

# Mexico

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## The legal environment for financial services may have come full circle

Carlos Aiza  
Creel y García-Cuéllar  
Mexico City

The legal environment of the Mexican financial sector has come a long way since the futile privatisation of the Mexican banking industry in the early nineties.

The nineties saw the opening of the financial services sector to unrestricted foreign investment after the implementation of the financial services chapter of the North American Free Trade Agreement and the banking sector failure that followed the peso crisis of 1995. They also saw the creation of the regulated *sociedades financieras de objeto limitado*, a sector of specialised non-deposit-taking lending institutions that played a central role in providing financing, particularly to the housing, consumer, auto and real-estate sectors, at a time when the banking sector was almost entirely absent. The creation of the private pension funds system followed by the birth of the *administradoras de fondos para el retiro* provided the foundation for what has become the most important institutional investor in the domestic capital markets.

### The new century

The early years of this century proved to be equally significant. By the end of the nineties, state laws in most jurisdictions in Mexico had been amended to streamline mortgage assignment procedures, setting the stage for mortgage securitisation. The *Sociedad Hipotecaria Federal* (SHF), a state-owned housing development bank, was born in 2001 with a clear mandate to serve as a catalyst for the development of the primary and secondary residential mortgage markets.

SHF has since played a leading role in designing and implementing the backbone infrastructure of the residential mortgage securitisation market, in large part with the

participation of mortgage *sociedades financieras de objeto limitado*. The housing sector has since seen unprecedented growth, providing great relief to a large housing deficit which is still on the rise.

On the secured lending front, the Mexican banking crisis and generalised payment system failure of the mid-nineties gave clear evidence of the underlying deficiencies of loan origination and collection and bankruptcy laws and procedures. Structural changes to secured lending laws designed to streamline loan origination and collections and collateral foreclosures were enacted, together with an entirely new and greatly improved bankruptcy law. These laws, though still young, have significantly contributed to building the confidence of credit providers across many sectors. Though great challenges still lie ahead, particularly with respect to the effectiveness and efficiency of the judiciary, these were certainly steps in the right direction.

### A new foundation for securities

The domestic capital markets also saw noteworthy developments. Two different generations of securities-related legislative and regulatory amendments during 2001 and 2006 set the stage for the current breadth and depth of the domestic debt capital markets, one of the most active in the region. The *Comisión Nacional Bancaria y de Valores*, the securities regulation agency, has since accomplished a great deal in setting flexible but healthy disclosure and other policies to accommodate a youthful but fertile asset securitisation market. Much more is still needed to revamp the equity capital markets, which have been sluggish to say the least, but it seems that the foundation has been set and the time is right.

Significant developments continue. During 2007, lending, financial leasing and factoring activities were effectively deregulated with the phased-out substitution of regulated *sociedades financieras de objeto limitado* with non-regulated *sociedades financieras de objeto múltiple*

(Sofoms), non-deposit taking lending institutions with a broader scope of permitted activities than their predecessors. Many market participants have already adopted the Sofom model and many more are expected to do so over the next few years.

Also during 2007, an entirely new and quite comprehensive financial services consumer protection statute was enacted. Among other things, this statute incorporates important disclosure requirements concerning terms, conditions and pricing of a broad range of financial services, providing the consumer protection agency with broader powers and protecting the privacy of consumers in a more meaningful way.

More recently, early 2008 saw the enactment of wide-ranging amendments to banking laws designed to create niche-like opportunities within the banking sector, giving market participants the option to focus on specific sectors or activities while enjoying significant reductions in capital and regulatory requirements. These amendments are expected to generate much-needed competition across various financial products and ultimately translate into significant benefits for financial consumers of all types. These amendments also accomplished much in terms of regulation by incorporating important self-regulation guidelines and principles and concentrating regulatory and supervisory powers with the *Comisión Nacional Bancaria y de Valores*.

Whether all of these legislative and regulatory efforts will ultimately deliver to their full potential is yet to be seen. What they do seem to suggest is that the lack of macroeconomic stability or of a modern, sure and flexible framework for the financial services sector is no longer an excuse. After years of idleness, the time has come for financial intermediation to finally perform its duty of efficiently channeling much-needed financial resources to the medium-sized and small family-owned businesses at the heart of the Mexican economy. Will it come to pass?

## Banking and capital markets

Recommended firms
<b>Tier 1</b>
Creel y García-Cuéllar Galicia y Robles Mijares Angoitia Cortés y Fuentes Ritch Mueller White & Case
<b>Tier 2</b>
Kuri Breña Sánchez Ugarte y Aznar
<b>Tier 3</b>
Jáuregui Navarrete y Nader González Calvillo Holland & Knight - Gallástegui y Lozano Martínez Algaba de Haro Curiel y Galván-Duque Romo Paillés y Guzmán Santamarina y Steta
<b>Tier 4</b>
Baker & McKenzie Berdeja Abogados

## Mergers and acquisitions

Recommended firms
<b>Tier 1</b>
Creel y García-Cuéllar Galicia y Robles Mijares Angoitia Cortés y Fuentes
<b>Tier 2</b>
Kuri Breña Sánchez Ugarte y Aznar Ritch Mueller White & Case
<b>Tier 3</b>
Baker & McKenzie Basham Ringe y Correa Jáuregui Navarrete y Nader González Calvillo Holland & Knight - Gallástegui y Lozano Santamarina y Steta
<b>Tier 4</b>
Goodrich Riquelme y Asociados Von Wobeser y Sierra

## Project finance

Recommended firms
<b>Tier 1</b>
Creel y García-Cuéllar Galicia y Robles Ritch Mueller
<b>Tier 2</b>
Jáuregui Navarrete y Nader Mijares Angoitia Cortés y Fuentes White & Case
<b>Tier 3</b>
Kuri Breña Sánchez Ugarte y Aznar López Velarde Heftye y Soria Martínez Algaba de Haro Curiel y Galván-Duque Santamarina y Steta

Naturally, when the US economy began to nosedive there were concerns that Mexico would be affected. Those fears are not being realised. The reasons are manifold, ranging from the improved condition of the Mexican banking system, the continued influx of foreign investment, the high price of oil, and a new tax code which has increased revenue. The government is putting this increased revenue into infrastructure projects which will continue to sustain the economy.

Mexican banks are taking advantage of low inflation, which is resulting in lower and more competitive interest rates. Whereas the banks used to engage only in traditional banking activities, these institutions are beginning to assume more risk and are getting involved in project finance on a much larger scale.

The capital markets in Mexico began to grow after the economic crisis of 1995. The banks had curtailed lending activities, so companies preferred to go to market to raise capital. The debt markets were humming in 2007, but have started to become affected by the subprime crisis in the US. But there is a deep domestic market for structured debt, especially RMBS.

On the equity side, many deals have been put on hold, with parties instead choosing to extend the terms of offer and wait for a more favourable economic environment. As a consequence of the capital markets beginning to dry up, the main source of financing for corporate ventures has shifted to mezzanine schemes and syndicated loans.

In terms of M&A activity, the trend for consolidation is unflagging, albeit at a slower pace than most of 2007. Conditions remain favourable for investment: the exchange rate has remained stable, and the Mexican economy is fundamentally solid. Telecoms, hospitality, cable and the airlines industries are all experiencing continued consolidation.

Cross-border investment also remains strong. Foreign investors are introducing products to appeal to the growing Mexican middle class. Further, Mexican telecoms companies and appliance manufacturers are investing across Latin America to bring products and services to the lower middle class across the region.

Additionally, US and European companies are selling off their assets in Mexico and across Latin America in order to restructure or satisfy creditors and take the company out of receivership. Ironically, this by-product of the worldwide economic slump has been contributing to the rash of M&A work that Mexican lawyers are experiencing.

Finally, the fate of Pemex - the state-owned oil company, which is being propped up with huge debt and concessions - remains unclear. As long as the price of oil remains high, and if some type of reform can be pushed through the legislature, then financing for public projects, especially in energy, will likely increase. President Felipe Calderón has committed to infrastructure financing, and there is hope that the government will carry on incentivising private investment in public projects.

### Creel y García-Cuéllar

Creel y García-Cuéllar is one of only two firms to make it into the first tier in all three practice areas. Clients defend the firm's position as one of the most respected firms in the country: "Lawyers at the firm are very dedicated, knowledgeable, and business-savvy," says one. "They are more than a legal advisor; they are more like business confidantes."

Last year one of the firm's original name partners, Carlos Müggenburg, left to start his own firm, taking with him much of Creel's litigation practice. The firm has decided not to recreate the litigation department, but will be reconstituting its intellectual property practice in order to continue serving the transactional needs of their corporate clients.

The firm has not slowed down since the departure, and has made four new partners as of January 2008. The firm is sanguine about the shake-up, and competitors are quick to confirm that the firm has not been affected. "Creel has always concentrated mainly on corporate work, and they are handling the spin-off well," says one.

Creel is participating in large deals in the growing Mexican debt capital market. The firm represented Deutsche Bank in the country's first asset-backed commercial paper multi-seller conduit, as part of a \$20 billion programme. In addition, the firm advised Credit Suisse and MBIA on the first cross-border dollar-denominated residential mortgage securitisation for Hipotecaria Su Casita.

Creel has kept busy with M&A activity. The firm, led by Jean Michel Enriquez, represented the buyer, Axa, in its \$1.5 billion acquisition of ING Commercial America, the second-largest insurance company in Mexico. Creel was again at the forefront of an innovative deal when in December 2007 it advised Consorcio Aeroméxico, the target in the first-ever competitive tender offer in Mexico. Consorcio Aeroméxico was bought by a group of Mexican investors, led by Banamex, for \$237 million.

#### Leading lawyers

Carlos Aiza  
Carlos Creel Carrera  
Jean Michel Enriquez Dahlhaus  
Samuel García-Cuellar

### Galicia y Robles

Even in a relatively slow time in the equity markets, Galicia y Robles has been busy. In June 2008, led by Rafael Robles, the firm represented Fresnillo, the world's largest producer of silver, in its IPO on the London Stock Exchange. The company raised \$1.8 billion, used to repay existing debt and to expand operations.

Again in June 2008, the firm advised the syndicate of underwriters, including IXE Casa de Bolsa, IXE Grupo Financiero and Casa de Bolsa, on Genomma Lab Internacional's \$234 million IPO on the Mexican stock exchange.

The firm had a very strong year in M&A activity. Galicia advised the Grupo Carso conglomerate in the sale of its ceramic-tile company for \$800 million to Grupo Lamosa. The target was much larger than the purchaser in this transaction; the highly-leveraged portion created complexities, and there were antitrust concerns that followed.

Peers note that the firm's main partner in the project finance practice area, Carlos de María, is on sabbatical in Oxford, and the amount of work done in that department has decreased as a result. Even with De María's hiatus, Galicia y Robles has been handling some important project finance work.

The firm represented Mexico's Ministry of Communications and Transport in October 2007 when the authorities auctioned the first of several packages of roads to private companies as part of the re-privatisation of the country's toll roads. The government granted a 30-year concession to Red de Carreteras de Occidente to oversee the future capital and maintenance expenses of the toll roads, which stretch across the states of Michoacán, Jalisco, Guanajuato and Aguascalientes.

#### Leading lawyers

Manuel Galicia  
Arturo Perdomo  
Ignacio Pesqueria

Rafael Robles Miaja

### Jáuregui Navarrete y Nader

"The lawyers at Jáuregui Navarrete y Nader conduct themselves professionally, and the speed and level of diligence that they show is as good as it gets," says one client of the firm.

The practice excels in project finance work, and Michell Nader Schekaiban is recognised by clients as one of one of the premier project finance lawyers in the country. The firm advised governmental agencies on the public bidding process with respect to the concession to construct, operate and maintain a second package of highways on the Pacific coast.

The firm also frequently advises private companies on their project finance ventures. The firm counselled GE Finance when its subsidiary completed an agreement with the government of the state of Queretaro and aircraft manufacturer Bombardier for the development of an aerospace industrial park near Queretaro Airport, with an investment of \$100 million.

The firm continued to represent GE, this time its real-estate division, GE Real Estate Mexico, in a \$320 million equity-and-asset acquisition from Intermex, of the first batch of 56 industrial properties located throughout the country.

#### Leading lawyers

Michell Nader Schekaiban

### Kuri Breña Sánchez Ugarte y Aznar

Kuri Breña Sánchez Ugarte y Aznar has been steadily gaining a reputation as player in Mexico's financial and corporate markets. In November 2007, founding partner Santiago Corcuera Cabezut departed Kuri Breña after 17 years to join Curtis Mallet-Prevost Colt & Mosle, a US firm. Competitors note that the firm's financial and corporate practice will not be greatly affected, as Corcuera was devoted primarily to human-rights work and *pro bono* causes.

The firm's banking practice is strong. In 2007, the firm advised on some important securitisation projects, which are fast becoming commonplace in Mexico. The firm counselled Papel Cartón y Derivados, a Mexican packaging and manufacturing company, in connection with a trade receivables programme. The transaction involved the purchase of a \$26 million senior tranche by a targeted investor, a leading Mexican bank.

The firm acted as Mexican counsel to Grupo Villacero in connection with the sale of Sicarsta, a steel producer. Luxembourg's

ArcelorMittal, the world's largest steelmaker, bought the Grupo Villacero plants to become the largest steel producer in Mexico.

The firm also participated in the \$700 million acquisition by Arcos Dorados of the assets involved in the Latin American operations of McDonald's Corporation. Kuri Breña advised McDonald's in connection with the Mexican implications of the transactions.

#### Leading lawyers

Daniel Kuri Breña

### Mijares Angoitia Cortés y Fuentes

Mijares Angoitia Cortés y Fuentes is known for providing excellent advice on corporate matters, but its banking practice has been strong in the last couple of years as well. Clients of Mijares Angoitia Cortés y Fuentes are satisfied with the firm's level of service: "The firm provided well thought-out, methodical advice, with no careless mistakes. They walked us through Mexican laws and Mexican structures, and were able to explain what items were worth fighting for during negotiations, which was indispensable."

But the firm's M&A practice has always been its strong suit, and 2008 was no exception. The tourism industry has been active, with foreign investors looking to take advantage of relatively inexpensive land. Mijares represented the international hotel group Fairmont in the sale of two of its hotels in Acapulco to Goodman Hospitality Investments, which made an immediate \$50 million capital investment in the properties.

Mijares participated in Mexican aspects of the takeover of US car manufacturer Chrysler by private-equity group Cerberus Capital Holdings for \$7.4 billion. Mijares, led by José Raz-Guzmán, represented DaimlerChrysler, as Daimler agreed to sell a majority share in the ailing Chrysler division to Cerberus.

Structured finance has been a particularly active practice area in 2008, and Mijares has been involved in some important securitisations. The firm represented a syndicate of underwriters, including Credit Suisse, Inversora Bursátil and Casa de Bolsa Grupo Financiero Inbursa, on a \$4.9 billion revolving structured debt securities programme issued by Ideal, a Mexican transport group. The proceeds of the offering will allow Ideal's subsidiaries to repay existing debt and invest in new infrastructure projects.

#### Leading lawyers

Francisco Fuentes Ostos  
Pablo Mijares Ortega  
José Raz-Guzmán

### Ritch Mueller

Ritch Mueller continues to build on its reputation as the go-to firm for capital markets transactions in Mexico. Competitors are virtually unanimous in their praise: "Ritch Mueller is the best firm in Mexico for financial work," says one. A client comments: "Ritch Mueller is very good, efficient, and professional. Because of that, they are well respected in the Mexican corporate community."

Ritch Mueller, led by Luis Nicolau, was counsel to Bolsa Mexicana de Valores, the Mexican stock exchange, on its June 2008 \$444 million IPO. This was the first Mexican IPO of the year. The proceeds will be used to enable BMV to exercise control over the derivatives exchange, among other businesses.

The firm works with international financial institutions in all manner of debt and equity issuances, but also has experience working with issuers. The firm advised Megacable Holdings, a Mexican telecoms company, and its selling shareholders, on the IPO of \$638 million participation certificates offered on the NYSE and the Mexican stock exchange.

The firm has become more involved in project finance as more work has become available. Ritch Mueller represented the consortium of 11 banks, led by Banco Santander, on a \$3.3 billion loan to Red de Carreteras de Occidente to fund a 30-year toll road concession. The toll roads were the first set released by the Farac privatisation programme through a competitive tender offer.

The firm has worked on some noteworthy M&A deals in the past year, parlaying its financial work for large international institutions into advising them on the M&A side. Led by Luis Nicolau and Federico Santacruz, the firm advised the Carlyle Group on its \$56.5 million purchase of Arabela Holdings.

#### Leading lawyers

Rodrigo Conesa  
Thomas Mueller-Gastell  
Luis Nicolau  
Carlos Obregón Rojo  
James Ritch  
Federico Santacruz

### White & Case

White & Case's international presence has earned the firm name recognition, but it is the quality of service coming out of the Mexican office that satisfies clients. "White and Case are first-rate, very professional, and always up to date in terms of changes in laws and developments in their areas of expertise," says one client.

The firm's banking and capital markets practice has always been exemplary. During a period in which shareholders have been relatively timid, White & Case has worked on some important deals in the debt and equity capital markets. On the debt side, the firm represented Corporación Durango, a Mexican paper and packaging company, in the offering and sale of \$520 million in senior notes. A portion of the proceeds was used to fund the repurchase of Durango's outstanding debt through a tender offer.

The firm has developed an expertise in restructurings and corporate turnarounds. The firm represented ING Americas and ING BV in their restructuring process. Once this was completed, the firm advised the same client on its sale of ING Insurance International, a casualty and life insurance business, to Axa Group for \$1.5 billion.

In June 2008, White & Case participated in the largest investment in greenfield projects in the Mexican highway system. The firm represented Ingenieros Civiles Asociados, Controladora de Operaciones de Infraestructura and FCC Construcción as sponsors of a highway project utilising \$581 million in syndicated loan financing. The project will be completed as a 30-year concession to build, operate and maintain a package of toll roads.

#### Leading lawyers

Vicente Corta  
Thomas Heather  
Alberto Sepúlveda Cosío

### Other notable firms

"Santamarina y Steta has historically been quite active in the M&A market," states a competitor. Led by Aarón Levet, the firm represented Goodman Hospitality Investments in their \$379 million acquisition of Pierre Marqués, Acapulco Princess and The Fairmont Hamilton Princess Hotels. The firm continued its work in the hospitality industry with its work on behalf of AIG Global Real Estate, representing the company in connection with its joint venture with a Mexican company for a \$74 million acquisition of five executive-class hotels.

#### Leading lawyers

Aarón Levet  
Juan Carlos Machorro  
Alberto Saavedra