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# Real Estate 2024

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DLA Piper LLP



# Chambers

Global Practice Guides

## Real Estate

Contributing Editors

John Sullivan and Matt Alshouse

**DLA Piper LLP**

2024

# MEXICO



## Law and Practice

### Contributed by:

Roberto Cannizzo, Carlo Cannizzo, Stefano Amato and Mauricio Moreno-Rey  
**Cannizzo**

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Contributed by: Roberto Cannizzo, Carlo Cannizzo, Stefano Amato and Mauricio Moreno-Rey, **Cannizzo**

**Cannizzo** was established more than 40 years ago and is one of the pioneers in large-scale real estate developments (projects that include different real estate components, such as golf courses, residential, commercial, hospitality and marinas). The firm has participated in many large-scale development projects, including marinas in Puerto Peñasco, Guaymas, Mazatlán, Puerto Vallarta, Cancun, Ixtapa and Los Cabos, which are the largest projects in those areas. It was active in the acquisition, structuring and development of projects such as Bosque Real, Puerto Cancun, Playacar and Mayakoba.

**Cannizzo** has participated in real estate transactions involving hospitality brands in Mexico, including Barceló, JW Marriott, Sheraton, Hyatt, Auberge, Fiesta Americana, Four Seasons, Fairmont and Hilton. In the industrial sector, **Cannizzo** has participated in several industrial acquisitions by Pirelli and Macquarie. In the retail and entertainment sector, the firm has provided advisory services to Cinemex in relation to 40 theatres, and more than ten shopping centres nationwide, as well as luxury brands, including Ermenegildo Zegna, Salvatore Ferragamo, Cartier and Lacoste.

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The logo for Cannizzo, featuring the word "CANNIZZO" in a large, blue, sans-serif font. The letters are outlined, and the "O" at the end is a solid blue circle. A thin horizontal line is positioned below the text.

## 1. General

### 1.1 Main Sources of Law

Mexico comprises 31 states and Mexico City. The Federal Constitution outlines the matters in which the Federal Congress is authorised to approve laws. Matters not expressly delegated to the Congress are considered reserved for each state. Consequently, the laws governing real estate and property ownership vary depending on the jurisdiction in which the property is located.

In corporate combinations (ie, mergers, purchase of shares) or trusts, typically the General Law of Commercial Companies, the Commercial Code and, in some cases, the Stock Market Law are applicable. Parties are free to choose the court with subject-matter jurisdiction, provided certain requirements are met. The main laws applicable to real estate transactions, depending on the value and nature of the transaction, are as follows:

- the Federal Constitution;
- Civil Code and tax laws of the state where the real estate is located;
- Agrarian Law;
- Income Tax Law;
- VAT Law;
- Foreign Investment Law;
- General Law of Commercial Companies;
- Stock Market Law;
- General Law of Ecological Balance and Environmental Protection;
- General Law of Securities and Credit Transactions;
- Federal Antitrust Law; and
- federal, state and municipal zoning and planning provisions.

### 1.2 Main Market Trends and Deals

Over the past 12 months, the real estate market in Mexico has been affected by the strong peso currency, rising inflation, and increased interest rates, causing a slowdown in many real estate transactions, including leasing, commercial and office space acquisition, mortgage transactions, and the construction industry.

On the other hand, residential and industrial real estate acquisitions and rentals experienced significant growth. According to reports from market participants, despite rising prices, the real estate sector is considered a safe investment opportunity to protect capital. Experts predict growth in Mexico's real estate sector this year, with industrial and tourism markets expanding the fastest.

Rising inflation worldwide and in Mexico has led central banks to increase interest rates, potentially impacting transaction volume and values for businesses.

Many companies have permanently adopted remote work or hybrid models. The recent amendment to the Federal Labour Law, which addresses remote work, highlights that the pandemic has led to lasting changes in office space usage and the residential real estate market, with an increasing number of workers now working from home.

The activities of authorities involved in real estate transactions, such as treasury offices, public registries and municipal offices, have returned to pre-pandemic levels. Some have permanently implemented digital processes for specific procedures that used to necessitate in-person filing of documents and applications.



The past year has seen significant deals involving the reconfiguration of industrial spaces due to “Nearshoring” becoming a trend, with a number of international businesses relocating operations to Mexico for improved supply chain control and proximity to the US market. Nearshoring generated approximately USD36 billion in Mexico in 2024. The Mexican Association of Private Industrial Parks (AMPIP) estimates the arrival of at least 450 foreign companies to Mexico between 2024 and 2025. AMPIP estimates that industrial space vacancies account for less than 1% of the total inventory. In 2023, Mexico Pacific Limited announced plans to invest USD14 billion in Sonora, for the development of a gas pipeline and liquefaction facility. Moreover, Tesla has announced the development of a USD5 billion “Gigafactory”, a large battery-production facility, to be built near the city of Monterrey by 2026.

### Impact of Disruptive Technologies

New technologies have impacted the real estate industry in Mexico. Investors in the sector have found new ways to invest, using blockchain technology, decentralised finance (DeFi) and proptech. These advancements have facilitated the expansion of acquisition portfolios, creation of marketplaces for fractional property ownership, and even fragmentation of mortgage debt. Blockchain technology has been embraced by the real estate industry because it brings transparency to transactions, reducing risk and processing time, and could ultimately eliminate unnecessary costs for buyers, such as search and no-liens expenses, notary public fees and registration costs.

Smart contracts and the strengthening of electronic commerce has also influenced the sector. Fintech start-ups involved in the real estate sector have created digital payment solutions, which, among other benefits, reduce the use of

paper cheques or cash. Such platforms facilitate smooth and secure transactions, conveniently enabling tenants to make rent payments online and property owners to receive payments electronically.

Lenders have benefited from the implementation of new technologies through risk assessment, algorithmic processes and data analysis. In the construction and development sector, contech has introduced collaborative software, improved financial management and reduced construction costs, making processes more efficient.

Moreover, the Law to Regulate Financial Technology Institutions provides a legal framework for new technologies, and the Mexican National Banking and Securities Commission (CNBV) grants authorisations to operate, so an increase in technology companies entering the market, including the real estate sector, is anticipated.

However, significant changes to business practices in the sector due to these technologies are unlikely within the next 12 months. The legal requirements of the Mexican civil law system necessitate notary public involvement and filings to transfer property titles and record mortgages, resulting in a formal and strict procedure for obtaining property title deeds under Mexican regulations.

### 1.3 Proposals for Reform

In March 2022, NOM-247-SE-2022, an Official Mexican Standard (*Norma Oficial Mexicana* or NOM) was published with the goal of protecting potential buyers from abusive market practices. NOMs are mandatory technical regulations. This particular regulation regulates buyer rights, seller obligations, guidelines for real estate advertising, and extended warranties against structural failures, among other aspects, in order to eliminate

informality and irregularities in property transactions. The provisions within the regulation are mandatory for suppliers such as builders, developers, and intermediaries involved in advising or selling real estate. It is also applicable to any individual or legal entity engaged in marketing residential property to the general public.

Further, the regulation outlines obligations for sellers concerning warranties. Coverage must be no less than five years for structural failures, three years for water leakage issues, and at least one year for all other problems. During the warranty period, defects must be repaired at the supplier's expense, and the supplier must provide documentation detailing how the warranty will be fulfilled.

## 2. Sale and Purchase

### 2.1 Categories of Property Rights

Mexican Civil Codes provide for several categories of property rights: full ownership, usufruct (the real and temporary right to enjoy the property of others, which includes the right to receive all the fruits/benefits, whether natural, industrial or civil, produced by the property) and other minor rights, such as use or certain easements. In infrastructure projects, rights of way or other types of easements are used for the construction of roads, gas and oil pipelines.

Another type of property is "Ejido property", which accounts for over 50% of the land in Mexico. Ejido property is a landholding in Mexico that is owned collectively by a community and is typically used for agriculture or other similar purposes. It is subject to a special regime, regulated by Article 27 of the Constitution and the Agrarian Law.

### 2.2 Laws Applicable to Transfer of Title

The law applicable to transfer of title, if the transfer is considered a commercial act by the Commercial Code, is the Civil Code of the relevant state where the real estate is located. If at least one of the parties is a merchant (including real estate for industrial purposes, offices, retail and hotels), the applicable law would be the Commercial Code and the Civil Code of the relevant state where the real estate is located.

In combinations involving corporations (ie, mergers, the purchase of shares) or trusts, the Commercial Code, General Law of Commercial Companies, the Stock Market Law and the General Law of Securities and Credit Transactions will apply.

For the transfer of title to Ejido property, the applicable law is the Agrarian Law.

### 2.3 Effecting Lawful and Proper Transfer of Title

In Mexico, the legal methods for acquiring property are usucapion, accession, succession by reason of death and by transfer, whether onerous (such as a sale and purchase agreement) or gratuitous (such as a donation agreement). The most common way to acquire property is by entering one of the following agreements:

- a purchase agreement, as defined in Article 2248 of the Civil Code for Mexico City, whereby one party agrees to transfer ownership of goods or a right, and the other party agrees to pay a specific price for it;
- a trust agreement, as defined in Article 381 of the General Law of Securities and Credit Transactions, whereby a trustor, by virtue of a trust, transfers the ownership of one or more goods or rights to a trust institution (trustee) for lawful and specified purposes, with the

trust institution responsible for realising those purposes; in an administration trust, the trustee maintains ownership of the goods or right, and the beneficiary is considered the holder of the trust rights; and

- corporate combinations (mergers or purchase of shares).

All transfers of title of real estate in Mexico are formalised before a notary public or judge, registered in the Public Registry of Property (RPP) of the state where the real estate is located or in case of agrarian property in the corresponding agrarian registry.

Protection of bad title is usually included in the purchase agreement as an indemnity in case of eviction. Although title insurance is available in Mexico, it is uncommon, as is insurance to cover contractual liability resulting from breaches of the seller's representations and warranties in an acquisition agreement. Instead, indemnity is often supported by an escrow holdback, a price adjustment, or a combination of both.

While the COVID-19 pandemic has not led to new processes or procedures for completing real estate transactions due to the Mexican civil law legal system's requirements for a notary public and specific filings, it has significantly increased the digital execution of private documents.

## 2.4 Real Estate Due Diligence

Buyers usually carry out real estate due diligence through their legal advisers. The matters typically involved in real estate due diligence are as follows.

- Ownership – to be performed by the attorneys. Encumbrances on the real estate (including liens and some litigation aspects) may be identified through the request of a real

estate background folio, from the RPP. Payment of real estate taxes and utilities for the past five years, which, generally, is the applicable statute of limitations for tax payments, are also requested. In certain cases, searches are conducted to determine the existence of agrarian issues, mainly by reviewing the title chain and determining if the process to have the property become private property were completed. In the case of agrarian properties, there are other aspects to be reviewed, such as the records of the property in the Agrarian Registry.

- Corporate – to be performed by the attorneys. Liens on the company through the request of a commercial folio from the Public Registry of Commerce of the area where the company is located.
- Agreements – to be performed by the attorneys. The scope of the review of agreements in the context of a real estate business combination (ie, merger, purchase of shares) varies depending on the structure of the transaction.
- Assuming the transaction is the direct purchase of real estate, the review should cover at least:
  - (a) the last sale-purchase agreement that transferred the property of the real estate and the chain of title;
  - (b) any agreement that may affect the property, such as leases, commodatum, usufruct and easements;
  - (c) federal zone concessions; credit agreements, if the real estate is subject to a mortgage, trust or any encumbrance on the property;
  - (d) agreements regarding services, maintenance, repair or supply of assets or utilities;
  - (e) franchise agreements;
  - (f) insurance policies; and

- (g) management, licensing and operation agreements.
- Environmental – to be performed by the attorneys and environmental specialists for phases I and II, and authorisations reviews.
- Tax matters – to be performed by the tax advisers.
- Disputes – to be performed by the attorneys.
- Surveys, usually under American Land Title Association standards – to be performed by professional surveyors, ALTA surveys, zoning confirmations, analysis to determine if the real estate is in an archaeological zone or historical monument, etc.

## 2.5 Typical Representations and Warranties

The most common representations and warranties agreed in sale and purchase agreements typically involve the seller's faculties, legitimate ownership of the real estate, absence of liens or limitations affecting the real estate (including archaeological limitations or easements), no outstanding payments (including taxes), no land use issues, existence of permits, and no agrarian issues. In relation to the environmental representations, these often pertain to the existence of certain permits or licences as well as the absence of any contamination, which is frequently qualified by the seller's knowledge. This is one of the reasons why a phase I is required, and, depending on the asset or the results of the other studies, a phase II study may also be required.

COVID-19 pandemic representations and warranties, even if not required in all cases, relate to running businesses such as hotel/office buildings and include the non-existence of health situations, claims, procedures by the authorities, and the existence of sufficient insurance coverage, mainly business interruption.

In transactions involving corporate combinations, such as mergers or share purchases, typical M&A representations and warranties are included. It is important to mention that, in some cases, where transactions are structured as an asset acquisition (real and movable property, assignment of permits and licences), there is a risk that some authorities may treat the transaction as a business acquisition. In such cases, the seller's obligations, such as tax or labour-related liabilities, may carry forward to the acquiring entity if the seller has breached their obligations with relevant authorities, like tax authorities.

In real estate transactions, there are certain statute indemnification provisions that arise from the law, where the seller shall guarantee the qualities of the thing sold and respond in case of eviction, meaning the seller is liable to the buyer if the purchased property is taken away from the buyer by a third party claiming to have a prior and preferential right of ownership over the purchased property.

To protect against seller misrepresentation, purchase agreements often include indemnities and/or provisions for payment of damages. Similar to common law jurisdictions, a variety of negotiated provisions address remedies and misrepresentations (such as maximum cap, survival period, basket, joint liability, anti-sandbagging clauses, etc). Typically, indemnities are supported by an escrow account or other types of holdback arrangements, or by joint liability of parent companies. While representations and warranties insurance is available in Mexico, it is not commonly used in transactions.

## 2.6 Important Areas of Law for Investors

The main areas of law to which an investor must pay attention when acquiring real estate are tax aspects (mainly determined by the Federal Tax

Code, the Income Tax Law and local real estate acquisition provisions), environmental aspects, urban development and construction limitations, and limitations imposed on the use of the real estate: eg, in terms of leasing, especially for residential purposes, limitations that may result depending on where the real estate is located (eg, federal zone residential restrictions). It is important for the investor to understand that there are specific laws which apply to the “Ejido Properties”.

## 2.7 Soil Pollution or Environmental Contamination

Although it is common practice to include provisions in agreements that hold the seller responsible for environmental liability, the buyer may also bear responsibility before the environmental authority for the environmental condition of the land and its remediation.

## 2.8 Permitted Uses of Real Estate Under Zoning or Planning Law

In terms of the provisions of the Constitution, the municipalities in Mexico are the entities authorised to regulate zoning and planning matters following guidelines set forth by the Federal Congress and the states. Thus, to determine the land use of specific real estate, it is necessary to analyse the applicable laws (zoning and planning). At the state level, the applicable provisions might be found in the State Partial Development Plans; and, at the municipal level, in the Municipal Development Plans, the Urban Development Plans that determine the main land use of the urban centres, and, sometimes, the Detailed Plans. To confirm the land use of a given real property, the purchaser must review the land use zoning certificate and licence issued by the competent authority.

In environmental matters, at the federal level there are General Ecological Plans that regulate the use of land to protect the environment and promote sustainable development, while State Ecological Partial Plans and sector-specific programmes address agricultural, territorial and urban development issues, as well as matters related to protected natural areas. Additionally, ecological reserves are established to protect specific flora and fauna, imposing limitations on human activities within these areas.

Although it is not common to enter into specific development agreements with the relevant public authorities to facilitate a project, it can occur if the authority is interested in a specific project due to its size or impact on urban development. In practice, this has been seen in the case of large-scale developments that may include marinas, golf courses, residential, hospitality, commercial, hospitals, etc.

## 2.9 Condemnation, Expropriation or Compulsory Purchase Expropriation Law

### *Possible reasons*

The Mexican government is authorised at the federal and local levels to expropriate the property of individuals for public utility purposes. Causes of public utility include:

- establishment, operation or conservation of a public service;
- opening, expansion, construction or alignment of streets, roads, bridges, paths and tunnels to facilitate urban and suburban traffic;
- beautification, expansion and sanitation of towns and ports;
- construction of hospitals, schools, parks, gardens, sports fields or airfields; and

- construction of public infrastructure and services.

## The Procedure

The expropriation procedure begins with a declaration of public utility by the authority published in the Federal Official Gazette and, where appropriate, in a local newspaper, and the owners of the property and rights to be affected will be personally notified to respect their right to due process. If applicable, after the process of filing evidence and allegations, the judge will issue the corresponding resolution and, subsequently, the Federal Executive will decree the relevant expropriation that will be published again in the Federal Official Gazette. The relevant decree, together with the appraisal in which the amount of the compensation will be fixed, will be notified to the interested parties, who may then go to court. The price fixed as compensation must be equal to the commercial value of the property, and in no circumstances may it be less than the fiscal value shown in the cadastral offices. Once decreed, the authority is authorised to occupy the property.

The applicable law (ie, the Expropriation Law) provides for the existence of temporary occupation, total or partial, and the simple limitation of ownership rights, which may be decreed for reasons of public utility.

## National Law on Ownership Extinction

The National Law on Ownership Extinction governs the process of extinguishing property ownership in favour of the state, either through the federal government or the states, as applicable. According to the law, property can be subject to ownership extinction if it is the product, instrument or material object of certain specified crimes. These crimes include:

- offences under the Federal Law against Organised Crime;
- kidnapping;
- crimes involving hydrocarbons, oil and petrochemicals;
- crimes against health;
- human trafficking;
- corruption;
- concealment;
- crimes committed by public servants;
- vehicle theft;
- extortion; and
- offences outlined in the Federal Criminal Code relating to transactions involving resources of illicit origin.

## 2.10 Taxes Applicable to a Transaction

If real estate is acquired through a direct purchase of assets, different taxes and rights must be paid, namely:

- Property Acquisition Tax, which is paid by the purchaser and varies depending on the state where the property is located – it is usually between 2% and 6%;
- VAT on the value of the construction (unless it is a residence or lot), paid by the purchaser at a 16% rate; and
- income tax, paid by the seller and calculated on the net gains from the sale of the property.

Certain deductions are available (ie, acquisition cost, construction, improvements and extensions, notary expenses and commissions).

Finally, there are registration fees that the purchaser pays to the RPP and for obtaining certificates (no liens certificates, no tax debts certificate, etc).



When the seller is an individual or foreign tax resident, taxes are withheld by the notary public who formalises the transaction.

If a purchase is performed through share acquisition, only income tax will be generated.

## 2.11 Legal Restrictions on Foreign Investors

In principle, foreigners can acquire real estate in Mexico, with the exception of properties located within the restricted zone (100 km-wide strip along the border or 50 km-wide strip inland from the beaches). However, foreigners may participate with 100% of the equity of corporations, including in the restricted zone, provided the property will not be used for residential purposes.

A foreigner can own property located in the restricted zone through a trust, by holding beneficiary rights, which will grant to the beneficiary practically all the benefits of an owner.

## 3. Real Estate Finance

### 3.1 Financing Acquisitions of Commercial Real Estate

Acquisitions of commercial real estate are generally financed by a loan facility whose terms and conditions will depend on the creditworthiness of the borrower and the collateral available.

There are different financing options for the acquisition of large real estate portfolios or companies holding real estate. In addition to a loan facility with collateral (mortgage, pledge, etc), other options include acquiring the seller's debts or swapping shares, depending on the transaction and the parties involved.

### 3.2 Typical Security Created by Commercial Investors

A commercial real estate investor who is borrowing funds typically creates the securities requested by lenders. Lenders usually request mortgages, trusts, shares pledges, furniture, fixtures and equipment pledges (FF&E pledges), cash deposits, etc.

Lock boxes, trusts or other forms of cash control may also be requested by the lender. Depending on the nature and function of the real estate, the borrower may create reserves for maintenance, insurance and improvements.

The most common equity financing provisions include the following:

- equity financing – the amount of investment versus the participation percentage of the company's equity;
- access to the books and records;
- reporting and covenants;
- expected return for equity;
- the right to appoint directors; and
- investment restrictions, limiting the use of invested funds to certain projects or purposes.

### 3.3 Restrictions on Granting Security Over Real Estate to Foreign Lenders

There are no restrictions on granting securities over real estate to foreign lenders or on repayments to foreign lenders under loan or security agreements. However, taxes may be withheld from the interest paid, which in some cases depends on the tax residence of the lender and whether there is a double taxation treaty with the lender's country of residence.

The acquisition of real estate by foreign lenders as result of a mortgage foreclosure could be

subject to restrictions based on its location and use.

### 3.4 Taxes or Fees Relating to the Granting and Enforcement of Security

The granting of security over real estate does not trigger taxes. However, notary public fees and registration fees to the RPP should be paid, and in certain locations, such as Cancun, the payment of a transfer tax (ISABI) is mandatory. Notary public fees and registration fees usually vary from state to state, depending on the amount secured. Enforcing a real estate security results in the same taxes as acquiring the property (see **2.10 Taxes Applicable to a Transaction**).

It is important to consider that in some cases, depending on the lender, where there is a foreclosure procedure, particularly when collateral is owned by a private individual, the lender may end up having to pay the borrower's taxes (income tax and/or VAT on constructions) arising from the transfer of the property as part of the foreclosure procedure. The notary public is responsible for withholding these taxes.

### 3.5 Legal Requirements Before an Entity Can Give Valid Security

There are no special legal rules or requirements the entity must comply with to grant a valid security, other than complying with the regulations included in its by-laws, to avoid ultra vires acts.

### 3.6 Formalities When a Borrower Is in Default

In typical real estate transactions, collateral is structured through mortgages or security trusts. If a borrower defaults, the lender must initiate a foreclosure legal procedure in the case of a mortgage. For securities granted through trusts, the process follows the rules set forth in the rel-

evant trust agreement, with the trustee usually acting as the executor.

When other creditors of the borrower have security interests in the same asset, priority is generally established in the document through which the security was granted. In such cases, the judge will order the notification of other creditors about the existence of the lawsuit or procedure, allowing them to participate in the process.

Under Mexican law, in situations where the borrower has other creditors, the mortgagee or trustee has priority over other creditors when it comes to collecting from the secured asset.

### 3.7 Subordinating Existing Debt to Newly Created Debt

It is possible for existing secured debt to become subordinated to newly created debt by agreement of the parties involved. There are certain legal obligations which have preference in relation to pending debt or securities, such as tax and labour credits, under certain circumstances and with limitations.

### 3.8 Lenders' Liability Under Environmental Laws

A lender holding or enforcing a real estate security is not liable under environmental laws for any pollution of the real estate if it did not cause it. In terms of the Federal Environmental Liability Law, the individual or legal entity which, through its action or omission, directly or indirectly damages the environment, is liable and must repair the damage, or, where repair is not possible, shall be liable for environmental compensation.

### 3.9 Effects of a Borrower Becoming Insolvent

Under Mexican law, a borrower's security interests in favour of a lender cannot be deemed



invalid solely due to the borrower's insolvency. However, if a borrower's grant of security affects their creditors and leads to the borrower's insolvency, the creditors may request that the security be declared void, as long as their claim precedes the grant.

### 3.10 Taxes on Loans

In Mexico, when participating in real estate transactions, lenders and borrowers must take into account the payment of recording fees or similar charges in connection with mortgage loans. These charges typically involve fees associated with registering mortgage deeds or other relevant documents with the RPP. The recording taxes or fees in the RPP are generally imposed at the state level and can vary from one state to another. Additionally, there may be fees charged by notaries, and these are typically calculated based on the value of the mortgage or the amount being financed through the loan. In practice, it is borrowers who usually absorb the aforementioned fees in relation to mortgage or mezzanine loans, though this may vary depending on the transaction and the agreement between the parties.

## 4. Planning and Zoning

### 4.1 Legislative and Governmental Controls Applicable to Strategic Planning and Zoning

In Mexico, municipalities are the entities authorised to regulate planning and zoning matters, following certain guidelines established by the Federal Congress and the states. At state level, the applicable provisions are in the State Partial Development Plans, and, at the municipal level, in the Municipal Development Plans and the Urban Development Plans. In addition, see the

environmental provisions in **2.8 Permitted Uses of Real Estate Under Zoning or Planning Law**.

### 4.2 Legislative and Governmental Controls Applicable to Design, Appearance and Method of Construction

For legislative and government controls typically applicable to the design, appearance and method of construction of new buildings or refurbishment of existing buildings, see **2.8 Permitted Uses of Real Estate Under Zoning or Planning Law** and construction regulations. In addition, various aspects, modalities and limitations regarding the construction and refurbishing of existing properties are usually included in the provisions that regulate condominiums, which are regulated by local laws.

### 4.3 Regulatory Authorities

In relation to the regulation of the development and designated use of individual parcels of real estate, see **2.8 Permitted Uses of Real Estate Under Zoning or Planning Law**.

The most common requirements set forth by plans involve the protection of natural resources, proper implementation of services, and integration with the surrounding environment. Additionally, these plans often impose legal restrictions, such as the prohibition of urbanisation in certain areas, the requirement to leave specific areas free of construction, and restricted areas due to the presence of railway facilities, drinking water systems, drainage, electricity, telecommunications and roads.

The authority responsible for oversight typically depends on the jurisdiction; municipal or state authorities are usually involved. However, for certain projects, particularly those in coastal areas or involving archaeological sites or historical monuments, federal authorities may also be

required to participate. Examples of such federal authorities include the Ministry of the Environment and Natural Resources (SEMARNAT) and the National Institute of Anthropology and History (INAH).

## 4.4 Obtaining Entitlements to Develop a New Project

### Local Licences and Permits

In order to be legally entitled to develop a new project and carry out a major refurbishment, it is necessary to obtain, at a local level, a construction licence to be able to build, extend, modify, repair, install, demolish and dismantle a work or installation. Also, in certain cases, building permits for historical monuments and archaeological zones are required. In the case of Mexico City, due to water supply shortages, water feasibility documents issued by the government are sometimes required.

### Third-Party Objections and Approval

Considering that the regulation of construction matters is the responsibility of each state, it is necessary to analyse local construction regulations to determine the rights of third parties to object to construction projects. In certain projects, an Environmental Impact Authorisation is required, involving third parties and, in some cases, neighbours, or a public consultation procedure is initiated. Finally, third parties can file appeals against the issuance of construction licences.

In the case of environmentally sensitive infrastructure projects, which may include pipelines, the community may be part of the process through a public consultation.

## 4.5 Right of Appeal Against an Authority's Decision

An appeal for review is available against a refusal to grant a construction licence for any type of work, or other decisions arising from construction regulations. Likewise, nullity and amparo proceedings may be initiated. Depending on the authority, it is also common for other procedures to be initiated, in the event that a new project is not approved.

## 4.6 Agreements With Local or Governmental Authorities

Agreements with the authorities or with utility suppliers are usually required in the following areas:

- the provision of public services such as electricity, drinking water and sewerage;
- the development of destination areas for infrastructure, urban equipment, green areas and roads for real estate developments; and
- concessions (such as ZOFEMAT (Federal Maritime Terrestrial Zone) and port authorisations).

In some cases, where the projects have certain density or requirements, the developer might enter into agreements with the authorities to build certain infrastructure, which may include treatment plants, roads, energy infrastructure, etc, and then have the said infrastructure assigned to the municipality or to the energy company (CFE).

## 4.7 Enforcement of Restrictions on Development and Designated Use

Failure to comply with the restrictions on development and designated use are sanctioned by each state or municipality depending on the location of the real estate and on the relevant violation. Sanctions usually include the tempo-

rary suspension of the project, cancellation of the authorisations granted, closure of the project, fines and arrest for up to 36 hours.

## 5. Investment Vehicles

### 5.1 Types of Entities Available to Investors to Hold Real Estate Assets

The most common vehicles for acquiring real estate in Mexico are commercial companies and the most frequently used are the stock company (*sociedad anónima*) and the limited liability company or LLC (*sociedad de responsabilidad limitada*), both of variable capital, and trusts. These are the most widely used forms because they have perfect patrimonial autonomy.

#### The Stock Company

The stock company is composed of shareholders whose liabilities are limited to the amount of their contributions. Its capital is represented by negotiable certificates, and it is the only form of corporation whose shares may be traded on the stock exchange.

#### The LLC

The LLC is composed of partners whose liabilities are limited to the amount of their contributions. For the transfer of equity and the admission of new partners, the consent of the partners representing the majority of the capital stock is necessary. LLCs are often used by US residents because they can be treated as transparent entities for US tax purposes.

#### The Trust

In the case of a trust, the property is owned by the trustee who is a regulated financial institution. Trusts are commonly used, since in many cases it is easier to determine the various obligations of the trustors and beneficiaries, vis-à-

vis shareholders'/partner's agreements, such as contributions by each trustor, reversion of the property if certain conditions are not met, etc.

#### The FIBRA

Another vehicle widely used to acquire real estate is FIBRA (*Fideicomisos de Infraestructura y Bienes Raíces*), or REIT. See also 5.3 REITs.

#### Other Structures

Other structures currently used for these types of transactions include real estate investment companies (SIBRAs), development capital certificates (CKDs) and investment project fiduciary securitisation certificates (CERPIs).

### 5.2 Main Features and Tax Implications of the Constitution of Each Type of Entity

Mexican companies must be incorporated before a notary public or a commercially authorised person (*corredor público*). All of the constituent shareholders or partners (a minimum of two), or attorneys-in-fact, must be present upon the incorporation of the company. For incorporation, it is necessary to do the following:

- obtain a permit, to use the company's name; indicate domicile, purpose, amount of authorised capital and its division into shares (or equity membership); and
- indicate the internal rules of the company governing:
  - (a) shares (or equity membership), the transfer and issuing of shares;
  - (b) calling, holding, proceedings, quorum and powers of general meeting;
  - (c) appointment, removal, conduct and powers of attorney of the directors or the sole administrator and auditors;
  - (d) payment of dividends; and
  - (e) dissolution and liquidation of the company.

The by-laws containing all the above information may be drafted either by a lawyer or by the same notary public or commercially authorised person (*corredor público*) who will incorporate the company.

## FIBRAs

To incorporate a FIBRA, the parties must have at least 70% of their assets invested in real estate, be engaged in the purchase or construction of real estate to be leased, and distribute among the holders at least 95% of the tax result of the previous year.

## SIBRAs

SIBRAs operate in a similar manner to FIBRAs; however, they are commercial companies incorporated under Mexican law instead of trusts. As with FIBRAs, real estate developers receive some tax benefits for using a SIBRA as a financing and structuring mechanism for their project.

## CKDs

CKDs are securities that are issued through an irrevocable trust. Initial patrimony is formed with the proceeds of the placement and is used to invest in or to finance Mexican companies, either directly or indirectly, through various investment vehicles. CKDs are designed to allow the flow of resources to finance projects that consume resources in the short term and later generate long-term flows.

## CERPIs

CERPIs are similar to CKDs; however, only qualified investors can own CERPIs.

## 5.3 REITs

FIBRAs (REITs) are investment vehicles listed on the Mexican Stock Exchange (BMV) for the acquisition and construction of real estate for leasing. At present, Mexican law solely per-

mits publicly traded FIBRAs. FIBRA assets may comprise a wide range of properties, spanning from industrial facilities such as warehouses and manufacturing sites, to corporate spaces such as offices and work areas, as well as commercial premises including malls, plazas and department stores. Legally, a minimum of 70% of a FIBRA's portfolio must be allocated towards the following:

- real estate assets designated for rental or accommodation purposes;
- procurement of rights which result in rental income; or
- providing financing for the acquisition or development of real estate assets intended for leasing.

The majority of FIBRA certificates are available for issuance, purchase and acquisition by both domestic and foreign investors who hold investment agreements with authorised institutions in Mexico. Trust certificates are offered to the general public through a public offering in the stock market. Holders of trust certificates issued by a FIBRA will be entitled to receive dividends at least once a year for at least 95% of the result of the immediately preceding fiscal year. Such distributions shall be made no later than March 15th of each year. FIBRA is typically used because it is considered a tax pass-through entity and allows for more flexible structuring of real estate combinations than may be achieved through a corporation.

## 5.4 Minimum Capital Requirement

For a stock company, there is no mandatory minimum capital stock required by law. The initial minimum capital stock is determined by the shareholders upon incorporation.

For an LLC, there is also no mandatory minimum capital required by law. The LLC's capital will be divided into equity memberships, with each membership representing at least MXN1 or a multiple of that amount. However, there is a restriction on the number of partners allowed in an LLC, with a maximum of 50 partners.

## 5.5 Applicable Governance Requirements

### Stock Companies and LLCs

The obligations of a stock company and LLC are imposed on the directors by law and by the company's by-laws. The directors are jointly liable with the company for compliance with legal and statutory requirements as follows:

- in relation to the dividends;
- for the existence and maintenance of the accounting, control, recording, filing or reporting required by law;
- for the fulfilment of the shareholders'/partners' resolutions; and
- for the creation of the reserve fund required by law.

Some other special liabilities are provided by law.

Generally, a company's officers include at least one director (who, in such a case, will act as sole administrator). Furthermore, stock companies must designate one or more statutory auditors; this requirement does not apply to LLCs. Directors or employees of a company cannot be internal auditors for that company.

### FIBRAs

FIBRAs must comply with certain corporate governance standards and best practices among shareholders, investors, management and the

technical committee, like all companies listed on the Mexican Stock Exchange (BMV).

## 5.6 Annual Entity Maintenance and Accounting Compliance

In Mexico, there is no annual fee/tax for the simple existence of a company. Since companies are subject to periodic compliance with administrative and tax requirements, the maintenance cost will depend on the nature, complexity, volume and frequency of the transactions and operations carried out.

## 6. Commercial Leases

### 6.1 Types of Arrangements Allowing the Use of Real Estate for a Limited Period of Time

Mexican civil law recognises four arrangements that allow a person to occupy and use a real property for a limited period, without buying it outright:

- the lease (*arrendamiento*), ie, the agreement through which one of the parties grants to the other party the right to temporarily use or enjoy a property, and the other party agrees to pay a certain price for such use or enjoyment;
- the commodatum or free lease (*comodato*), ie, the agreement through which one of the parties grants to the other party the free use of a property;
- the real right of occupation (*habitación*), which grants to the right-holder the right to freely occupy part of another person's house, for themselves and/or family members; and
- the real right of usufruct (*usufructo*), ie, the real and temporary right to enjoy another person's property and to receive all the fruits,

whether natural, industrial or civil, produced thereby.

## 6.2 Types of Commercial Leases

Mexican civil law recognises only one type of lease agreement, although specific rules are provided in the federal and state civil codes, depending on the purpose or location of the leased premises.

## 6.3 Regulation of Rents or Lease Terms

Rentals and lease terms are usually freely negotiable, however, there are certain legal provisions within the regulation provided by the federal and state civil codes that are binding and non-negotiable/waivable since they are considered as public interest provisions. These are usually provisions applicable to residential leases, although certain state civil codes may also provide restrictions to other types of leases, such as maximum duration of the lease (ie, 20 years for commercial leases). It is always recommended to review the set of rules provided by the applicable state civil code.

The government has not yet enacted any legislation directly affecting leases because of the COVID-19 pandemic. However, it should be noted that civil codes already contain legal provisions applicable to the impediment of the use of leased premises, mainly in commercial leases where the leased premises cannot be operated due to a force majeure. For example, Article 2431 of the Federal Civil Code, also applicable to commercial leases, provides that, if, by reason of an Act of God or force majeure, the tenant is completely prevented from using the leased premises, no rent shall be due while the impediment lasts, and if such impediment lasts more than two months, the tenant may request the termination of the agreement. Similar provisions are

included in the civil codes of the various states of Mexico.

Furthermore, in some state civil codes, the “unforeseeability theory” is acknowledged, the spirit of which is to seek a balance between the mutual obligations undertaken by the parties in the event that there are extraordinary and unforeseeable national events that make the obligations of one of the parties more onerous. In such a case, the affected party may take action to have the balance between the obligations restored, under certain conditions and circumstances.

## 6.4 Typical Terms of a Lease Length

Normally, the length of a lease term is freely negotiable; however, it must be taken into account that civil codes may contain provisions for minimum and maximum terms. For example, the minimum term of a residential lease agreement, pursuant to the Civil Code for Mexico City, is one year for both parties, and may be extended at the tenant’s will for up to one more year, under certain circumstances. Lease of real properties destined for commerce and industry, under the same Code, cannot exceed 20 years. Landlords and tenants may freely determine whether a term is binding and may even agree on penalties to be paid if the binding term is breached by any party.

## General Rules

General rules contained in the federal and state civil codes establish that the landlord is liable for defects in the leased property that may prevent the use thereof, even if the landlord was not aware of the defects or they occurred during the lease term, provided they are not a consequence of the tenant’s negligence. On the other hand, the tenant is responsible for minor repairs



required from the use of the leased property. Standard provisions stipulate that the landlord must maintain the structure of the property and perform extraordinary maintenance, while the ordinary maintenance is usually the responsibility of the tenant, who must reinstate the property to its original pre-let state, accounting for ordinary wear and tear from usage. However, the parties may negotiate and agree on the allocation of maintenance responsibilities.

Rental payment frequency is flexible and determined by both parties, with monthly payments being the most common arrangement.

Regarding COVID-19 issues, refer to **6.3 Regulation of Rents or Lease Terms**.

Lastly, regarding construction build-out or supply chain issues, there are no specific provisions under the law, so these matters should be negotiated and agreed upon by the parties.

## 6.5 Rent Variation

Mexican civil law allows for flexible negotiation of rental updates between parties, without imposing binding or automatic updates. The standard practice is to update rent annually by applying the same percentage increase as the National Consumer Price Index, published in the Federal Official Gazette by the National Institute of Statistics and Geography. In some cases, additional points may be added to this percentage. For lease agreements involving premises in shopping centres, it is possible for the tenant to pay a variable rent, either in addition to or as a replacement for the fixed monthly rent. This variable rent is typically calculated as a percentage of the tenant's net sales.

## 6.6 Determination of New Rent

Rental increases or changes are negotiable between parties. The standard practice involves applying an agreed-upon percentage increase to the existing monthly rent at the end of a specified period, typically on an annual basis. Semi-annual increases are less common but still possible. In the case of new developments, such as shopping centres, rent increases might also be tied to the number of stores open or the centre's capacity.

## 6.7 Payment of VAT

VAT is 16% and payable on the rent of real estate used for commercial purposes. Rents payable under lease agreements for residential purposes are not subject to VAT, unless the leased premises include furniture.

## 6.8 Costs Payable by a Tenant at the Start of a Lease

It is customary for tenants to pay the first month's rent in advance, plus a security deposit, typically equivalent to one or two months' rent. The deposit is held by the landlord as a guarantee to ensure the tenant fulfils their obligations under the agreement. In commercial leases (shopping centres), the landlord (or previous tenant) may also request a one-time payment referred to as goodwill or key money, the amount of which usually depends on the standards and success of the shopping centre.

## 6.9 Payment of Maintenance and Repair

Costs and expenses associated with maintenance and repair of common areas used by several tenants are usually charged to and paid by those same tenants to the landlord, building manager or shopping centre manager, as "condominium quotas" or common area maintenance fees. Condominium or shopping centre regulations usually establish how such quotas

are allocated among the co-owners/users of the common areas. Leases of premises located in shopping centres may also require payment of a certain amount or percentage of the rent as advertising/marketing fees. Such fees and quotas are usually payable on a monthly basis.

## 6.10 Payment of Utilities and Telecommunications

Utilities and telecommunications that serve a property occupied by several tenants are usually paid on a pro rata basis and reflected in the maintenance.

## 6.11 Insurance Issues

Neither federal nor state civil codes specifically address insurance requirements for leased properties. However, tenants are generally expected to obtain an insurance policy covering civil liability and fire, as fire-related damages are the tenant's responsibility under federal and state civil codes.

Landlords typically take out insurance cover for the property of leased premises. In commercial and industrial leases, tenants may sometimes be responsible for taking out and paying for insurance cover for the property, including for risks such as earthquakes and floods. Insurance for common areas is usually included in the maintenance fees charged to tenants.

Tenants primarily obtain insurance related to the property itself. Unless financing is involved, it is not customary to have business interruption insurance in Mexico, which primarily covers property closures due to Acts of God or force majeure. It is not standard practice to include insurance cover for pandemics or similar situations.

## 6.12 Restrictions on the Use of Real Estate

Pursuant to the federal and state civil codes, the tenant must use the leased property solely for its agreed-upon purpose or pursuant to its intended nature and destination. If a tenant violates this provision, the landlord has the right to terminate the lease agreement.

## 6.13 Tenant's Ability to Alter and Improve Real Estate

The federal and state civil codes stipulate that a tenant cannot alter the form of the leased property without the landlord's express consent. If such provision is breached, the tenant is responsible for restoring the leased property to its original state and paying the damages caused to the landlord. Usually, improvements are paid by the tenant; in exceptional cases, the landlord must pay them if they are useful, urgent or authorised improvements.

## 6.14 Specific Regulations

Premises used for commercial, industrial, office or retail purposes are usually subject to the same set of rules. The federal and state civil codes contain a specific set of rules for residential and rural properties.

- Properties intended for residential purposes – specific rules are provided in the civil codes to address, among other things:
  - (a) hygiene and health conditions, and minimum term of lease;
  - (b) the preferential right of the tenant to acquire the leased property or enter into a new lease; and
  - (c) currency for payment of the rent.

Rules applicable to residential leases are usually considered to be of public order and social interest, and, therefore, they are not waivable.



- Rural property – specific rules are provided in the civil codes to address, among other things:
  - (a) the terms for payment of rent;
  - (b) the rights of the tenant in the event of lack of productivity of the leased property; and
  - (c) the minimum term of the lease.

No specific COVID-19 legislation has been enacted. In addition to what was discussed in **6.3 Regulation of Rents or Lease Terms** regarding the “unforeseeability theory”, it should be noted that judicial criteria have established that such a theory does not apply to commercial acts; therefore, its application to commercial leases could be challenged.

### 6.15 Effect of the Tenant’s Insolvency

The Law on Commercial Insolvency (*Ley de Concursos Mercantiles*) provides that a tenant’s commercial insolvency does not terminate a lease agreement. However, the conciliator appointed for the insolvency procedure may terminate the agreement, in which case the compensation agreed in the lease must be paid to the landlord, or, failing that, an indemnity equal to three months’ rent, for early termination.

### 6.16 Forms of Security to Protect Against a Failure of the Tenant to Meet Its Obligations

The most common security requested by landlords to ensure tenants’ compliance under lease agreements are:

- security deposit (*depósito*), usually one or two months’ rent;
- bond policy (*fianza*), issued by a bond institution, which guarantees the fulfilment of a tenant’s obligations;
- letter of credit; and/or

- a joint and several obligation by a third party (*obligado solidario*).

### 6.17 Right to Occupy After Termination or Expiry of a Lease

Generally, a tenant is not entitled to continue occupying the leased property after the termination of the lease agreement, and the landlord is entitled to enforce eviction. However, if the tenant continues to occupy the property without any objection from the landlord, the lease agreement will continue for an undetermined period. In such a case, either party may terminate the agreement by giving 30 days’ written notice to the other party in the case of residential property and one year in case of rural, commercial or industrial properties.

### 6.18 Right to Assign a Leasehold Interest

The tenant may not sublet the leased property or a portion thereof, or assign the tenant’s rights, without the consent of the landlord. If breached, both the tenant and subtenant will be liable for damages.

### 6.19 Right to Terminate a Lease

Pursuant to the federal and state civil codes, a landlord is entitled to terminate a lease in the following cases:

- failure to pay the rent;
- failure to use the property for the agreed-upon use;
- subletting of the property, without the landlord’s consent;
- material damages to the leased property attributable to the tenant; and
- where the tenant modifies the form of the leased property, without the express consent of the landlord.

On the other hand, a tenant is entitled to terminate a lease in the following cases:

- the leased property is not in a good condition;
- total or partial loss of the leased property; and
- hidden defects or flaws in the property prior to the lease and unknown to the tenant.

The parties may also agree on events of default different from or in addition to those provided by the law.

## 6.20 Registration Requirements

The civil codes require lease agreements to be in writing.

The state civil codes may provide certain registration requirements. The Civil Code for Mexico City, for example, establishes that lease agreements with a six-year term (or more) must be recorded in the RPP, or when advance payments of more than three years rent are made.

## 6.21 Forced Eviction

The landlord is entitled to terminate the lease agreement and start a procedure to enforce eviction when a termination cause provided by law or the lease agreement, occurs. The duration of the eviction process may vary, but on average it may last up to two years.

No eviction moratoriums or related restrictions were implemented by the government during the COVID-19 pandemic.

## 6.22 Termination by a Third Party

Expropriation of the leased property for public utility and judicial sale are grounds for termination. The landlord and tenant are entitled to receive an indemnification from the competent authority. The landlord will be indemnified in accordance with the expropriation decree. The

tenant will receive an indemnification equal to six months' rent, provided it has occupied the property for more than one year. Additionally, the tenant may receive compensation for the value of any necessary improvements made during the last six months.

## 6.23 Remedies/Damages for Breach

Upon the event of a tenant breach and/or lease termination due to tenant's breach, in accordance with general provisions of Mexican law, landlords are entitled to recover the direct and consequential damages directly resulting from the breach, including but not limited to unpaid rents and damages suffered by the property exceeding normal wear and tear. Parties are also entitled to negotiate and insert in the lease conventional penalties and moratorium interests for tenant's breach. If penalties are inserted, the landlord will not be entitled to demand damages as well. Penalties, however, cannot lawfully exceed the amount of the main obligation. Penalties typically included are one to two months' rent for each month during which the tenant unduly keeps occupying the leased premises when the lease term has elapsed.

Regarding security deposits, it is common for landlords in Mexico to hold security deposits posted by tenants as a form of guarantee against damages and/or unpaid rent fees. These security deposits are most commonly held in cash, usually in an amount which is equivalent to one to two months' rent. The specific requirements and regulations regarding security deposits may vary depending on the terms negotiated between the landlord and tenant in the lease agreement. Security deposits must usually be returned to the tenant, either fully or in part, within a reasonable timeframe, once the lease agreement term is completed and the landlord verifies the state of the property and any deductions that should

be made to the security deposit. Though somewhat uncommon, landlords accept other forms of security, such as letters of credit. Additionally, bond policies (*fianzas*) issued by specialised bonding institutions are commonly accepted as a way to guarantee due performance by a tenant of its obligations under the lease.

## 7. Construction

### 7.1 Common Structures Used to Price Construction Projects

The most common structures used in Mexico to price construction projects are:

- unit-price construction agreements;
- lump-sum construction agreements; and
- refundable costs construction agreements.

#### Unit-Price Construction Agreements

Under the unit-price construction agreement, the parties agree on a price per construction unit and the total value of the contract will be the sum of the units multiplied by the value of each unit. Each unit must include a value that represents the value of the contractor's remuneration.

#### Lump-Sum Construction Agreements

Under the lump-sum construction agreement, the contractor provides the fixed price of the work, regardless of the effective costs of the work it incurs during execution of the project. Usually, the cost is higher than in other construction contracts, since the contractor tends to have a margin in case of cost variations for material, equipment and subcontractors.

#### Refundable Costs Construction Agreements

Under the refundable costs construction agreement, the price that the contractor receives will

be that resulting from the expenses assumed in the execution of the project plus a profit.

Mexican construction contracts commonly include a "change clause" that allows the owner to modify the work to be performed and, as a consequence, the price also changes.

### 7.2 Assigning Responsibility for the Design and Construction of a Project

In Mexico, different methods are used to assign responsibility for the design and construction of a project. If the contractor developed the design and engineering of the project, they are responsible for the correct construction of the project and for any defect, error, failure or malfunction. Therefore, the contractor is required to guarantee all the construction work and activities performed thereunder against defects (including hidden defects), malfunctions, deficiencies and damage of any kind, including (but not limited to) structural damage, design and engineering errors, labour problems, availability of materials, malfunctions of equipment and installations, during the term of the construction agreement and commonly 12 months after the termination date of the construction (the guarantee period). If any defect is detected during the guarantee period, the contractor, usually at their own cost, shall immediately remedy any such defect, and the guarantee for the defective work shall be extended, as agreed by the parties. See also **1.3 Proposals for Reform**.

If the contractor does not develop the design and engineering of the project, unless provided otherwise, it is responsible for defects, errors, failures or malfunctions, but shall not guarantee the design and engineering defects, which are the client's responsibility.

The above-mentioned responsibilities are typically allocated in specific responsibility and indemnification clauses within the construction contract, whereby the contractor agrees to indemnify and hold the client and its indemnified parties free from any damage, claim, liability, obligation, loss, action, administrative proceeding, complaint, expenses, interest, fines and costs (including reasonable attorneys' costs and expenses) arising out of or in connection with the construction agreement.

### 7.3 Management of Construction Risk

In Mexico, several means are used to manage construction risk on a construction project. The most common ones are:

- bonds;
- insurance; and
- guarantee funds.

#### Bonds

A contractor typically grants the following bonds in construction agreements.

- Down-payment bond – to guarantee the correct use of the down payment in an amount equal to the full amount of the down payment; the down payment bond is effective until the full down payment is amortised.
- Performance bond – usually equal to 10% of the construction price, it guarantees the complete performance of the works and timely completion of the construction.
- Guarantee and quality assurance bond – usually delivered simultaneously with the completion of the construction works in an amount equal to 10% of the construction works price and effective for a one-year term from the delivery of the fully completed construction works; this bond usually guarantees the payment of any hidden defects in the construc-

tion that may arise after the completion and delivery of the construction works and any third-party claims.

#### Insurance

Typically, the contractor is responsible for obtaining the all-risk and civil liability insurance. Generally, it includes any risk inherent to the construction works, including constructions adjacent or within the construction site, personal damage and death, basic cover for activities and real estate, subsoil installations, demolition, machines used for work, foundations, propping and other works, and sudden and unforeseeable pollution. The insurance policy usually covers gross liability, design errors, employers' liability and damage to property.

#### Guarantee Funds

From the amounts paid by the client to the contractor, the client usually withholds 5% of the total amount of each invoice, until they have accrued a guarantee fund equivalent to 5% of the construction price to guarantee compliance with the obligations of the contractor under the construction agreement.

The guarantee fund is typically used by clients to address any defect, liabilities or claims against the contractor that may arise from the construction agreement, including (but not limited to) the payment of liquidated damages or where the contractor fails to comply with any obligation established in the agreement.

There is also the possibility of limiting contractor's liability or capping it at a certain amount, depending on the project and the specific negotiations. Other than with respect to the maximum liability under the law or limitation or prohibition of certain damages (consequential, risk of loss, etc) under the law, all the provisions relating to

indemnification, risk of loss, waivers and limitations of liabilities are freely negotiated by the parties.

## 7.4 Management of Schedule-Related Risk

Parties may agree that the owner is entitled to monetary compensation/liquidated damages if certain milestones or completion dates are not achieved. Unless there is a force majeure event or delays caused by the owner or third-party factors such as licences or permits, liquidated damages for any incomplete work are usually paid. The payments by contractor of penalties or other amounts (damages) are usually guaranteed through the issuance, for the benefit of the owner and/or owner lenders, of:

- performance and advance payment bonds;
- letters of credit; and
- parent or third-party guarantees, in addition to payment holdbacks as agreed by the parties.

## 7.5 Additional Forms of Security to Guarantee a Contractor's Performance

The most common way for owners to seek to guarantee a contractor's performance of a project is to obtain performance bonds, including advance payment and performance bonds. However, letters of credit, parent guarantees, holdbacks and escrow accounts are also common.

## 7.6 Liens or Encumbrances in the Event of Non-payment

Contractors and/or designers cannot lien or otherwise encumber a property in the event of non-payment. In Mexico, there are no mechanical liens as in other jurisdictions.

However, it is important to note that in the case of certain equipment (ie, elevators and air conditioning equipment), the seller or manufacturer may include a domain reserve in their sales agreement, which allows them to retain ownership of the equipment until payment is made. This domain reserve must be registered in the Mexican Federal Register of Property and Commerce (RUG).

## 7.7 Requirements Before Use or Inhabitation

Local laws determine the requirements to be met before inhabiting a project after its construction. For example, in Mexico City, it is necessary to obtain authorisation for the use and occupation of the construction, and for this it is necessary to present the construction licence and the construction logbook in which the progress of the executed works is registered and endorsed by an expert, among other things. Furthermore, it should be noted that the properties must comply with safety regulations, evacuation routes and civil protection, etc. Lastly, there are operation licences that must be obtained for the property to be used for its intended use, which depend on the business (hospitality, restaurant, parking lot, etc).

# 8. Tax

## 8.1 VAT and Sales Tax

If real estate is acquired through the direct purchase of real estate, various taxes and rights must be paid, including VAT on the value of the construction (unless it is a residence), paid by the purchaser at a rate of 16%. As previously mentioned, certain locations, such as Cancun, mandate for the payment of a transfer tax (ISA-BI), and such tax shall be calculated by applying a rate of 2% to the value of the property.

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