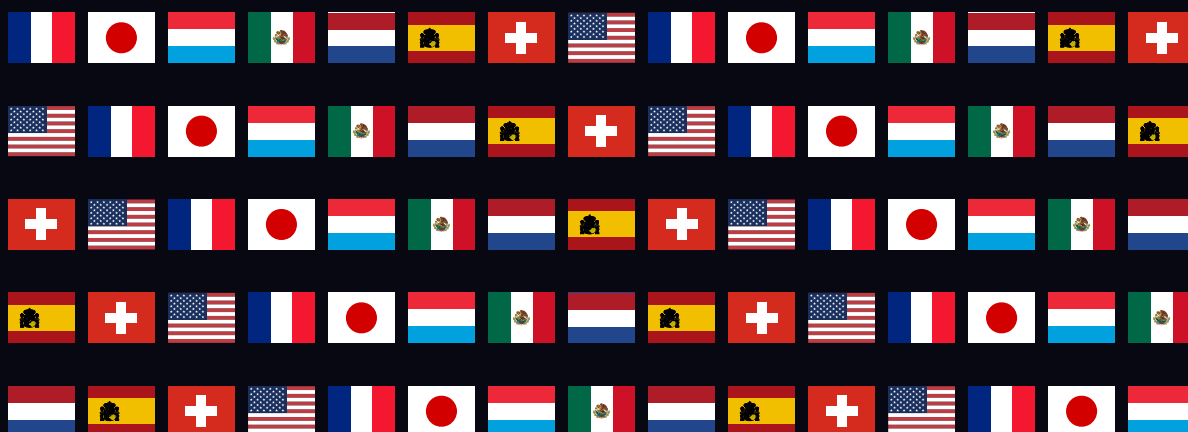


# ACQUISITION FINANCE

## Mexico



# Acquisition Finance

Consulting editors

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Quick reference guide enabling side-by-side comparison of local insights, including into general structuring of financing; guarantees and collateral; debt commitment letters and acquisition agreements; enforcement of claims and insolvency; and recent trends.

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## GENERAL STRUCTURING OF FINANCING

### Choice of law

What territory's law typically governs the transaction agreements? Will courts in your jurisdiction recognise a choice of foreign law or a judgment from a foreign jurisdiction?

In Mexico, transaction agreements are typically governed by the Code of Commerce, which sets forth the general rules for transaction agreements, as well as procedural rules for commercial disputes. Nonetheless, depending on the particular transaction, a specific commercial law may be applicable (eg, the General Law of Negotiable Instruments and Credit Operations for credit transactions).

Mexican courts may recognise the choice of foreign law, provided that certain specific rules are met, and that the choice of such foreign law is not used to evade fundamental principles of Mexican law, or the result of its application does not contravene the principles of Mexican law.

Judgments rendered by a court of a foreign jurisdiction may be recognised by Mexican courts and are enforceable in Mexico, provided that certain requirements are met.

*Law stated - 21 January 2022*

### Restrictions on cross-border acquisitions and lending

Does the legal and regulatory regime in your jurisdiction restrict acquisitions by foreign entities? Are there any restrictions on cross-border lending?

There are certain activities reserved to Mexican individuals or Mexican corporations that do not admit foreign investors. These activities include domestic land transportation of passengers, tourism and freight; the incorporation of banking institutions; and rendering certain professional and technical services.

Additionally, there are other activities in which the participation of foreign entities is limited, such as manufacture and commercialisation of explosives, firearms, cartridges, ammunition and fireworks; the printing and publication of newspapers; freshwater, coastal and exclusive economic zone fishing; integral port management; port pilot services for inland navigation; commercial exploitation of ships for inland and coastal navigation; radio broadcasting services; and regular and non-scheduled domestic air transport service, non-regular international air transport service in the form of air taxi; and specialist air transport service.

There are other activities that require an authorisation from the Foreign Investments Commission in order for the foreign investment to participate in a percentage above 49 per cent. These activities include port services to carry out inland navigation; shipping companies engaged in the operation of vessels exclusively in traffic height; aerodromes services; private education services; legal services; and the construction, operation and exploitation of railways, as well as the provision of public rail transport services.

There are no restrictions on engaging in cross-border lending transactions pursuant to Mexican law.

*Law stated - 21 January 2022*

### Types of debt

What are the typical debt components of acquisition financing in your jurisdiction? Does acquisition financing typically include subordinated debt or just senior debt?

Acquisition financings typically includes senior debt that is collateralised through pledges over fixed assets, and equity instruments, as well as through mortgages. It is customary for lenders to select to structure loans in the form of senior debt, rather than subordinated debt.

*Law stated - 21 January 2022*

### **Certain funds**

Are there rules requiring certainty of financing for acquisitions of public companies? Have 'certain funds' provisions become market practice in other transactions where not required?

There are no specific rules requiring certainty of financing for companies that are listed on the Mexican stock market.

'Certain funds' provisions are not customary in Mexico and are not market practice. Nonetheless, it is possible to include such provisions in financing documents.

*Law stated - 21 January 2022*

### **Restrictions on use of proceeds**

Are there any restrictions on the borrower's use of proceeds from loans or debt securities?

Working capital and fixed asset loans are specifically regulated under the General Law of Negotiable Instruments and Credit Operations, which provides specific restrictions for the use of proceeds from such loans.

On one hand, the proceeds of working capital loans can only be invested in working capital expenses, such as the payment of wages, the acquisition of raw materials or capital expenses related to the performance of business of the company.

Fixed asset loans regulated under the General Law of Negotiable Instruments and Credit Operations are those loans intended to finance the acquisition of fixed assets in the agricultural industry. In terms of the applicable law, the proceeds of this type of loan can only be used to acquire such assets.

Besides the restrictions provided in the General Law of Negotiable Instruments and Credit Operations for working capital and fixed asset loans, there are no statutory restrictions on the borrower's use of proceeds from loans or debt securities. However, the parties of a commercial agreement (including agreements where loans and debt securities are documented) are free to set forth any negative covenants, as long as these covenants do not contravene Mexican law.

In such regard, even though Mexican law does not expressly provide restrictions on the borrower's use of proceeds from loans or debt securities (besides those described before), it is common for lenders to impose certain negative covenants on borrowers with regard to the use of proceeds from loans or debt securities.

*Law stated - 21 January 2022*

### **Licensing requirements for financing**

What are the licensing requirements for financial institutions to provide financing to a company organised in your jurisdiction?

The main financial institutions that operate in the country and provide financing include banks, popular finance companies (SOFIPOs), and multiple purpose financial companies (SOFOMs). To operate as a Bank or SOFIPO, an authorisation from the federal government, through the Mexican Banking and Securities Commission, must be obtained. Likewise, SOFOMs must be registered before the Commission for the Defence of the Users of Financial

Services to operate as such.

Foreign financial institutions do not require licensing requirements to provide financing to a company organised in Mexico.

*Law stated - 21 January 2022*

### **Withholding tax on debt repayments**

Are principal or interest payments or other fees related to indebtedness subject to withholding tax? Is the borrower responsible for withholding tax? Must the borrower indemnify the lenders for such taxes?

Principal payments related to indebtedness are not subject to withholding tax in Mexico provided the indebtedness is duly documented and that in the corresponding agreement such principal amount is clearly separated from interest to be paid.

However, interest paid by Mexican tax residents to residents abroad as a general rule is subject to income tax withholding. The applicable withholding rates contemplated in the Mexican Income Tax Law vary depending on the nature of the resident abroad who is actually receiving the payment of interest or the transaction itself that gives rise to the obligation to pay interest.

Accordingly, the withholding rates established in the Mexican Income Tax Law range from 4.9 to 40 per cent, as detailed below:

- 4.9 per cent – interest on debt instruments placed abroad or paid to specific foreign financial institutions.
- 10 per cent – interest paid to foreign financing entities, entities that place or invest capital in Mexico with funds arising from securities issued by them publicly traded abroad among investors at large or foreign banks (including investment banks and limited purpose financing entities), as well as interests derived from securities placed through banks or brokerage houses paid to residents abroad in a country with which Mexico has not in force a double taxation treaty and the acquisition of a credit right of any kind.
- 15 per cent – interest paid to reinsurance entities.
- 21 per cent – interest paid (different to the payments referred to above) by Mexican financial institutions to residents abroad, interest payments made to foreign suppliers for the sale of machinery and equipment (fixed assets of the purchaser) and to residents abroad for the financing granted for the acquisition of such machinery and equipment.
- 35 per cent – other interest paid to other residents abroad not included herein.
- 40 per cent – interest paid to persons, entities that are considered legal entities or transparent for tax purposes or other legal figures created or constituted in accordance with foreign law, whose income is subject to a preferential tax regime (exceptions apply including interest payments made to foreign banks).

Borrowers that are Mexican tax residents are obliged to withhold the corresponding income tax when making interest payments to lenders residing abroad. Borrowers are not obliged to indemnify lenders for such income tax.

The Mexican Income Tax Law also establishes a list of types of interest paid to residents abroad that are exempt from such tax.

*Law stated - 21 January 2022*



## Restrictions on interest

Are there usury laws or other rules limiting the amount of interest that can be charged?

Under Mexican law, there are no usury laws or rules that expressly limit the amount of interest that can be charged under a financing agreement.

As a general rule, the parties have contractual freedom to agree the amount of interest that can be charged. Nonetheless, the Supreme Court of Justice of the Nation has interpreted that even though the commercial legislation contemplates the possibility of charging interest on loans, based on the principle of contractual freedom, in accordance with the American Convention on Human Rights, the protection of debtors against abuses and the charging of excessive interest, for constituting usury, must be recognised by the Mexican courts. Thus, the judge hearing a lawsuit where an excessive or disproportionate collection of both ordinary and default interest is appreciated, must act in favour of the debtor, avoiding the excessive collection of the creditor.

*Law stated - 21 January 2022*

## Indemnities

What kind of indemnities would customarily be provided by the borrower to lenders in connection with a financing?

Indemnities provided by the borrower to lenders will depend on the type of financing. Nonetheless, it is customary that borrowers provide indemnities related to the use of proceeds from the loan; the performance of their obligations in terms of the financing agreement, including positive and negative covenants; the accuracy of the representations and warranties stated; litigations brought by third parties, among others.

*Law stated - 21 January 2022*

## Assigning debt interests among lenders

Can interests in debt be freely assigned among lenders?

Under Mexican law, the assignment of interests among lenders is allowed. Nonetheless, it is customary for financing agreements to include an 'assignment clause' in which the terms and conditions of the assignment of the financing agreement and certain specific rights and obligations are regulated and agreed between the parties.

*Law stated - 21 January 2022*

## Requirements to act as agent or trustee

Do rules in your jurisdiction govern whether an entity can act as an administrative agent, trustee or collateral agent?

There are no rules that govern the administrative or collateral agent in a financing transaction. Under Mexican law, any entity can act as administrative or collateral agent, including lenders. Regarding trustees, Mexican law provides that only specific financial entities can act as trustees in a trust.

*Law stated - 21 January 2022*

## Debt buy-backs

May a borrower or financial sponsor conduct a debt buy-back?

Pursuant to Mexican law, there are no rules that prohibit a borrower or a financial sponsor from conducting a debt buy-back.

*Law stated - 21 January 2022*

## Exit consents

Is it permissible in a buy-back to solicit a majority of lenders to agree to amend covenants in the outstanding debt agreements?

It is possible to request the majority of lenders to amend the debt agreements to modify any covenants.

*Law stated - 21 January 2022*

## GUARANTEES AND COLLATERAL

### Related company guarantees

Are there restrictions on the provision of related company guarantees? Are there any limitations on the ability of foreign-registered related companies to provide guarantees?

There are no restrictions with regard to guarantees granted by related companies or third parties. With regard to secured guarantees, the perfection of the security interests granted could have associated costs, such as notary public and registration fees.

Foreign-registered related companies are allowed to provide secured or unsecured guarantees; however, there could be limitations related to the enforcement of such guarantees in a foreign country.

*Law stated - 21 January 2022*

### Assistance by the target

Are there specific restrictions on the target's provision of guarantees or collateral or financial assistance in an acquisition of its shares? What steps may be taken to permit such actions?

As such, there are no specific provisions that restrict or limit the target's ability to provide guarantees, collateral, or financial assistance in an acquisition of its shares. To authorise these actions, it is customary for a corporate resolution to be adopted by the shareholders or partners of the relevant target, through which the provision of guarantees, collateral or financial assistance is approved.

*Law stated - 21 January 2022*

### Types of security

What kinds of security are available? Are floating and fixed charges permitted? Can a blanket lien be granted on all assets of a company? What are the typical exceptions to an all-assets grant?

Under Mexican law, it is possible to grant security interests over any assets or ownership rights (this includes real estate property, machinery, copyrights, trademarks, negotiable instruments, shares or bonds). Floating and fixed charges are also permitted.

Blanket liens can be granted over all assets, except real estate property, which has specific formalities for perfection.

*Law stated - 21 January 2022*

### **Requirements for perfecting a security interest**

Are there specific bodies of law governing the perfection of certain types of collateral? What kinds of notification or other steps must be taken to perfect a security interest against collateral?

The General Law of Negotiable Instruments and Credit Operations regulates two types of security interests that can be granted over movable property as collateral: (1) the pledge with transfer of possession; and (2) the non-possessory pledge. The difference between these two types of pledges is that, when granting a non-possessory pledge, the pledgor retains the possession of the pledged assets, while the pledge with transfer of possession, necessarily requires for the pledgor to transfer the possession of the pledged assets.

To perfect collateral granted through a pledge with transfer of possession, the following requirements must be met: (1) a pledge agreement must be executed in writing; (2) possession of pledged assets must be transferred to pledgee (ie, pledged assets must be delivered or endorsed).

To perfect collateral granted through a non-possessory pledge, the following requirements must be met:

- a non-possessory pledge agreement must be executed in writing;
- when the amount of the credit secured by the pledge is equal to or greater than the equivalent in local currency of 250,000 Investment Units (ie, around US\$89,000) the parties must ratify the non-possessory pledge agreement before a Mexican notary public; and
- the non-possessory pledge agreement must be registered in the Registry of Movable Guarantees.

The requirements to perfect a security interest over real estate property granted as collateral are provided in the local Civil Code of the state where the real estate property is located. This generally includes:

- the execution of a mortgage agreement in writing;
- the ratification of the mortgage agreement before a Mexican notary public; and
- the registration of the mortgage before the local Public Registry of Property.

Moreover, it is also common to incorporate a security trust in order to grant collateral for the benefit of the lenders. Security trusts are regulated in the General Law of Negotiable Instruments and Credit Operations. Through this type of trust, the borrower (or any related or third party that grants a security interest) transfers certain assets to a trust with the purpose of securing the borrower's obligations.

*Law stated - 21 January 2022*

### **Renewing a security interest**

Once a security interest is perfected, are there renewal procedures to keep the lien valid and recorded?

The validity of a security interest will be subject to the term set forth in the relevant security agreement. It is customary for the validity of a security interest to be tied to the term of the principal agreement that sets forth the secured obligations. However, periodical renewal of the registrations of the security before the local registries might be required to keep the security interest recorded and effective against third parties.

*Law stated - 21 January 2022*

### **Stakeholder consent for guarantees**

Are there 'works council' or other similar consents required to approve the provision of guarantees or security by a company?

Under Mexican law, other than appropriate corporate governance consents or approvals, no 'works council' consents are required to approve the provision of guarantees or security by a company.

*Law stated - 21 January 2022*

### **Granting collateral through an agent**

Can security be granted to an agent for the benefit of all lenders or must collateral be granted to lenders individually and then amendments executed upon any assignment?

It is possible to grant security to an agent for the benefit of different lenders instead of granting collateral individually to each lender. However, in this case, it is customary for a security trust to be incorporated.

Under a security trust, a financial institution will act as trustee and will assume the role of collateral agent for the benefit of all the lenders.

*Law stated - 21 January 2022*

### **Creditor protection before collateral release**

What protection is typically afforded to creditors before collateral can be released? Are there ways to structure around such protection?

Typically, creditor's protection clauses are included in the security agreements (ie, the pledge or mortgage agreements). The parties have contractual freedom to include any restrictions or limitations on the sale of the assets granted as collateral, including prohibitions on selling such assets, or the obligation to request the consent of the creditors to execute any sale.

Additionally, when creditors seek to structure such protection more effectively, a security trust is incorporated. As stated before, when a security trust is incorporated, borrowers transfer the assets granted as collateral to the trust that is incorporated, which will be managed by a financial institution acting as trustee. When structuring a security trust, the parties can include any limitations on the sale of the assets granted as collateral as well, and the trustee is obliged to comply with such limitations.

*Law stated - 21 January 2022*

### **Fraudulent transfer**

## Describe the fraudulent transfer laws in your jurisdiction.

The Federal Civil Code and the local codes of each of the States of Mexico protect creditors against the fraudulent transfers that generate the insolvency of debtors. There is a specific claim ( acción pauliana ) that creditors can file before a Mexican court to cancel any act that intentionally generated the insolvency of a debtor.

Moreover, fraudulent transfers can also be criminally charged, although the specific rules that regulate fraudulent transfers as crimes may vary from state to state.

*Law stated - 21 January 2022*

## DEBT COMMITMENT LETTERS AND ACQUISITION AGREEMENTS

### Types of documentation

What documentation is typically used in your jurisdiction for acquisition financing? Are short-form or long-form debt commitment letters used and when is full documentation required?

There are no widely accepted standard forms for loan documents. Acquisition financings typically require a short-form commitment letter to start the formalisation of acquisitions between seller and buyer. A term sheet with the terms and conditions of the acquisition may also be executed between seller and buyer. The term sheet usually sets forth the conditions and the term in which the full documentation will be required.

*Law stated - 21 January 2022*

### Level of commitment

What levels of commitment are given by parties in debt commitment letters and acquisition agreements in your jurisdiction? Fully underwritten, best efforts or other types of commitments?

Levels of commitment may depend on the type and size of the transaction. For those small or midsize transactions, typically there is one or two lenders involved with a small level of commitment. With regards to larger transactions, lenders may increase in number and levels of commitment.

*Law stated - 21 January 2022*

### Conditions precedent for funding

What are the typical conditions precedent to funding contained in the commitment letter in your jurisdiction?

Typical conditions precedent to funding that are contained in commitment letters include the following:

- the execution of the agreements related to the financing;
- the accuracy and truthfulness in all material respects of the representations and warranties;
- the absence of defaults; and
- the delivery of any closing certificates, if applicable.

Additionally, it is customary to include the compliance of any conditions precedent related to the specific financing

agreements, such as the perfection of security interests.

*Law stated - 21 January 2022*

### **Flex provisions**

Are flex provisions used in commitment letters in your jurisdiction? Which provisions are usually subject to such flex?

It is not customary to include flex provisions in domestic financed acquisitions since they can be declared null. Flex provisions are commonly used in cross-border transactions. The extent of these provisions may depend on the specific transaction, and its negotiation between the parties involved.

*Law stated - 21 January 2022*

### **Securities demands**

Are securities demands a key feature in acquisition financing in your jurisdiction? Give details of the notable features of securities demands in your jurisdiction.

Security demands are not customarily used in acquisition financings executed in Mexico.

*Law stated - 21 January 2022*

### **Key terms for lenders**

What are the key elements in the acquisition agreement that are relevant to the lenders in your jurisdiction? What liability protections are typically afforded to lenders in the acquisition agreement?

One of the key elements of acquisition agreements in financed transactions that is relevant to lenders is the representations regarding:

- the fulfilment of the conditions regarding buyer's obligation to close;
- the fulfilment of the seller's covenants;
- the solvency of the buyer and target company either before or after the execution of the acquisition agreement; and
- the absence of events that would constitute a default in terms of the commitment letters.

Another key provision is the covenant that imposes an obligation on the seller to cooperate with the buyer in obtaining the buyer's financing contemplated by the commitment letters.

As protection to lenders, there are some provisions that are included with regards to the obligation of the seller not to sue the lenders in the event that the deal does not close; or the appointment of lenders as third-party beneficiaries of any limitation on liability of the buyers.

*Law stated - 21 January 2022*

## Public filing of commitment papers

Are commitment letters and acquisition agreements publicly filed in your jurisdiction? At what point in the process are the commitment papers made public?

With regard to private companies, there is no legal obligation to publicly disclose commitment letters or acquisition agreements. Therefore, it is not common to disclose acquisition agreements and/or commitment letters that involve private companies.

*Law stated - 21 January 2022*

## ENFORCEMENT OF CLAIMS AND INSOLVENCY

### Restrictions on lenders' enforcement

What restrictions are there on the ability of lenders to enforce against collateral?

To enforce against collateral, a final judgment issued by a court must be obtained. Regarding arbitration proceedings, in addition to the award issued by the arbitration ordering the foreclosure of collateral, a Mexican court must recognise such award to enforce such foreclosure.

Nevertheless, it is important to consider that with respect to security trusts and non-possessory pledges, Mexican law allows for the parties to agree out-of-court procedures for the foreclosure of collateral, which can simplify such a process.

*Law stated - 21 January 2022*

### Debtor-in-possession financing

Does your jurisdiction allow for debtor-in-possession (DIP) financing?

Mexican bankruptcy law allows DIP financing. Once a company files for bankruptcy, it can request the court's authorisation for DIP financing to maintain the company's day-to-day operations, as well as the liquidity of the company during the bankruptcy process. If requested by the company, the court can authorise granting collateral to secure such financing.

*Law stated - 21 January 2022*

### Stays and adequate protection against creditors

During an insolvency proceeding is there a general stay enforceable against creditors? Is there a concept of adequate protection for existing lien holders who become subject to superior claims?

Under the Mexican Commercial Insolvency Law, as soon as the court declares the debtor in insolvency proceedings, no creditor may seize or execute any debtor's assets.

Also, during the insolvency proceeding, the court may issue injunctions to protect the debtor's assets and its creditors' rights. These injunctions may include the following, among others:

- the prohibition on making payments due before the date of admission of the request for bankruptcy;
- the suspension of all execution proceedings against the assets and rights of the debtor;

- the prohibition on the debtor to carry out operations of alienation or encumbrance of the main assets of its company;
- the securing of assets;
- intervention of the cashier's office;
- the prohibition on making transfers of resources or securities in favour of third parties;
- the order to arrest the debtor, for the sole effect that he or she may not leave the place of his domicile without leaving, through a mandate, a sufficiently instructed and authorised proxy when the person who has been taken into custody proves to have complied with the foregoing, the judge shall lift the restraining order; and
- any others analogous in nature.

There is no concept for 'adequate protection for existing lien holders who become subject to superior claims' under the Commercial Insolvency Law. However, these lien holders may be considered as creditors with secured credit or with a special privileged credit, which will help them to recover their credits before other creditors with common or subordinate credits.

*Law stated - 21 January 2022*

### **Clawbacks**

In the course of an insolvency, describe preference periods or other reasons for which a court or other authority could claw back previous payments to lenders. What are the rules for such clawbacks and what period is covered?

During an insolvency proceeding, a court may claw back previous payments to lenders if these payments were made by the debtor in fraud of creditors. The Commercial Insolvency Law provides for the acts considered as acts in fraud of creditors; for example, payments of unmatured obligations made by the debtor during the clawback period.

The clawback period in Mexican insolvency proceedings consists of the time when it is considered that the debtor was already in generalised breach of its obligations (insolvent). The clawback period covers 270 days before the court declares the debtor in insolvency proceedings.

For subordinate creditors, the clawback period is 570 days, regarding the acts in which such subordinate creditors were involved.

However, the conciliator, the receiver, an intervenor or any creditor may request the court to set a different clawback period. The clawback period cannot exceed three years.

*Law stated - 21 January 2022*

### **Ranking of creditors and voting on reorganisation**

In an insolvency, are creditors ranked? What votes are required to approve a plan of reorganisation?

The Commercial Insolvency Law provides an order of priority for creditors to collect, subordinate creditors being the last to collect in the case of liquidation:

- employee credits for the last two years;
- social security credits;
- credits for the benefit and conservation of the debtor's patrimony (specialist in the insolvency proceedings);



- secured credits (mortgage and lien holders);
- special privileged credits (credits that are granted a special privilege by another Mexican law (eg, the credit of a carrier);
- debtor-in-possession financing;
- other employee credits and tax credits;
- common credits (unsecured credits); and
- subordinate credits (the credits of the debtor's related parties).

To reach a settlement agreement, the debtor must have the vote of creditors that represent 50 per cent of:

- the total amount of common and subordinated creditors; and
- the total amount of secured creditors and special privileged creditors.

If the subordinate credits represent 25 per cent or more of the total recognised credits, the subordinate credits will be excluded from the amounts mentioned above.

*Law stated - 21 January 2022*

### **Intercreditor agreements on liens**

Will courts recognise contractual agreements between creditors providing for lien subordination or otherwise addressing lien priorities?

The Commercial Insolvency Law provides for the right of the creditors to agree on the total or partial extinction of their credits, their subordination or a treatment that is less favourable than the treatment given to the creditors of the same rank. The requirement is that creditors' consent is expressly recorded in the reorganisation plan.

*Law stated - 21 January 2022*

### **Discounted securities in insolvencies**

How is the claim of an original issue discount (OID) or discount debt instrument treated in an insolvency proceeding in your jurisdiction?

Within the Commercial Insolvency Law, the claim of an OID or discount debt instrument does not have any special treatment. For these creditors to have a privilege, they must have been secured by a lien or mortgage.

*Law stated - 21 January 2022*

### **Liability of secured creditors after enforcement**

Discuss potential liabilities for a secured creditor that enforces against collateral.

As a general rule, secured creditors would not be liable under Mexican law for enforced collateral, unless such creditor receives title to and becomes the owner or possessor of collateral that generates a specific damage (eg, environmental damages). In practice, it is not common that secured creditors are held liable for enforced collateral, since it is unlikely for such creditors to take title to or possession of collateral that could generate some type of liability.

## UPDATE AND TRENDS

### Proposals and developments

Are there any proposals for new legislation or regulation, or to revise existing legislation or regulation? If so, please give a reference to any written material, whether official or press reports. Are there any other current developments or trends that should be noted?









As part of a tax reform that became effective as of 1 January 2022, some amendments were made to the tax laws, which must be considered when executing a financed acquisition.

These amendments include modifications in corporate restructurings, mergers and spin-offs (which are typically carried out during an acquisition); as well as in financing transactions.

Regarding corporate restructurings, mergers and acquisitions, with the new tax regime, in order to be entitled to request authorisation for a restructuring (and to transfer the shares at tax cost), as well as not to be considered as an alienation in the case of mergers and spin-offs, it is necessary to have a 'business purpose' when such transactions are carried out.

With respect to credit operations, if a credit operation has no business reason, it will be considered as a back-to-back loan with all its consequences (non-deductibility, recharacterisation as dividends, etc).

## Jurisdictions

 <b>France</b>	Stephenson Harwood LLP
 <b>Japan</b>	Miura & Partners
 <b>Luxembourg</b>	Vandenbulke
 <b>Mexico</b>	Von Wobeser y Sierra, SC
 <b>Netherlands</b>	CMS Netherlands
 <b>Spain</b>	King & Wood Mallesons
 <b>Switzerland</b>	Lenz & Staehelin
 <b>USA</b>	Willkie Farr & Gallagher LLP