estate rights;
- collection and contractual rights of the project company under offtake contracts or concessions, construction, operation, management, maintenance and other material project contracts; and
- the right to receive insurance proceeds.

In projects where the project company is entitled to own the project assets in its own name, the lenders also expect security over the project assets, including the facilities, installations and other “hard assets”.

Depending on the nature of the project, the creation of security interests over project assets may be subject to limitations in addition to those previously described, including the need to obtain authorisation from the concession authority or regulator prior to creating security over the project assets, the concession or the rights under the contract.

As a matter of Mexican law, security interests may be created through a variety of forms, the suitability of which will largely depend on the type of assets and particular characteristics of the project. The benefit of the security is usually held by the lenders through a collateral agent appointed by them, who shall act in accordance with the lender’s instructions.

The main forms of security interest used in project finance transactions and their perfection requirements are described below.

Security Trust

By means of a security trust, the debtor transfers to a Mexican bank – acting as trustee under a trust – title to assets that are specifically identified to the trustee, to be held by the trustee as security for the debtor’s obligations. The security trust provides flexibility for creating security over any kind of real and personal property, and is one of the most commonly used security mechanisms in project financing transactions in Mexico.

Project finance lenders typically require that the majority of the project assets be contributed to the trust. However, for assets or rights over which the debtor is unable to transfer title (for example, permits and licences), the debtor is not required to transfer those rights into the trust and is expected to grant security over those assets through other means.

While title to the trust assets is always held by the trustee, the parties may agree that the debtor or any third party maintains physical possession of the assets, in which case the debtor or the third party is considered the depositary of the trust assets. In the case of security trusts constituted over personal property, the parties may authorise the debtor to:

- make use of the trust assets;
- combine or make use of them for the production of other assets;
- receive and use the proceeds thereof; and
- instruct the trustee to dispose of and transfer the trust assets in the ordinary course of the debtor's business.

Mexican law allows for the creation of security trusts to secure – simultaneously or successively – different obligations of the borrower with one or more creditors. In addition, the grantor of the trust may designate one or more beneficiaries to receive the benefits of the trust, either simultaneously or successively. The proceeds derived from the foreclosure of a security trust will be allocated to the beneficiaries according to the priority of their designation established in the trust deed.

The security trust must be in writing, and, depending on the value of the collateral, signatures should be notarised. Security trusts created over real estate must be recorded with the Public Registry of Property in the jurisdiction where the assets are located. Registration times and costs vary from registry to registry, and fees are generally calculated based on the secured obligation, although most registries provide a maximum fee in their regulations.

The perfection requirements for security trusts constituted in respect of personal property and contractual rights vary depending on the underlying assets. Gen-

erally, they require notice to the relevant counterparties and registration with the Sole Registry for Security Interests on Movable Assets (*Registro Único de Garantías Mobiliarias*). Security trusts over receivables require notice to the corresponding debtor. If the trust assets include shares or other securities, the endorsement of those shares or securities in favour of the trustee is required, in addition to the registration of the security in the share ledger of the company issuing the shares. If the security trust is created over other movable assets, physical or virtual delivery of the assets to the trustee is required to perfect the security.

Non-Possessory Pledge

Similar to an English-law floating charge, the non-possessory pledge allows the creation of a security interest over a fluctuating pool of assets and may be created in respect of movable tangible or intangible property. The non-possessory pledge may be granted over a specifically designated set of assets or as a generic or floating pledge.

Project finance lenders typically require debtors to issue a non-possessory pledge to create security over assets that cannot be transferred to a security trust or that may otherwise be subject to another type of security interest. This may be due to the impossibility of individually identifying the assets subject to the pledge, or to the impracticality of obtaining the necessary authorisations from the governmental authorities to authorise the transfer of title to permits or licences.

This blanket pledge over assets does not require that the assets be delivered to the creditor or otherwise be identified specifically. Under this security structure, the debtor may maintain physical possession of the property being pledged and use the collateral as part of its manufacturing process. Subject to certain restrictions, the debtor may also sell the collateral within the normal course of its business activities, in which case the proceeds of the sale will be automatically subject to the pledge. The right to sell collateral within the normal course of business is suspended upon notice that enforcement procedures have been initiated.

The non-possessory pledge must be granted in writing before a Mexican notary public and registered with

the Sole Registry for Security Interests on Movable Assets (*Registro Único de Garantías Mobiliarias*). If the non-possessory pledge is created over shares, an endorsement of the shares in favour of a collateral agent as pledgee is required, in addition to the registration of the pledge in the share ledger of the company issuing the shares.

Mortgage

In exceptional instances when it is impossible or impractical for a project company to transfer title to real estate into a security trust, security interests over real estate are commonly created through mortgages. Laws applicable to real estate are those of the local jurisdiction, and therefore mortgages are governed by the Civil Code for the state in which the mortgaged asset is located.

The mortgage is defined by law as “a real guarantee created on assets that are not delivered to the creditor but that grant the creditor, in the event of default of a secured obligation, the right to be paid from the value of the assets, with the preference set forth in the law”. Mortgages must be created in respect of real property that is specifically identified and, subject to the jurisdiction where the mortgage assets are located, the mortgage may also include the natural accessions of the mortgaged property, such as:

- the rights to any easements;
- improvements made on the mortgage property by the owner;
- movable objects permanently affixed to the mortgaged property by the owner and which cannot be removed without damage to the objects or property; and
- any new buildings built on the mortgaged land.

Real estate property that has been mortgaged may be subject to additional mortgages. Priority among mortgages is determined by the date on which the mortgage is recorded with the corresponding Public Registry of Property. The mortgage first recorded with the corresponding Public Registry of Property shall constitute a senior or first-priority lien, and the mortgages recorded thereafter shall constitute junior or second-priority liens, and so on.

A mortgage must be granted in writing before a Mexican notary public and recorded in the Public Registry of Property (*Registro Público de la Propiedad*) for the jurisdiction where the mortgaged properties are located. Registration times and costs vary from registry to registry, and fees are generally calculated based on the secured obligation, although most registries provide a maximum fee in their regulations.

2.2 Charges or Interest Over All Present and Future Assets of a Company

See 2.1 Assets Available as Collateral to Lenders for details of the non-possessory pledge provided for under Mexican law, which allows for the creation of a security interest over all present and future assets of a company.

2.3 Registering Collateral Security Interests

The cost of creating security interests in Mexico varies depending on the form of security and the assets expected to be covered by that security. In many instances (such as for documents evidencing security over real estate, including mortgages and security trusts), the security interests must be formalised by way of a public deed issued before a notary public in Mexico. Certain other security documents, such as non-possessory pledges and security trusts that are not expected to hold real estate, may be issued by a ratification deed, also before a notary public.

The maximum fees that notaries public are authorised to charge vary depending on the state in which the notary is located and are generally calculated based on the secured obligation. However, the notary can deviate from the maximum fees through negotiation with the interested parties.

Security interests may need to be registered with general or specialised registries. The fees of these registries vary depending on their location. Many registries have fixed and maximum fees. In other instances, fees are calculated based on the value of the transaction being registered, with some registries setting a maximum amount.

2.4 Granting a Valid Security Interest

As indicated in 2.1 Assets Available as Collateral to Lenders, security interests created by way of mort-

gages and security trusts require that the relevant assets be specifically identified as a requirement for granting that security. The non-possessory pledge allows the creation of security over specifically identified assets, over all of the pledgor's assets or over a generic set of unidentified assets.

2.5 Restrictions on the Grant of Security or Guarantees

Generally, assets that the borrower is entitled to dispose of freely would be subject to any security interest agreed to between the borrower and its creditors. However, certain assets and rights may be inconsistent with a certain type of security interest under Mexican law, as described in **2.1 Assets Available as Collateral to Lenders**.

Permits and governmental authorisations generally cannot be transferred from the original permit-holder without authorisation from the issuing authority. Also, the creation of security over contract rights may require consent from the relevant counterparty if that restriction is set out in the relevant contract.

2.6 Absence of Other Liens

In order to verify the existence of liens on companies or assets, lenders may need to conduct searches in a number of registries, depending on the relevant assets. A search in the online-based Sole Registry for Security Interests on Movable Assets (*Registro Único de Garantías Mobiliarias*) would identify whether a company has granted security over movable assets owned by that company at a federal level. However, certain security interests are not required to be registered in that registry.

For lien searches relating to real estate, it is necessary to conduct a lien search in the Public Registry of Property for the jurisdiction where the real estate is located. Although most registries are being updated to digital files, certain registries continue to conduct a ledger-based registration, which may result in delays in conducting the searches.

2.7 Releasing Forms of Security

The release of security interests is typically conducted by way of a release agreement, which must follow the same formalities as those required for the creation

of the security, including notarisation and registration in the relevant registry. It should be noted that, as a general proposition, security interests are subject to the terms of the statute of limitations applicable to the main obligations they secure.

3. Enforcement

3.1 Enforcement of Collateral by Secured Lender

Prior to the enforcement of security in Mexico, it is necessary to provide evidence that the secured obligations have been breached. This may be particularly cumbersome in instances where the secured obligations arise under financing documents governed by laws other than Mexican law, since it may be necessary to enforce the relevant foreign judgment in Mexico prior to initiating enforcement of the security interest.

The following is a description of the legal provisions and steps for enforcement in relation to the main forms of security interest used in project finance transactions in Mexico.

Security Trust

The security trust may be foreclosed through a judicial proceeding that is essentially the same as the judicial foreclosure proceeding applicable to the non-possessory pledge, as described below.

Mexican law allows for the parties to agree to a non-judicial enforcement proceeding, pursuant to which the trustee will sell the trust collateral to satisfy the secured obligations, provided that the parties include minimum rules in the procedure, including:

- that the non-judicial foreclosure shall begin upon written notice made by the beneficiary to the trustee that an event of default has occurred under the financing documents;
- that the trustee shall notify receipt of the foreclosure request to the grantor; and
- the ability of the grantor to oppose foreclosure by evidencing payment or the extension of the term for payment.

Non-Possessory Pledge

A non-possessory pledge may be foreclosed by means of a non-judicial proceeding or a judicial proceeding. The judicial proceeding is similar to the mortgage foreclosure proceeding, in that, once the debtor is found to be liable to pay the secured obligation, the court carries out (through an appraiser) a valuation of the assets subject to the pledge and conducts a public sale, with a progressive reduction in the price of those assets until they are sold.

The non-judicial proceeding begins when the pledgee formally requests delivery by the pledgor of the pledged assets. Following the delivery of the pledged assets, the pledgee may proceed with the sale of the assets, provided prior notice has been given to the pledgor. It should be noted that the law allows for some flexibility in relation to the non-judicial proceeding, which is a contractual matter. However, certain minimum requirements must be met in order to prevent challenges from the pledgor in relation to the enforcement proceeding. These minimum requirements include:

- the designation of an appraiser acceptable to both parties to determine the price of the pledged assets;
- the requirement to provide written notice to the pledgor of an event of default, together with a request to deliver possession of the pledged assets in order to continue with the foreclosure proceeding; and
- the ability of the pledgor to oppose foreclosure by evidencing payment or the extension of the term for payment.

It should be noted that if the pledgor opposes the delivery of the pledged assets, this will result in the non-judicial proceeding being abandoned and the pledgee retains the right to commence judicial foreclosure proceedings.

Mortgage

Foreclosure under a mortgage requires that a judicial proceeding be followed before the competent courts of the jurisdiction where the mortgaged property is located. Once the proceeding is initiated based on a claim arising from the default of the secured obliga-

tion, the court is required to issue a mortgage proceeding statement (*cédula hipotecaria*). The statement is recorded with the corresponding Public Registry of Property as notice to third parties in order to prevent any attachment or sale of the mortgaged property during the proceedings.

Once the court has issued a foreclose order on the mortgage, the enforcement procedure begins with an appraisal by an independent appraiser to determine the value of the property. Once that value is established, the court conducts a public sales process that involves progressive reductions of the appraised price until the property is sold.

The proceeds of such a sale are applied to the payment of the secured obligation. Where the mortgage was created to secure obligations owed to several creditors, the proceeds from the sale of the mortgaged assets shall be allocated to those secured creditors in accordance with the order of priority of their respective mortgages.

3.2 Foreign Law

Under Mexican law, parties can choose the foreign law to govern their agreements, and that choice is recognised by Mexican courts upon enforcement. However, a choice of foreign law may be deemed invalid if it is selected to avoid the application of Mexican principles of public policy or if it is made for fraudulent purposes. Security documents concerning assets located in Mexico, or governed by Mexican law, must comply with Mexican law, and the choice of a foreign law to govern such agreements would not be valid.

Except for disputes relating to Mexican subsoil, air-space and territorial sea, in respect of which the Mexican courts have exclusive jurisdiction, the parties to an agreement may validly submit to the jurisdiction of foreign courts as long as the parties to the relevant agreement clearly and definitely waive the jurisdiction that the law affords them and designate competent courts in one of the following locations:

- the domicile of the parties;
- the place where the obligations under the contract are expressed to be performed; or
- the location of the assets.

It should be noted that any such submission must benefit all parties to the agreement and must be exclusive; therefore, submission clauses that allow a party to seek remedies in any other jurisdiction of its choosing will not be recognised.

3.3 Judgments of Foreign Courts

A judgment issued by a foreign court will be recognised and enforced by the courts of Mexico without re-examination on the merits, if the following requirements are fulfilled:

- the judgment is obtained in compliance with the legal requirements of the jurisdiction of the court rendering it, and in compliance with all the legal requirements set out in the relevant agreement;
- the judgment does not contravene Mexican law, the public policy of Mexico, international treaties binding on Mexico, or generally accepted principles of international law;
- service of process was made personally on the debtor or on a duly appointed process agent;
- the applicable procedure under the laws of Mexico with respect to the enforcement of foreign judgments (including issuing of a letter rogatory by the competent authority of the jurisdiction requesting enforcement of the judgment, and the certification of the judgment as authentic by the relevant authorities of the jurisdiction in accordance with their laws) is complied with;
- the judgment is final in the jurisdiction where it is obtained;
- the action in which the final judgment is rendered is not the subject matter of a lawsuit among the same parties pending before a Mexican court; and
- the courts of the non-Mexican jurisdiction contained in the relevant agreement would enforce Mexican judgments as a matter of reciprocity.

Similarly, Mexican courts will recognise and enforce a foreign arbitration award without re-examination on the merits, unless:

- a party to the arbitration agreement proves that it was incapacitated, or that the agreement is not valid under the law chosen by the parties, or, if not expressly addressed, under the law of the country in which the award was rendered;

- the party against whom enforcement is sought was not duly notified of the appointment of an arbitrator or of the arbitration procedure, or was unable, for any other reason, to protect its rights;
- the award relates to a dispute not covered by the arbitration agreement or contains decisions that exceed the terms of the arbitration agreement;
- the procedure agreed by the parties was not followed, or, in the absence of an agreement, the law of the country where the arbitration took place was not followed;
- the award is not yet binding on the parties or has been cancelled or suspended by the judge of the country where the award was issued; or
- the judge finds that, under Mexican law, the dispute is not subject to arbitration, or the recognition or enforcement of the award is contrary to public policy.

3.4 A Foreign Lender's Ability to Enforce

If financing documents governed by foreign law are the subject of a dispute before a Mexican court, or if enforcement of a foreign judgment based on such documents is sought before the courts of Mexico, a Spanish-language translation will need to be delivered in the course of the proceedings.

Depending on the type of project and project contracts, it may be necessary for the main offtake contracts to be registered with budgetary or administrative authorities, in particular if those documents are considered to be long-term payment obligations of certain governmental authorities.

Documents evidencing real estate rights and, in certain state jurisdictions in Mexico, leases, require registration in the Public Registry of Property to which each real estate corresponds.

Security documents entered into in relation to project financings must be filed with the corresponding public registries in order for those security interests to be enforceable against third parties and to establish their priority and ranking. These registration requirements vary based on the type of security granted and the asset that is intended to be part of the collateral package. See **2. Guarantees and Security** for details of those registration requirements.

4. Foreign Investment

4.1 Restrictions on Foreign Lenders Granting Loans

Mexican law does not restrict foreign lenders from granting financing to private parties in Mexico, and no foreign exchange controls or restrictions are currently in effect in Mexico. See **8. Tax** for details of the provisions of Mexican law governing payments of interest by Mexican parties to foreign lenders and repatriation of dividends by foreign investors in Mexican companies, as they are relevant to project financing transactions.

It should be noted that the incurring of debt by government entities and the states and municipalities in Mexico is subject to specific regulation, including the restrictions on incurring debt with foreign lenders. However, project finance transactions are seldom, if ever, structured in a way that requires that the government entities awarding contracts to incur debt directly. Instead, they involve granting financing to private entities that are obliged to perform under concessions or contracts awarded to them by government entities.

4.2 Restrictions on the Granting of Security or Guarantees to Foreign Lenders

Foreign lenders are generally able to take security over assets located in Mexico, whether directly or through a collateral agent, under the forms described in **2. Guarantees and Security**. It should be noted that only Mexican banks are authorised to act as security trustees; however, these security trustees act for the benefit of the beneficiaries of the security trust, who may be foreign lenders.

4.3 Foreign Investment Regime

Currently, Mexico continues to consider the following as matters reserved for the Mexican nation:

- the exploration and extraction of hydrocarbons;
- the generation of nuclear power;
- the mining of radioactive minerals;
- planning and control of the national electric grid; and
- electric power distribution and transmission.

In addition, certain sectors of the telecommunications industry continue to be reserved for the Mexican nation. As described in **1.4 Active Industries and Sectors**, the amendments to the Mexican Constitution may affect the aforementioned reserved matters and increase the level of state control over a number of activities in the power and mining industry that were previously liberalised or otherwise made available to foreign investors through concessions.

The Mexican Foreign Investment Law also prevents foreign investment from participating in more than 49% of the capital stock of entities conducting certain activities that may be relevant to the infrastructure industry. In particular, the administration of port facilities, internal navigation and certain port services are the few remaining activities that fall within this category.

Notwithstanding the foregoing, the vast majority of activities that may be of interest to foreign investors and lenders in the project finance sector are open to foreign investment. These activities include:

- power generation;
- construction and maintenance of electric transmission lines;
- hydrocarbons transportation, storage, exploration, drilling and related services;
- toll-road construction, operation and maintenance;
- telecommunications;
- railways;
- social rehabilitation; and
- healthcare.

Foreign and private investment is allowed to participate in sectors reserved for the Mexican nation and to benefit from the rights to concessions and authorisations related to natural resources through schemes that protect ownership of certain assets in favour of the Mexican nation and that are supervised and regulated closely by the Mexican government. These schemes include concessions, licences and service contracts that may be awarded to companies with foreign investment (subject to certain restrictions), and that allow the ownership, use and disposition of those assets. The limitations include the agreement by companies with foreign investors that any foreign investor,

upon becoming a member of the company, shall agree to be treated as a Mexican national in relation to its investment and will not invoke the protection of its government of origin in the event of disputes with the Mexican nation.

Following the liberalisation of the Mexican economy and its gradual and progressive opening to foreign investment, Mexico is now a party to a significant number of bilateral treaties governing the mutual protection of investments, which include provisions on:

- the customary investment principles and protections that contain most-favoured nation clauses;
- protections from expropriation and actions tantamount to expropriation;
- removal of restrictions on the transfers of funds; and
- dispute resolution mechanisms.

Currently, examples of these treaties include those between Mexico and Germany, Argentina, Australia, China, Korea, Denmark, Cuba, Spain, Finland, the Netherlands, Panama, Portugal, the Czech Republic, Trinidad and Tobago, Belgium, Uruguay, India, Iceland, Greece, Switzerland, Sweden, Austria, France, Italy, Spain, Slovakia and the United Kingdom.

Mexico is also a party to a number of bilateral and regional free-trade agreements that provide for preferential treatment in relation to customs and trade issues. These agreements also include provisions governing the protection of investments made in Mexico by foreign entities, similar to the investment treaties previously described. Currently, the main examples of these free-trade agreements include:

- the United States-Mexico-Canada Agreement (USMCA or T-MEC, which replaces the North American Free Trade Agreement); and
- the Free Trade Agreement between Mexico and the member states of the European Union.

4.4 Restrictions on Payments Abroad or Repatriation of Capital

There are no restrictions under Mexican law in relation to the transfer of funds abroad or the repatriation of capital by foreign equity investors. Interest payments

under shareholder loans and the repatriation of funds intended to be carried out by way of payments of dividends or capital reductions may be subject to withholding tax, capital gains tax and tax on dividends pursuant to the Mexican Income Tax Law, in accordance with the provisions of the applicable international treaties for the avoidance of double taxation entered into by Mexico and the country of residence of the relevant foreign parent company.

4.5 Offshore Foreign Currency Accounts

Mexican companies are permitted to maintain accounts in foreign currency abroad, which is commonly required by project finance lenders, in particular for debt reserve and payment accounts.

5. Structuring and Documentation Considerations

5.1 Registering or Filing Financing of Project Agreements

Financing documents are not required to be filed or registered with a governmental authority in order for those documents to be valid or enforceable. However, if financing documents governed by foreign law are the subject of a dispute before a Mexican court or if enforcement of a foreign judgment under such document is sought before the courts of Mexico, a Spanish-language translation will need to be delivered in the course of the proceedings.

Project contracts are generally not required to be filed or registered with governmental authorities in order for them to be enforceable or valid. However, depending on the type of project and project contracts, it may be necessary for the main offtake contracts to be registered with budgetary or administrative authorities, in particular if those documents are considered to be long-term payment obligations of certain governmental authorities.

Documents evidencing real estate rights and, in certain state jurisdictions in Mexico, leases, require registration in the Public Registry of Property to which such real estate corresponds. In addition, contracts for the use or occupation of real estate for hydrocarbon exploration, production and transport projects, as

well as electric power projects that require a specific location due to their technology (such as geothermal or hydropower projects), must undergo a court validation process prior to registration with the relevant public registry – a process that has proven to be time-consuming and challenging.

See **2. Guarantees and Security** for details of the registration requirements applicable to security documents under Mexican law.

5.2 Licence Requirements

No licences are required in order to hold ownership of land in Mexico, provided that the ownership of land in border regions is limited to Mexican nationals and corporations. According to the Mexican Federal Constitution, natural resources belong to the Mexican nation; therefore, individuals require governmental authorisation, licensing or concessions as a condition for their use, ownership or exploitation. Such authorisations cannot be held directly by foreign entities, but they may be held by corporations that have foreign investment, subject to the provisions of the Mexican Law on Foreign Investment, which are further detailed in **4.3 Foreign Investment Regime**.

5.3 Agent and Trust Concepts

The trust concept is widely recognised and utilised in Mexico, as described in more detail in **2. Guarantees and Security**. Mexican law includes concepts, similar to “agency”, that allow a party to appoint a representative to act on its behalf with limited or general authority.

5.4 Competing Security Interests

Priority on security interests and recordable rights generally follows the “first-come, first-served” approach. As such, where a security interest requiring registration is not recorded in a timely fashion, there is a risk that a competing or prior lien may be recorded. In addition, it should be noted that the tax, labour and social security claims may have a preference on claims, except where such claims have a specific real security, such as a mortgage or a pledge.

Through the transfer of title that occurs by the creation of a security trust, the assets transferred to the security trustee to secure the obligations of a project

company are generally considered to be beyond the reach of the project company’s other creditors, except if that transfer is considered to be fraudulent in the context of an insolvency proceeding. The beneficiaries to a trust may freely establish priority among themselves regarding the distribution of the trust assets upon enforcement.

For claims that are not secured by a security trust or a real security interest (such as a mortgage or pledge), or that do not otherwise have a specific ranking (such as tax, labour or social security claims and rights of retention on specific assets), Mexican law recognises contractual subordination provisions, which are generally upheld by insolvency and bankruptcy courts.

5.5 Local Law Requirements

Most project finance transactions involve a special purpose company, which is typically required to be a company incorporated pursuant to the laws of Mexico with a corporate purpose limited to the execution of the relevant project. This requirement is often embedded in the bid requirements issued by contracting or concession entities and commonly refers solely to the creation of a Mexican mercantile corporation.

The most common forms of mercantile corporations for project companies in Mexico are:

- a limited liability company, organised as a *sociedad anónima de capital variable* (SA), which is a stock corporation; or
- a *sociedad de responsabilidad limitada* (SRL), which is a partnership.

A variation of the SA that is widely used is the *sociedad anónima promotora de inversión* (SAPI), which allows more flexibility in relation to shareholder matters and the creation of preferred shares.

The “variable capital” feature allows flexibility in the increase and reduction of the variable portion of the corporate capital, as long as the minimum portion remains untouched. All the forms described above may adopt this feature in order to increase or reduce the variable capital of the company in a more expedited fashion.

All the corporate forms described above are generally suitable for conducting projects and have very similar characteristics from a business and managerial standpoint. The selection of one corporate form over another commonly corresponds to the tax considerations of the sponsors.

6. Bankruptcy and Insolvency

6.1 Company Reorganisation Procedures

The Mexican Commercial Insolvency Law (*Ley de Concursos Mercantiles*) provides for a sole insolvency proceeding applicable to mercantile companies in Mexico. This proceeding is known as the *concurso mercantil* and encompasses two successive phases:

- a conciliatory phase of mediation between the creditors and debtor; and
- a bankruptcy phase.

The objective of the conciliatory phase is to preserve or save the business enterprise through a restructuring or reorganisation agreement. The stated purpose of the bankruptcy phase is to liquidate the business, as a whole or through the sale of its individual assets, in order to repay its creditors.

As a general rule, insolvency may be declared if the debtor has ceased to comply with its payment obligations. The petition may be filed by the debtor or by creditors holding at least 35% of obligations payable by the debtor. Unless the debtor proves that it maintains sufficient assets to comply with its payment obligations, a declaration of insolvency will be accepted by the courts if:

- the debtor ceases to pay two or more of its creditors;
- the debtor ceases to pay its obligations that have been due for at least 30 days and that represent 35% or more of all obligations payable by the debtor on the date the insolvency petition is filed; and
- the debtor has no liquid assets or there are insufficient assets for purposes of paying at least 80% of the debtor's obligations that are due and payable on the date the petition is filed.

Once the judge has made the declaration of insolvency, the judge will appoint a conciliator and issue a judgment recognising creditors and establishing their preferences. During the conciliatory stage, the debtor will manage the administration, although the conciliator or mediator may make a request to the court to remove the debtor from the administration. If no reorganisation agreement can be reached, bankruptcy will be declared.

6.2 Impact of Insolvency Process

Following the acceptance of the insolvency filing, the court may order measures aimed at preserving the business. Such measures may include a court order preventing the filing of attachments or the enforcement of rights against the debtor's assets. During the conciliatory stage, all obligations of the debtor are considered due and payable; however, creditors are generally barred from seeking attachment or enforcement of rights against the debtor.

The Commercial Insolvency Law establishes provisions that are designed to protect the monetary value of creditor loans. All peso-denominated obligations are converted into inflation-linked units; foreign currency-denominated obligations are converted into pesos at the prevailing rate of exchange on the date the insolvency judgment is rendered, and are then converted into inflation-linked units. Only claims with a perfected security interest will be maintained in their original currency or unit of account, and will continue to accrue interest, but only up to the value of the collateral.

6.3 Priority of Creditors

If a reorganisation agreement is reached, creditors will be paid in accordance with the provisions of that agreement. Generally, a reorganisation agreement requires the consent of recognised creditors representing more than 50% of the total recognised amounts corresponding to unsecured and secured or privileged creditors, in addition to the debtor's agreement. Any such agreement, with the prior validation of the insolvency court, becomes binding on all creditors and the insolvency proceeding shall be considered final and concluded.

If a reorganisation agreement is not agreed to within the time periods specified in insolvency law, the proceeding shall move to the bankruptcy phase and the court will order the liquidation of the debtor. The liquidation may take some time and will involve the sale of the debtor's assets to repay its creditors up to the amounts recovered. The Commercial Insolvency Law provides for the following ranking in relation to payments due by the debtor upon liquidation:

- privileged creditors (which includes certain labour claims);
- secured creditors, which includes creditors holding a valid mortgage or pledge interest, up to the amount of the value of the relevant security interests;
- creditors with a particular privilege (which includes tax obligations and labour and social security quotas);
- unsecured creditors; and
- subordinated creditors, subject to the contractual provisions in the relevant agreements entered into by those creditors.

6.4 Risk Areas for Lenders

Lenders are exposed to the inherent risks of any commercial insolvency proceeding, including as they relate to procedure and failure to appear in the proceedings within the legal time periods for the recognition of their respective claims. Lenders may also face the risk of recovering less than the full amount owed if the insolvent entity's assets are insufficient to cover the whole of its obligations, subject to the priority rankings previously described. Further, the lenders would be exposed to the risk of being unable to recover the full amount of their debt in the case of a foreclosure of any security interests granted to them, and to being required to recover the remaining balance as unsecured creditors.

In addition, upon a declaration of insolvency, agreements entered into with the debtor prior to the petition could be declared ineffective against the insolvent estate and could be set aside if they are determined to constitute fraudulent conveyance (*actos en fraude de acreedores*). Such acts would include:

- dispositions (including granting additional security interests not provided for in the initial financing documents) within a period of 270 calendar days prior to the judgment declaring insolvency (the "retroactive period") (*fecha de retroacción*);
- transfers of assets not carried out at arm's length;
- forbearance of debts within the retroactive period; and
- payments of unmatured obligations within the retroactive period.

6.5 Entities Excluded From Bankruptcy Proceedings

As a general rule, the Mexican Commercial Insolvency Law applies to the insolvency of mercantile corporations. This law also provides special proceedings that are applicable to Mexican banks that become insolvent.

Generally, the Mexican government and its entities are not subject to insolvency; however, certain state-owned enterprises, including the *Comisión Federal de Electricidad* and *Petróleos Mexicanos*, may be subject to liquidation in accordance with the terms of the laws under which those enterprises were created.

7. Insurance

7.1 Restrictions, Controls, Fees and/or Taxes on Insurance Policies

Under Mexican law, risks located within the territory of Mexico may only be insured, through a primary policy, by insurance companies authorised to operate in Mexico. Such insurance companies may, however, enter into reinsurance policies with foreign reinsurers. The validity of cut-through clauses in reinsurance contracts has been strongly debated, since these clauses are viewed as contrary to the underlying principle that risks situated in Mexico must be insured by Mexican insurers.

7.2 Foreign Creditors

Lenders require that insurance proceeds under policies other than third-party liability insurance form a part of the collateral package created to secure the financing. This is commonly documented by designat-

ing the security trustee (if such a security mechanism is implemented) as a loss payee or additional insured.

In instances where a security trust is not part of the collateral package, the insurance policies are commonly pledged in favour of the lenders and the collateral agent, and the lenders are designated as loss payees or preferred beneficiaries. Upon payment of the insurance proceeds, the lenders have the right to direct the application of those proceeds toward the reconstruction, in whole or in part, of the damaged project assets, or towards repayment of the financing obligations.

8. Tax

8.1 Withholding Tax

Under the Mexican Income Tax Law, foreign creditors and holders of debt securities issued by Mexican residents are subject to tax on interest payments made by debtors resident in Mexico.

Withholding tax rates applicable to interest payments made abroad vary from 4.9% to 40%, depending on the identity and tax residence of the relevant lender. Tax rates may be affected by the application of one of the many treaties for the avoidance of double taxation to which Mexico is a party. Interest payments to export credit agencies and certain multilateral and regional development lenders are exempt from withholding taxes.

It is common for financing documents in international project financing transactions to include tax gross-up provisions that require the debtor to pay additional amounts as necessary for the lenders to receive the full amount of interest that they would have received had those withholdings or deductions not been made. These tax gross-up provisions are valid under Mexican law.

8.2 Other Taxes, Duties, Charges

Although there are no restrictions under Mexican law on the transfer of funds abroad or the repatriation of capital by foreign equity investors, interest payments under shareholder loans are subject to the withholding taxes detailed at **8.1 Withholding Tax**. In addition, if

the repatriation of funds is intended to be carried out by way of payments of dividends or capital reductions, capital gains taxes and tax on dividends may apply under the Mexican Income Tax Law, subject to the provisions of the applicable international treaties for the avoidance of double taxation entered into by Mexico.

8.3 Limits to the Amount of Interest Charged

As a general rule, the determination of interest payable by a borrower is not subject to a maximum or minimum limit, since financings are considered to be transactions among sophisticated entities that do not require protection in terms of usury or balancing laws. However, transfer-pricing provisions should be taken into account where interest payments are not in line with market terms and conditions, since failure to set interest rates in line with the market may result in claims by the Mexican tax authorities.

Under Mexican law, the collection of interest on interest is prohibited; therefore, claims in relation to amounts corresponding to ordinary or overdue interest on interest will not be recognised. However, the parties do have the right to agree to capitalise any amounts corresponding to interest, and to incorporate them as part of the principal amount on which ordinary interest would accrue.

9. Applicable Law

9.1 Project Agreements

Project agreements are generally entered into pursuant to Mexican law. This applies particularly in relation to offtake contracts and concessions granted by Mexican government entities. Security documents in relation to assets located in Mexico, as well as documents relating to land rights and insurance, are also required to be governed by the laws of Mexico.

Certain project agreements (such as construction, operation and maintenance, equipment supply and similar project-level agreements) may be entered into pursuant to the laws of jurisdictions other than Mexico or pursuant to Mexican law. The choice of applicable law in relation to those agreements is a matter of negotiation between the project company and its

respective counterparties. Choosing a foreign law to govern such agreements is valid and recognised under Mexican law, subject to limited exceptions, including rules relating to the transfer of ownership of assets located in Mexico, which require that contracts be entered into pursuant to Mexican law.

9.2 Financing Agreements

The main financing documents in project finance transactions may be entered into pursuant to Mexican law or foreign law. In projects that allow for payments of currency other than Mexican currency or that are sponsored by international companies, it is not uncommon for documents to be governed by the laws of New York or England; however, certain Mexican and international development and commercial lenders have accepted financing documents governed by Mexican law.

9.3 Domestic Laws

Project agreements are generally entered into pursuant to Mexican law. This applies particularly in relation to offtake contracts and concessions granted by Mexican government entities. Security documents relating to assets located in Mexico, as well as documents concerning land rights and insurance, are also required to be governed by the laws of Mexico.

Trends and Developments

Contributed by:

Jorge Oria and Santiago Zardain

Ritch Mueller

Ritch Mueller is a top-tier multidisciplinary transactional firm committed to offering high-value legal advice to national and international clients in the structuring, development and financing of their private businesses and public sector projects in Mexico. The firm represents national and international lenders, investors, developers and contractors in connection with projects in the infrastructure, road, energy, power, oil and gas, airport, ports and data centre industries in Mexico. The projects team – which is comprised of approximately 20 dedicated profes-

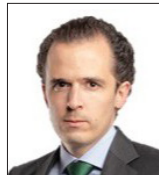
sionals and has the support of the firm's environmental, social, tax and dispute resolution practice groups – is able to provide comprehensive services to clients and regularly participates in all stages of projects in which the firm is involved. This includes project development, permitting, land and asset acquisition, equity investment and divestiture, negotiation of offtake agreements and concessions, project financing and refinancing, dispute resolution and negotiation of project contracts.

Authors



Jorge Oria joined Ritch Mueller in 1999 and has been a partner since 2014. Over the past 25 years, his practice has focused primarily on advising clients in the infrastructure and energy and power industries on

acquisition, divestiture, equipment finance, project financing, contract negotiation and dispute resolution matters. Jorge regularly represents sponsors, offtakers and local, multilateral and regional lenders, as well as equity and mezzanine investors in transactions and disputes within the aforementioned industries.



Santiago Zardain joined Ritch Mueller as a senior associate in 2019 and was promoted to counsel in 2025. His main practice focuses on the energy and infrastructure sector, with extensive experience working in the

drafting and negotiation of power purchase agreements, regulatory analysis and general advice to private and public entities operating in the electricity industry. He also has significant experience in transactions involving acquisition, investment and financing of assets in the energy and infrastructure space in Mexico.

Ritch Mueller

Av. Pedregal 24
10th Floor
Molino del Rey
11040
Mexico City
Mexico

Tel: +52 55 9178 7000
Email: contacto@ritch.com.mx
Web: www.ritch.com.mx

RITCH
M U E L L E R

Background of the Project Financing Industry in Mexico

As many sectors of the Mexican economy have been liberalised over the past few decades, up to and including the Mexican government's implementation of sweeping reforms in the power and hydrocarbons industries in 2013, the project financing market in Mexico has experienced several years of steady growth and sophistication.

The power and midstream sectors have attracted particular interest from international project finance lenders over the past few decades. This is due, among other things, to the large capital requirements of these projects and the structure of the standard offtake contracts used in the industry, which provide for a steady payment stream denominated in US dollars and typical take-or-pay or similar provisions that are key features for the success of international project financings. This interest by project finance lenders has also resulted in the development of a refinancing market, whether through longer-term bank financing and project bond structures, once projects have reached commercial operation and construction risk has been mitigated.

Additionally, private equity investors were called upon to bring additional capital to these projects, enabling developers to continue their efforts in an industry that saw steady and progressive growth over many decades. This additional capital was provided through equity investment as well as through creative mezzanine and "quasi-equity" structures that were tailored to meet the needs of both the equity investors and the project companies.

Mexican commercial and development banks supported financing efforts as senior lenders and through the issuance of VAT financing, which was crucial in the creation of comprehensive financing structures that were much needed by project developers and investors.

These projects were initially sponsored by the Mexican state-owned power, oil and gas companies. However, the 2013 reforms, along with the successful and competitive power auctions that came with them, allowed for an increasing number of privately spon-

sored projects that would sell products to the fledgling wholesale electricity market.

Recent Changes in Policy Regarding Infrastructure Projects

Strong demand for the development of infrastructure, power, energy and related investment in Mexico remains and continues to be a focus of attention. One of the key drivers for this demand, in addition to the existing and growing demands of the Mexican market, is the continued growth of nearshoring activity as companies seek to relocate manufacturing facilities from Asia to Mexico. However, the policy of the Mexican government with respect to private investment in key sectors necessary to support those new industries has shifted since 2018.

The overwhelming majority of the large-scale infrastructure projects that were built during the previous administration were assigned directly, in whole or in part, to the Mexican Ministry of Defence, through the Mexican Army Corp of Engineers, and were built largely with funds from the federal budget. These projects included:

- the Maya Train in the Yucatan Peninsula;
- the Felipe Ángeles International Airport, which is intended to reduce congestion in the Mexico City Airport;
- several regional airports; and
- the Transisthmian Railroad, which is expected to be a rail alternative to the congested Panama Canal by connecting the Port of Veracruz, in the Gulf of Mexico, with the Port of Salina Cruz, Oaxaca, on the Pacific Coast of Mexico.

The administration of Claudia Sheinbaum Pardo, the newly elected first female president of Mexico, commenced on 1 October 2024 for a six-year term. Ms Sheinbaum announced in her inauguration speech that she would continue supporting the Mexican public enterprises *Comisión Federal de Electricidad* and *Petróleos Mexicanos* in their activities in the power generation, distribution and transmission sectors, and in oil and gas exploration, refining and processing. Since her inauguration, this support has taken the form of affording such public enterprises preferential treatment and protection as state monopolies within

their respective activities. Such policies will continue to have a significant impact on the Mexican budget and may result in the need for these public enterprises to raise private financing, whether at a corporate or project financing level.

Although a few large scale and significant private investments have been recently announced in Mexico, a series of additional constitutional and legal reforms that were enacted in the first year of the administration may result in potential future investments in strategic sectors in Mexico facing significant challenges.

Those reforms include profound constitutional amendments that seek to:

- reconstitute the federal and state judiciaries by removing existing judges and substituting them with publicly elected judges;
- strengthen and give preferential treatment to the Mexican State, through its public enterprises, in the power, oil and gas, and internet sectors; and
- simplify the administration by abolishing a number of autonomous regulators, including in matters of anti-trust, energy regulation, hydrocarbons and transparency, and shifting their authorities to existing ministries of the federal public administration.

These reforms have been perceived by investors and legal practitioners as modifications to the Mexican legal framework that could adversely affect the rule of law and business environment in Mexico, which may also affect the appetite for private investors to continue their investments in Mexico. The governments of the United States of America and Canada have already signalled that some of those reforms may also be contrary to the spirit or the letter of the United States-Mexico-Canada Agreement (USMCA or T-MEC), which is scheduled to be reviewed in 2026.

Ms Sheinbaum has strongly endorsed the development of renewable power in Mexico and has acknowledged that private investment, both foreign and local, will be protected. The rules and regulations pertaining to the constitutional reforms described seek to provide certainty regarding these assurances and may lead to the creation of new forms of public-private

partnerships for projects in Mexico, including much anticipated growth in the distributed generation space.

Consequence of Shift in Policy to the Project Finance Sector

The recent developments in the political and legislative landscape have reignited interest among private investors and project finance lenders across all sectors of the formerly dynamic project development and project financing market in Mexico, following a period where such interest diminished during the previous administration. Investors and project finance lenders continue to monitor their current investments closely, with a view to preserving value and protecting their investments from government actions that may prioritise public investments over private investments. Some projects were able to take advantage of refinancing opportunities and also underwent a period of consolidation through investment by equity investors.

Based on the changes currently being implemented by the Sheinbaum administration, activity in the project financing sector is likely to continue to be focused on the restructuring, refinancing and leveraged acquisitions, as projects may need to continue to revisit their base case and repayment profiles to adapt to the changes in policy. The changes may also trigger additional opportunities in the M&A space, which may result in the need for acquisition financing as new equity investors replace existing sponsors in operating projects. If the challenges resulting from the recent policy shifts are adequately addressed, activity in the development space for projects sponsored by Mexican state-owned enterprises may resume, both in the debt and equity financing spaces.

Another potential avenue for growth continues to be in the development and financing of digital infrastructure, including hyperscale data centres. However, the key challenge for these projects continues to be their ability to obtain clean power from the Mexican grid or private suppliers.

Although much has changed in the regulatory framework applicable to privately sponsored projects in Mexico, private investors continue to show interest in debt and equity participation in projects, albeit under heightened scrutiny of the rules and regulations relat-

Contributed by: Jorge Oria and Santiago Zardain, **Ritch Mueller**

ing to those projects and investments, which are still being developed by the administration.

If Mexico is to take advantage of the opportunities that may arise from companies relocating their industrial facilities from Asia to regions closer to the United States, the Sheinbaum administration will need to continue implementing policies and regulations that will provide investors with confidence that they will be able to access reasonable protections, including adequate infrastructure, clean and renewable power, water and energy.