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Mexico: Trends & Developments
Mijares, Angoitia, Cortés y Fuentes, S.C.

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Trends and Developments

Contributed by Mijares, Angoitia, Cortés y Fuentes, S.C.

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tices have been recognised as premier practices in Mexico, advising clients ranging from small to medium and large businesses as well as all kinds of family enterprise. Other notable practice areas include: antitrust, arbitration, banking and finance, capital markets, corporate criminal liability and compliance, corporate services, energy, environmental, intellectual property, labour and employment law, litigation, mergers and acquisitions, project financing, real estate, sports & entertainment, tax, and telecommunications.

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The Mexican securities market experienced a relatively active environment during 2018, particularly in connection with the public offering of *Certificados de Proyectos de Inversión*, better known as CERPIs. However, the traditional IPO market has been dry. Regulatory authorities and other members of the financial community regularly express interest in promoting the listing of new issuers in either of the two stock exchanges authorised in Mexico and, at the same time, express concern as to why the number of listed companies not only does not grow but continues to experience some delistings, most recently Rassini, S.A.B. de C.V. in its final stage.

According to a number of potential issuers, the Mexican IPO market will remain passive as long as the current legal framework continues to impose unnecessary burdens on issuers, allowing excessive discretionary authority on Mexican regulators, and as long as the Securities Market Law and regulations are not amended to reflect the many necessary demands of the current environment.

In particular, potential issuers insist on their specific interest to go public with capital stock structures that permit the offering of instruments bundling voting with limited-voting or non-voting stock, or even with limited voting or non-voting stock on a stand-alone basis. In the past, several issuers made successful offerings with these type of structures. There are a number of important family-owned companies that have driven the Mexican economy for decades and that, with an appropriate regime, would be willing to go public without excessively diluting their voting power, while granting economic benefits to public investors.

With divided opinions among regulators, a significant reform to the Mexican Securities Market Law was adopted in 2004, prohibiting the use of those structures in the Mexican securities market. These prohibitions were later adopted in the current Securities Market Law, effective since 2006. Many well-developed securities markets in other countries allow these structures and there are many arguments that support them. Under a clear legal framework, including the right disclosure requirements, it might be reasoned that

Mexican companies should be allowed to go public with these types of instruments.

The current Mexican Securities Market Law permits Mexican companies to issue limited voting or non-voting stock for up to 25% of the company's float, and a percentage above such threshold if the limited voting or non-voting stock is converted into common stock within a period of time to be authorised by the Mexican Banking and Securities Commission (CNBV) which in no case shall exceed five years. This alternative has proven, however, to be of no practical use, since the market capitalisation of the relevant issuer would need to be very high in order to allow that a percentage of the issuer's float represented by stock with voting restrictions has sufficient liquidity. Likewise, the mandatory conversion of the limited voting or non-voting stock into common stock does not present an attractive scenario for controlling shareholders from a dilution standpoint.

Likewise, according with the Mexican Securities Market Law, the CNBV may also authorise the issuance of limited voting or non-voting stock for a percentage in excess of 25% of the company's public float, in the event of shares or other investment structures where voting rights are limited as a result of the stockholders' nationality. This alternative proved to be a good tool for companies where foreign investment participation was restricted to a percentage of the relevant company's capital stock. It has been the case, however, that the regulator's criteria has changed over time and it has been difficult to obtain specific authorisations to issue limited voting or non-voting stock under these provisions.

IPOs involving any of these instruments would allow companies and their controlling shareholders to be less concerned about losing control and, therefore, less concerned in the implementation of anti-takeover provisions in their by-laws that, in certain cases, create lengthy discussions with the underwriters since, in their view, such provisions make it difficult for investors to make significant investments in the relevant issuer's stock. In addition, the Mexican regulator would need to dedicate less time to reviewing and authorising complex by-law provisions intended to avoid the concentration of material equity positions by a single or a related group of investors.

In addition, some participants in the Mexican securities market express significant concern with respect to other provisions of the legal framework applicable to Mexican issuers and which clearly need to be amended to reflect current market and worldwide conditions. For example, there are a number of sections of the Securities Market Law and its regulations that govern corporate restructurings (*reestructuraciones societarias*), tender offer processes and disclosure of information, which have been subject to interpretation by the Mexican CNBV, where such interpretation is not necessarily shared by members of the financial and legal com-

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munity. Some of these provisions include events triggering thresholds that meet a *reestructuración societaria* or a tender offer scenario, and events that, in the opinion of the CNBV, require disclosure to the public where such disclosure may create in certain cases contingencies for the issuer, the loss of a potential business or the negative effect on a strategic decision, among others, which may ultimately result in an adverse effect on the company and its shareholders.

In sum, it appears that the Mexican securities market framework needs to be revised, reaching some level of consensus with the real players and endeavouring to adapt to current conditions, making the Mexican market more competitive in relation to other similar markets.