

# LEXOLOGY®

## Equity Capital Markets in Mexico

Global, Mexico | July 31 2018

### Market snapshot

#### *Recent activity*

#### **How would you describe the general state of equity capital markets in your jurisdiction, including notable recent activity and deals?**

Although the Mexican Stock Exchange currently only lists approximately 146 companies, the equity capital market has maintained sustained growth in recent years. During the first quarter of 2018 equity capital revenues increased by 1.5%, compared to the first quarter of 2017.

In 2017 a new exchange was granted authorisation to operate in Mexico. This new exchange is expected to start operations in the coming months, boosting the equity capital market in Mexico and hopefully increasing the number of listed companies.

2017 saw several initial public offerings on the Mexican Stock Exchange, the most important being the following:

- GMéxico Transportes SAB de CV for Ps19 billion;
- BECLE SAB de CV for Ps18.635 billion;
- Banco del Bajío SA for Ps8.791 billion;
- Grupo Traxión SAB de CV for Ps4.543 billion; and
- RLH Properties SAB de CV for Ps2.414 billion.

#### *Recognised exchanges*

#### **What recognised exchanges operate in your jurisdiction, and what are the pros and cons of listing in each?**

The only exchange currently operating in Mexico is the Mexican Stock Exchange. However, in August 2017 the Ministry of Finance granted an authorisation to organise and operate a second and new exchange called the Institutional Stock Exchange, which will start operating within the next few months.

This is expected to have a positive impact on the equity capital market, as it will become more competitive and bring benefits to exchange users, including a decrease in listing, maintenance and transaction expenses. The inclusion is also expected to increase the size of the equity capital market in Mexico; at present there are only approximately 146 listed companies on the Mexican Stock Exchange, which is a very low number for an economy the size of the Mexico's.

#### *Reforms and case law*

#### **Are any regulatory reforms envisaged or underway with regard to equity capital markets? Has there been any recent case law affecting the markets?**

There have not been any recent reforms regarding equity capital markets, and none of material relevance are expected soon.

#### *Tech developments*

#### **Have there been any notable recent developments in financial technology (fintech) which affect equity capital markets in your jurisdiction?**

On 9 March 2018 the Law to Regulate Financial Technology Institutions was passed, published and promulgated. This is a highly important event, as it puts Mexico on the cutting edge of this sector. The law focuses mainly on four areas:

- the organisation and operation of collective financing institutions (ie, crowdfunding institutions);
- the organisation and operation of electronic payment funds institutions;
- virtual assets; and
- financing operations through ‘novelty models’.

The first round of secondary legislation regarding the Law to Regulate Financial Technology Institutions will be issued by the end of the third quarter of 2018.

#### **Regulatory framework**

##### *Legislation*

#### **What primary and secondary legislation governs the issue and trade of equity securities in your jurisdiction?**

The primary legislation regulating the trade of equity securities comprises:

- the Securities Market Law;
- the General Law of Securities and Credit Operations;
- the National Banking and Securities Commission Law; and
- the Law for the Protection and Defence of the Users of Financial Services.

The secondary legislation regulating the trade of equity securities includes:

- the General Regulations Applicable to Issuers of Securities and Other Participants in Exchange Markets, issued by the National Banking and Securities Commission (CNBV);
- the Mexican Stock Exchange Internal Regulations;
- the General Regulations Applicable to the Stock Exchange; and
- the General Regulations Applicable to Broker-dealers.

##### *Regulators*

#### **Which authorities regulate equity capital markets in your jurisdiction and what is the extent of their powers?**

There are several authorities that directly or indirectly regulate the equity capital markets in Mexico.

##### ***Ministry of the Treasury and Public Finance***

The Ministry of the Treasury and Public Finance is the federal government's highest authority on economic matters, and the executor of financial politics. It can:

- issue general provisions that build on the Securities Market Law for administrative purposes;
- grant authorisations for the operation of broker-dealers;
- set requirements for participation in the exchange market;
- authorise the sale of equity capital between exchange intermediaries; and
- grant authorisations for the operation of new exchanges.

### ***Central Bank***

The Central Bank:

- regulates intermediation, financial services, payment systems and the issuance and circulation of money;
- operates as a reserve bank and final creditor for financial institutions;
- provides treasury services and acts as a financial institution for the federal government;
- acts as an economic and financial adviser for the federal government;
- issues general dispositions on operations related to securities; and
- provides the services necessary for the deposit, protection, administration, compensation, liquidation and transfer of securities.

### ***CNBV***

The CNBV:

- issues general provisions to regulate the equity capital markets;
- supervises compliance with the applicable regulations;
- investigates possible breaches of law;
- imposes administrative penalties for breaches of law;
- regulates the operation of exchanges, exchange intermediaries and the central deposit of securities;
- authorises the issuance of securities; and
- administers the National Registry of Securities.

### **Listing**

#### *Requirements*

**What eligibility and disclosure requirements apply for primary listing of equity securities on recognised exchanges in your jurisdiction (eg, aggregate share value, free float requirements, trading record, working capital)?**

A registration statement issued by the National Banking and Securities Commission (CNBV) is required for parties offering securities in Mexico. The securities must also be registered with the National Registry of Securities, along with any other relevant information, such as the prospectus and legal opinions, financial statements and stock certificates.

There are some requirements for primary listings, specifically regarding the minimum shares that public companies must offer to the public:

- *Sociedades Anónimas Bursátiles* (ie, SABs) must offer at least 15% of the capital shares; and
- *Sociedades Anónimas Promotoras de Inversión Bursátil* (ie, SAPIBs) must offer at least 12% of the capital shares.

There is no minimum trading record, although SABs must report profits of the previous three financial years and SAPIBs must report profits of the previous two financial years.

Working capital requirements are 20 million *unidades de inversión* (UDIs) for SABs and 15 million UDIs for SAPIBs.

*Exemptions***Are there any exemptions from the listing requirements?**

Generally speaking, there are no exemptions from listing requirements. However, the Mexican Stock Exchange is empowered to approve exceptions regarding working capital requirements, as well as other information requirements, when it holds the opinion that the issuer is a company with growth potential.

*Procedure and timeframe***What is the procedure and typical timeframe for listing?**

According to the internal regulations of the Mexican Stock Exchange, the company that intends to list securities or equity must file a listing request with the exchange, including all documents and satisfying all requirements necessary for the type of security to be listed.

The Mexican Stock Exchange will evaluate the documentation provided and will carry out legal and technical studies regarding the origin of the securities. After performing the studies, the Mexican Stock Exchange will issue a favourable or unfavourable opinion.

Where the listing company requests it, the Mexican Stock Exchange will inform public investors of the denomination of the company, the type of securities and type of offer. This information will be published on a date chosen by the company.

After being notified of a favourable opinion, the company must execute the placement of the values subject to the listing. The Mexican Stock Exchange will publish the prospectus and any other documents or information relevant to the listing process.

*Fees***What fees apply for an application to list equity securities?**

The Mexican Stock Exchange charges the following fees:

- a 3,200 UDI fee applicable for the study and listing process;
- a listing fee charged over 0.0084% of the income equity account; and
- a maintenance fee charged over 0.0060% of the income equity account.

Fees from other necessary participants vary depending on the circumstances of each case.

*Listing versus admission to trading*

**Is there a distinction between listing and admission to trading in your jurisdiction?**

In order to list securities, the issuer must comply with all legal and listing requirements. Trading is separately regulated and implies complying with different requirements.

*Secondary listing***Are there any differences in the rules, restrictions and procedures for secondary listings of equity securities?**

At present, since there is only one exchange operating in Mexico, there are no secondary listings.

*Foreign issuers***Are there any differences in the listing rules and procedures for foreign issuers?**

In addition to the listing rules for all issuers, foreign issuers that request the registration of securities for their listing must evidence before the CNBV that they have corporate rights of minorities that are equivalent to, or higher than, those required for SABs.

*Delisting***Under what circumstances can a company be delisted? What rules and procedures apply?**

A company can be delisted by filing a request before the Mexican Stock Exchange, as well as in the following circumstances:

- total emission amortisation;
- dissolution or liquidation of the issuer;
- judicial declaration of bankruptcy of the issuer;
- cancellation of the registration in the registry;
- merger of two or more issuers; or
- breach of the Securities Market Law.

**Initial public offerings***Structure***What are the most common structures used for IPOs in your jurisdiction, and what are the advantages and disadvantages of each?**

In Mexico, there are two common structures used for IPOs:

- a direct offering of the company's shares on the primary market. The advantage here is that all transactions are controlled and performed directly by the issuer. However, in a bankruptcy event, the shares will be part of any bankruptcy procedure; and
- a Mexican trust, used as a special-purpose vehicle, where the shares in the company are transferred to the trust, which then issues participation certificates. In this case the shares that are transferred to the trust will not be part of the company's estate and, in case of a bankruptcy declaration from the issuer, will not be part of a bankruptcy procedure. However, all transactions must be performed by the trustee and there is a higher administrative burden.

*Procedure and timeframe*

**What is the procedure and typical timeframe for launching an IPO?**

In order to launch an IPO, the issuer must:

- register the securities in the National Registry of Securities;
- file for authorisation of the IPO with the National Banking and Securities Commission (CNBV); and
- file the prospectus and all relevant documents with the CNBV, including legal opinions and audited financial statements.

Depending of the complexity of the deal, the CNBV takes two to four weeks to analyse and comment on the documents filed. After the final versions of relevant documents are filed, securities are listed and traded on the exchange.

*Due diligence***What due diligence is required and advised in the IPO process?**

Within the due diligence investigation for an IPO, at least the following information should be analysed:

- information regarding the company's good standing, its bylaws (as amended), its shareholder list and the corporate resolutions authorising the IPO;
- audited financial statements for the last three years, as well as the company's credit report;
- physical assets and real estate owned by the company;
- IP rights owned by the company;
- a list of employees, including positions, salaries and bonuses covering the last three years;
- collective bargaining arrangements, labour disputes and requests for arbitration undergone in the last three years;
- government licences and permits;
- environmental issues and audits;
- income tax returns for the last five years, as well as any tax audits or settlements undergone in the last five years;
- contracts, agreements and arrangements executed by the company with third parties, including loan agreements, mortgages or pledges;
- all pending or threatened litigation involving the company; and
- insurance coverage regarding the company's general liability.

*Pricing and allocation***What rules and standards govern share pricing and allocation in the context of an IPO?**

Standard international rules apply. Issuers should make use of valuation institutions to determine the pricing of an IPO, so they can offer the best price for securities and gain maximum returns. When necessary, the CNBV can perform a valuation, using an independent expert, in order to determine whether the offer price is appropriate.

**Follow-on offerings***Types/pros and cons***What types of follow-on offering are commonly used in your jurisdiction, and what are the advantages and disadvantages of each?**

Both diluted and non-diluted follow-on offerings are permitted. However, they must be previously approved and the terms must be clearly stated in the prospectus and relevant documentation. The pros and cons of each mechanism will depend on the specifics of the offering and the conditions of the market.

**Prospectus requirements***Applicability and exemptions***When must a prospectus be filed? Are there any notable exemptions?**

In order to launch an IPO, the issuer must:

- register the securities in the National Registry of Securities;
- file for authorisation of the IPO with the National Banking and Securities Commission (CNBV); and
- file the prospectus and all relevant documents before the CNBV, including legal opinions and audited financial statements.

Depending of the complexity of the deal, the CNBV takes two to four weeks to analyse and comment on the documents filed. After the final versions of relevant documents are filed, securities are listed and traded on the exchange.

No exemptions are contemplated and the only exceptions are related to private offers.

*Content***What must the prospectus contain?**

According to the Securities Market Law and the General Regulations Applicable to Issuers of Securities and Other Participants of Exchange Markets, the prospectus must contain the following:

- the public offer and securities specifications;
- the financial, administrative, economic and legal situation of the issuer;
- a description of the issuer;
- the structure of the capital stock;
- perceptions, of any nature, that the issuer grants related individuals;
- agreements authorising officers of the company to participate in the capital stock;
- any relevant operations that were completed with related parties in the last three years;
- directors' certificates regarding the financial situation of the company;
- a legal opinion and financial statements;

- a description of the equivalences, similarities and differences of any applicable special legal regime, if any, in terms of financial regulation; and
- a statement expressly manifesting that no relevant information is false or omitted.

#### *Filing and approval procedure*

#### **What is the procedure for filing for and obtaining prospectus approval from the regulator? Can draft prospectuses be submitted to the regulator for preliminary comment?**

In order to receive authorisation for a public offer, the prospectus must be filed with the CNBV for approval. Issuers can file draft prospectuses with the CNBV for preliminary comment.

#### *Prospectus liability*

#### **What types of prospectus liability can arise (eg, statutory, contractual, tort)? Which parties may be held liable?**

In addition to the standard contractual liability, which can result in compensation for damages, criminal liability can also arise when false information regarding securities is widespread through the prospectus. This can be penalised with a five to 10-year prison sentence.

#### **What defences are available for liable parties?**

No special defences are available.

### **Marketing**

#### *Methods*

#### **What methods are commonly used to market equity security offerings in your jurisdiction?**

The General Regulations Applicable to Issuers of Securities and Other Participants of Exchange Markets allows for market activity related to public offerings through conference calls, presentations and the Internet. Nevertheless, all marketing activities must be performed after filing the prospectus and obtaining prior authorisation from the National Banking and Securities Commission (CNBV).

#### *Rules and restrictions*

#### **What rules and restrictions (if any) apply to the marketing of equity securities?**

In order to market securities, issuers must:

- obtain an authorisation from the CNBV;
- file the prospectus before marketing the securities;
- include the corporate name of the issuer, type of securities and name of the placement agent;
- only disclose information contained in the prospectus; and
- indicate the authorisation number for the marketing exercise.

In case of restricted public offers, the information presented must indicate that the offer is addressed only to institutional and qualified investors.

#### *Bookbuilding*

#### **To what extent is bookbuilding used in your jurisdiction, and how does the process customarily play out? What are the advantages and disadvantages of using this process?**

Bookbuilding is frequently used and plays an important role, due to the reduced size of the market in Mexico. The advantages arise when the product is good, as selling a strong product should be easier; conversely, word spreads just as easily when the product is unattractive.

### **Role of advisers**

#### *Adviser roles and responsibilities*

**Describe the role and responsibilities of the following advisers in the context of equity securities offerings, including how their relationship with the issuer is formalised (eg, through terms of agreements):**

#### **(a) Banks/underwriters?**

Underwriters act as broker-dealers. They are responsible for structuring the deal, contacting potential investors, building the book and communicating with relevant regulators. Underwriters market the securities and are liable for the content of the prospectus.

#### **(b) Auditors?**

The auditors must review the issuer's financial statements and issue an accountant opinion of the audited financial statements. By signing the prospectus, the auditors assume liability for the financial information contained within it.

#### **(c) Lawyers?**

The main roles of lawyers are to:

- perform legal due diligence;
- review the prospectus before it is filed; and
- review any other marketing materials and provisions applicable to the trade of securities.

As independent legal advisers, they must issue a legal opinion stating that the issuer is in good standing and in a position to issue the securities. By signing the prospectus, the legal adviser assumes liability for all relevant legal information contained within it.

#### **(d) Any other relevant advisers?**

Depending on the complexity of the deal, issuers may hire additional advisers.

### **Continuing obligations**

#### *Continuing obligations*

**What continuing obligations apply to issuers of equity securities? What are the penalties for non-compliance?**

Issuers must periodically file the following with the National Banking and Securities Commission (CNBV):

- reports regarding the company's acts and agreements;
- quarterly reports regarding the company's financial situation, including financial statements;
- annual reports regarding audited financial statements;
- reports regarding mergers, acquisitions or sales of assets approved by the shareholders or board of directors;
- reports regarding the capital structure;
- information regarding shareholder meetings; and

- any other information that the CNBV requests or requires by its general provisions.

Where an issuer does not comply with its continuing obligations, the penalties range from the suspension or cancellation of listed securities to personal liability, settling on the individuals responsible for disclosing the information. If any of the information disclosed is false or misleading, individuals may be criminally liable for producing it.

### **Market abuse provisions**

#### *Rules and restrictions*

#### **What rules and restrictions are in place to combat market abuse and insider trading? What are the penalties for breach of these rules?**

According to the Securities Market Law, information regarding relevant events that has not been disclosed by the issuer is considered 'privileged information'. Only the following individuals have access to privileged information:

- officers of the company;
- individuals who directly or indirectly hold 10% or more of the shares in an issuer;
- officers of companies that hold 10% or more of the shares of an issuer;
- officers of companies that act as intermediaries of the equity market;
- shareholders that hold 5% or more of the shares of financial institutions that are acting as issuers;
- individuals who have a significant influence on issuers;
- individuals who exercise power of command over the issuer; and
- relatives and partners of the individuals above.

Individuals who have access to privileged information are obliged to maintain its confidentiality. As a consequence, it is considered insider trading to:

- instruct or advise, directly or through a third party, on operations of any type of listed securities, where their price may be influenced by privileged information;
- provide privileged information to any individual, unless that individual is entitled to access privileged information as a result of their position or relation to the user; and
- provide any recommendation regarding listed securities that may be influenced by privileged information.

The penalties for breaching these rules can be civil to criminal, depending on the breach.

### **Tax liabilities**

#### *Applicable taxes*

#### **What tax liabilities arise in relation to the issue and trade of equity securities in your jurisdiction?**

The trade of equity securities accrues income tax.

#### *Mitigation*

**How can these tax liabilities be mitigated?**

Income tax can be mitigated by performing a deduction on the expenses that arise in the trade of securities

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