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# Real Estate 2026

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**Contributing Editor**

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DLA Piper LLP



# MEXICO



## Law and Practice

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**Cannizzo**

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**Cannizzo** was established more than 40 years ago in Mexico and is a pioneer in large-scale real estate developments (including golf courses and residential, commercial, hospitality and marina developments) and industrial projects. The firm has participated in large marina developments in Puerto Peñasco, Guaymas, Mazatlán, Puerto Vallarta, Cancun, Ixtapa and Los Cabos; the acquisition, structuring and development of projects such as Bosque Real, Puerto Cancun, Playacar and Mayakoba; transactions involving Mexican hospitality groups, including Accor, Auberge, Barceló, Four Seasons, H10, Hilton, JW Marriott, IHG, Hyatt, Posadas de México, Velas and

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## 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;
- the Civil Code and tax laws of the state where the real estate is located;
- the Agrarian Law;
- the Income Tax Law and the VAT Law;
- the Code of Commerce;
- the Foreign Investment Law;
- the General Law of Commercial Companies;
- the Stock Market Law;
- the General Law of Ecological Balance and Environmental Protection;
- the General Law of Securities and Credit Transactions;

- the Federal Antitrust Law; and
- federal, state and municipal zoning and planning provisions.

### 1.2 Main Market Trends and Deals

Over the past year, Mexico's real estate market has slowed due to elevated interest rates and broader macroeconomic uncertainty, affecting leasing, commercial acquisitions, mortgages and construction. However, the residential and industrial segments have remained resilient, with investors seeing the sector as a safe haven. Market analysts estimate the market could reach approximately USD250 billion, with projected annual growth of 5–7% over the next five years, driven by expanding industrial activity, urbanisation and sustained foreign investment.

Nearshoring continues to drive strong demand for industrial space in Mexico, attracting international companies seeking supply chain resilience and proximity to the US market. According to the Mexican Association of Private Industrial Parks (*Asociación Mexicana de Parques Industriales Privados – AMPIP*), investment in industrial parks is expected to reach approximately USD5.8 billion in 2026. Mexico currently hosts around 477 industrial parks, supporting nearly 4,000 companies and 3.7 million jobs, with continued expansion expected through the development of new industrial parks across key manufacturing regions.

Foreign investment remains strong. Among recent transactions in the hospitality sector, some stand out, including Hyatt's acquisition of Playa Hotels & Resorts and Playa's subsequent sale of its 15 resorts for approximately USD2 billion in late 2025. The indus-

trial sector saw a spin-off from Fibra Uno, the largest Mexican REIT and public offering, namely Fibra Next, which will develop industrial parks. However, ongoing trade tensions and potential tariff measures by the United States, together with broader global trade dynamics, may affect certain industries and the real estate sector. Despite these challenges, Mexico's industrial real estate market continues to expand.

## Impact of Disruptive Technologies

New technologies are transforming Mexico's real estate sector, with AI, blockchain, decentralised finance (DeFi) and proptech enabling new investment opportunities. These innovations have expanded acquisition portfolios, facilitated fractional property ownership and streamlined mortgage debt transactions. Blockchain enhances transparency, reducing transaction risks, costs and processing time by minimising expenses such as no-lien searches, notary fees and registrations.

Smart contracts and fintech have modernised payment solutions, reducing reliance on cash and paper cheques while ensuring secure rent and property transactions. Lenders benefit from data-driven risk assessments, while contech improves financial management and efficiency in construction.

Moreover, the Law to Regulate Financial Technology Institutions provides a legal framework for new technologies, and the Mexican National Banking and Securities Commission grants authorisations to operate, so an increase in technology companies entering the market, including the real estate sector, is anticipated. However, due to Mexico's strict civil law system requiring notary involvement for property transfers, major industry shifts are unlikely within the next year despite ongoing technological advancements.

## 1.3 Proposals for Reform

Mexico City has introduced significant reforms to the Mexico City Civil Code (*Código Civil para el Distrito Federal* – CCDF) and the Housing Law, where rent increases cannot exceed inflation, and landlords must register lease agreements in a new digital system within 30 days. Existing leases must be registered within 90 days of the system's launch. Non-compliance can result in:

- fines of up to MXN1.2 million;
- work suspensions; and
- registration cancellations for up to six years.

The government is also mandated to promote affordable rental housing for low-income residents per the Housing Law.

## 2. Sale and Purchase

### 2.1 Categories of Property Rights

The Mexican Civil Codes provide for several categories of property rights, namely:

- full ownership;
- co-ownership;
- usufruct (the real and temporary right to enjoy the property of others, which includes the right to receive all the 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 and refers to 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, Stock Market Law and 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:

- by transfer, whether onerous (such as a sale and purchase agreement) or gratuitous (such as a donation agreement);
- usucapion;
- accession; and
- succession by reason of death.

The most common way to acquire property is by entering into 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 being 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); or
- corporate combinations (mergers or purchase of shares).

All transfers of title of real estate in Mexico are formalised before a notary public or judge and registered in the Public Registry of Property (*Registro Público de la Propiedad* – 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.

## 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, is 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 was 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) the availability of and access to services and

agreements regarding services, maintenance, repair or supply of assets or utilities;

- (e) permits, licences and cocessions relating to the use of the property and their assignability;
- (f) hotel management and franchise agreements;
- (g) insurance policies; and
- (h) management, licensing and operation agreements.

- Environmental audits to be performed by environmental specialists for Phases I and II, and authorisation reviews.
- Tax matters.
- Existing and past disputes.
- Surveys, usually under American Land Title Association (ALTA) standards, to be performed by professional surveyors, as well as zoning confirmations, analysis to determine if the real estate is in an archaeological zone or is a historical monument, etc.

## 2.5 Typical Representations and Warranties

Sale and purchase agreements commonly include representations and warranties covering:

- the seller's authority;
- legitimate ownership;
- absence of liens;
- unpaid taxes;
- land use compliance;
- required permits; and
- environmental matters.

Environmental warranties often involve permit existence, compliance and contamination absence, sometimes qualified to the seller's knowledge. Due diligence, including Phase I (and sometimes Phase II) studies, is crucial.

In M&A transactions, standard representations and warranties apply. However, in asset acquisitions, authorities may treat the deal as a business acquisition, potentially transferring tax or labour liabilities if the seller has outstanding obligations.

Mexican law includes statutory indemnification, where sellers must guarantee the property's condition and compensate buyers if eviction occurs due to a third-party ownership claim.

To mitigate misrepresentation risks, agreements include indemnities, damage payments and remedies like caps, survival periods, baskets and anti-sandbagging clauses. Indemnities are often backed by escrows, holdbacks or joint liability of parent companies. While representation and warranty insurance exists, it is rarely used in Mexico.

## 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 as follows:

- tax aspects (determined by the Federal Tax Code, the Income Tax Law and local real estate acquisition provisions);
- environmental aspects;
- agrarian background and regularisation process;
- urban development and construction limitations; and
- limitations imposed on the use of the real estate – in leasing, for example, especially for residential purposes, the limitations depends on where the real estate is located (eg, federal zone residential restrictions).

It is important for the investor to understand that specific laws apply to *Ejido* property.

## 2.7 Soil Pollution or Environmental Contamination

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

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

In Mexico, zoning and land use are regulated at the municipal level, subject to federal and state guidelines. Determining land use requires analysing zoning and planning laws. At the state level, this includes State Partial Development Plans, while municipal regulations involve Municipal Development Plans, Urban Development Plans and sometimes Detailed Plans. To confirm land use, purchasers must review the zoning certificates and licences issued by the relevant authority.

Environmental and territorial planning instruments are also binding and must be analysed alongside urban regulations. Ecological Land Use Planning Programmes (*Programas de Ordenamiento Ecológico del Territorio* – POET) set environmental zoning at the federal, state or regional level, while Local Ecological Land Use Programmes (*Programas de Ordenamiento Ecológico Local* – POEL) may impose additional municipal restrictions that can limit development beyond traditional urban zoning.

Environmental regulations include General Ecological Plans at the federal level, which promote sustainable land use, while State Ecological Partial Plans and sector-specific programmes address agricultural, territorial and urban development. In protected natural areas, there are restrictions on human activities to safeguard biodiversity.

While development agreements with authorities are uncommon, they may occur for large-scale projects with a significant urban impact. These agreements have been seen in developments such as marinas and golf courses, as well as in residential, hospitality and commercial projects, where government interest aligns with urban planning goals.

## 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, including:

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

### Procedure

The expropriation process begins with a public utility declaration, published in the Federal Official Gazette and, if applicable, a local newspaper. Property owners are notified and may present evidence and arguments before a judge issues a ruling. If approved, the Federal Executive decrees the expropriation and publishes it again.

The decree includes compensation, which must match the property's commercial value and cannot be lower than its cadastral value. Owners can challenge the decision in court. Once decreed, authorities may occupy the property. The Expropriation Law allows for temporary occupation, total/partial expropriation, or limitations on ownership rights.

### National Law on Ownership Extinction

The National Law on Ownership Extinction governs the process of extinguishing property ownership in favour of the state through the federal or state government, 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.

It is very important that the lease agreement includes specific clauses detailing the use and activities that may be carried out in the leased property.

## 2.10 Taxes Applicable to a Transaction

If real estate is acquired through a direct purchase of assets, different taxes and fees 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 rate of 16%; 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 to be paid 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, income tax should apply.

## 2.11 Legal Restrictions on Foreign Investors

In principle, foreigners can acquire real estate in Mexico, with the exception of residential 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 (trusts, 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, share and non-possessory pledges creating a security over the furniture, fixtures and equipment (FF&E). Cash deposits are also common, depending on the business.

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 whether it is a foreign bank, as well as 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 a 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 should be paid to the RPP, and in certain locations, such as Cancun and Los Cabos, the payment of a transfer tax (*impuesto sobre adquisición de bienes inmuebles* – 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 bor-

rower 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 relevant 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.

In general, 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. The successful enforcement of a real property security depends on the security and the borrower trail activity, but in general it takes well in excess of one year.

### 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 that 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 that, 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. However, new owners of real property as a result of a foreclosure procedure or direct acquisition are always responsible for clean-up and contamination existing on the real property.

### 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

As indicated in 3.4 **Taxes or Fees Relating to the Granting and Enforcement of Security**, lenders' and borrowers' payment of recording fees or similar charges in connection with mortgage loans are generally imposed at the state level and can vary from one state to another. Additionally, there will be the notary fees; in practice, the borrowers will 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 Planning and Zoning Framework

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 the state level, the applicable provisions are contained in State Development Plans and Partial Development Plans. At the municipal level, regulation is established through Municipal Development Plans and Urban Development Plans, which govern land use, zoning, urban density, and development parameters.

These planning instruments commonly establish requirements related to the protection of natural resources, the proper implementation of urban services and integration with the surrounding environment. They also impose legal restrictions, such as prohibitions on urbanisation in certain areas, requirements to leave specific areas free of construction and limitations arising from the presence of infrastructure such as railways, drinking water systems, drainage,

electricity networks, telecommunications facilities and roads.

Construction activities are further governed by local construction regulations issued by each state or municipality. These regulations control the design, appearance and method of construction of new buildings or the refurbishment of existing buildings. In addition, various aspects and limitations relating to the construction and refurbishment of properties may be included in local condominium by-laws and rules.

The authorities responsible for administering and enforcing these controls depend on the relevant jurisdiction. Municipal authorities generally oversee zoning compliance, planning permits and construction licences, while state authorities may participate in broader urban development planning.

For certain projects, the federal authorities may also become involved, particularly where environmental, archaeological or historical considerations arise. Examples include the Ministry of the Environment and Natural Resources, which oversees environmental matters, and the National Institute of Anthropology and History, which regulates projects affecting archaeological zones and historical monuments.

### 4.2 Development Process, Challenges and Enforcement

To obtain development rights in Mexico, developers must obtain a construction licence at the local level, which authorises activities such as building, extending, modifying, repairing, installing, demolishing or dismantling structures or installations. Depending on the nature and location of the project, additional permits may be required.

Certain jurisdictions require additional documentation prior to construction. For example, in Mexico City, water feasibility documentation may be required due to water supply constraints.

In some cases, developers must also obtain environmental approvals, such as an Environmental Impact Authorisation. These procedures may include public participation mechanisms, such as public consultations or opportunities for neighbours or affected com-

munities to express objections. Third parties may also challenge the issuance of certain permits through administrative or judicial proceedings.

Developers may also be required to enter into agreements with public authorities or utility providers to facilitate the development of infrastructure and services. These agreements may relate to the provision of public services such as electricity, drinking water and sewerage, or to the development of infrastructure such as roads, green areas, urban equipment or treatment plants. In some cases, developers construct certain infrastructure and subsequently transfer it to the municipality or to the relevant utility provider, such as the Federal Electricity Commission (*Comisión Federal de Electricidad* – CFE).

If an authority refuses to grant a permit or issues an adverse administrative decision, the affected party may generally file an administrative appeal for review. In addition, nullity proceedings or constitutional amparo actions may be initiated before the relevant courts.

Failure to comply with planning, zoning or development restrictions may result in administrative sanctions being imposed by the relevant municipal, state or federal authority. These sanctions may include temporary suspension of the project, cancellation of authorisations, closure of the works, remediation or clean-up measures, fines and, in certain cases, administrative 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, the most frequently used of which are the stock company and the limited liability company (LLC), 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 negotia-

ble 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 might 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 settlors and beneficiaries vis-à-vis shareholders'/partner's agreements, such as contributions by each settlor, reversion of the property if certain conditions are not met, etc.

#### The FIBRA

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

#### Other Structures

Other structures currently used for these types of transactions include real estate investment companies (*sociedades de inversión en bienes raíces* – SIBRAs), development capital certificates (*certificados de capital de desarrollo* – CKDs) and investment project fiduciary securitisation certificates (*Certificados Bursátiles Fiduciarios de Proyectos de Inversión* – 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 commercial notary. 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).

- 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) the 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 covering all the foregoing 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 (*Bolsa Mexicana de Valores* – BMV) for the acquisition and construction of real estate for leasing. At present, Mexican law solely permits publicly traded FIBRAs. FIBRA assets may comprise a wide range of properties, ranging 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 that 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 or LLC company, there is no mandatory minimum capital required by law. The initial minimum capital is determined by the shareholders or partners upon incorporation.

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;
- for the creation of the reserve fund required by law; and
- for compliance with applicable regulatory obligations, including tax, anti-money laundering and beneficial ownership disclosure requirements.

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, unless voluntarily provided in the by-laws. 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 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 must periodically comply 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 – 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 – 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, 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 – ie, the real and temporary right to enjoy another person's property and to receive all the fruits, whether natural, industrial or civil, which it produces.

### 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

Lease terms are freely negotiable, but federal and state civil codes impose binding provisions, mainly for residential leases and, in some states, commercial leases (eg, a 20-year maximum duration). Reviewing state Civil Codes is essential.

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

for more than two months, the tenant may request termination of the agreement. Similar provisions are included in the Civil Codes of the various states of Mexico.

Some states recognise the “unforeseeability theory”, which aims to balance obligations if extraordinary, unpredictable national events make one party’s obligations excessively burdensome. Under specific conditions, the affected party may seek adjustments to restore fairness in the contract.

## 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 according to 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

Federal and state Civil Codes hold landlords liable for property defects that hinder its use, unless caused by tenant negligence. Tenants handle minor repairs, while landlords maintain the structure and perform major maintenance. Tenants are typically responsible for ordinary upkeep and must return the property in its original state, allowing for normal wear and tear, though maintenance terms can be negotiated. Rental payments are flexible, with monthly payments being the most common.

## 6.5 Rent Variation

Mexican civil law allows parties to negotiate rental updates freely, without mandatory or automatic increases. Typically, rent is updated annually – based on the National Consumer Price Index published by the National Institute of Statistics and Geography – in the Federal Official Gazette, sometimes with additional points. In shopping centre leases, tenants may

pay variable rent, alongside or instead of fixed rent, usually as a percentage of 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 is 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

Maintenance and repair costs for common areas are typically covered by tenants through “condominium quotas” or common area maintenance fees, paid to the landlord, building manager or shopping centre manager. Regulations determine how these costs are shared. Shopping centre leases may also include advertising/marketing fees, calculated as a fixed amount or rent percentage and usually paid monthly.

## 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 Payment of Property Taxes

It is customary for the owner/landlord to pay for the real property tax of the leased property. However, there is a tendency, mainly in industrial and commercial facilities, to use triple net lease conditions where the landlord pays for the property tax, property insurance and maintenance.

## 6.12 Insurance Issues

Neither federal nor state Civil Codes mandate insurance for leased properties, but tenants are generally expected to cover civil liability and fire damage. Landlords typically insure the property, though commercial and industrial tenants may be required to cover risks like earthquakes and floods. Common area insurance is usually included in maintenance fees. Business interruption insurance is uncommon unless financing is involved, as it mainly covers closures due to Acts of God or force majeure.

## 6.13 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.

## 6.14 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.

## 6.15 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 are, therefore, 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.

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.

## 6.16 Effect of the Tenant's Insolvency

The Law on Commercial Insolvency (*Ley de Concur-sos 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.

## 6.17 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, generally 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 should 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 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. In the case of Mexico City, landlords are required to register lease agreements

no more than 30 days after their execution in the new digital registry for lease agreements (see **1.3 Proposals for Reform**).

## 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.

## 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. Generally, the tenant will receive an indemnification equal to six months' rent, provided it has occupied the property for more than one year, though this will depend on the applicable Civil Code. 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

In Mexico, landlords can recover unpaid rent and property damage beyond normal wear if a tenant breaches a lease. Leases often include penalties and moratorium interest, but if penalties apply, landlords cannot claim additional damages. Penalties cannot exceed the main obligation and typically range from one to two months' rent per overdue month after lease expiration.

Security deposits, usually one to two months' rent, are held in cash and refunded after verifying property conditions. While letters of credit are rarely accepted, bond policies are commonly used to ensure tenant compliance. Deposit and guarantee terms vary based on lease negotiations and local regulations.

## 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. As a consequence, the price and time also change.

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

In Mexico, responsibility for design and construction varies by contract. If the contractor develops the design and engineering, they are liable for:

- construction defects, errors and malfunctions, including structural damage;
- labour issues;

- material shortages; and
- equipment failures.

They must guarantee the work during the contract term and typically for 12 months post-completion (guarantee period). If defects arise, the contractor must repair them at their own cost, extending the guarantee as agreed.

If the contractor does not design the project, they are responsible for construction defects but not for design errors, which remain the client's liability unless otherwise stated.

Responsibility and indemnification clauses in construction contracts typically protect the client, requiring the contractor to indemnify against damages, claims, legal actions and costs, including attorney fees. These provisions ensure risk allocation between parties, safeguarding the client's interests while holding contractors accountable for their scope of work.

### 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 payment for any hidden defects in the construction 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 to 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

Clients typically withhold 5% of each invoice until a guarantee fund equal to 5% of the construction price is accrued. This fund covers defects, liabilities or claims, including liquidated damages if the contractor fails to meet obligations. Contractor liability can be capped based on negotiations, except for statutory limitations. Indemnification, risk allocation and liability waivers are freely negotiated.

## 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 (*Registro Único de Garantías Mobiliarias* – RUG).

## 7.7 Requirements Before Use or Inhabitation

Local laws set requirements for occupying a building post-construction. In Mexico City, this includes obtaining authorisation by presenting the construction licence and expert-endorsed logbook, among other documents. Properties must also meet safety, evacuation and civil protection standards. Additionally, operation licences specific to the business type (hospitality, restaurant, parking, etc) are required for legal use.

## 8. Tax

### 8.1 VAT and Sales Tax

If real estate is acquired through direct purchase, various taxes and rights must be paid, including VAT on the value of the construction (unless it is a lot or residence), paid by the purchaser at a rate of 16%. As previously mentioned, certain jurisdictions mandate for the payment of a transfer tax – real estate acquisition/property transfer tax (*impuesto sobre adquisición de inmuebles* – ISAI) or ISABI – and such tax shall be calculated by applying a percentage to the value of the property.

### 8.2 Mitigation of Tax Liability

The most common method used to defer transfer liability is through the use of a real estate trust. This arrangement is not considered a sale for tax purposes, in accordance with Article 14 of the Federal Tax Code, as long as the trustor retains the right to reverse the ownership of the real estate. If the reversion right is lost, through a subsequent sale, termination of the right or failure to meet the necessary tax requirements, the transferor will be responsible for paying the taxes owed.

### 8.3 Municipal Taxes

There are no federal or local occupation taxes – only fees, licences and permits as required.

### 8.4 Income Tax Withholding for Foreign Investors

The taxes to be paid are withheld by the notary public, who formalises the transaction if the seller is not a tax resident in Mexico. The amount of taxes owed is determined based on the Mexican income tax law and can be up to 35% of the net gains.

Rental income from real estate is taxed in Mexico per the Income Tax Law and VAT Law. The rules regarding the taxation of rental income vary depending on the type of entity or individual receiving the income, as well as their residency status (Mexican or foreign). For example, flat fees of 25% or certain deductions may apply.

### 8.5 Tax Benefits

Owners of real estate in Mexico are eligible for tax depreciation of fixed assets, mainly constructions, and can deduct certain expenses from their income tax liabilities. These include:

- the proven cost of acquisition;
- certain construction and improvements costs; and
- notary fees and commissions.

While there is no tax depreciation allowed for land, a portion of the sale price will be allocated to the land when the real estate is sold. These tax benefits serve to reduce the amount of income tax owed on the sale of the real estate. Further, based on the purchase price allocated to land, no VAT should be paid for the portion of the price applied to the land.

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