LEXOLOGY
Getting The Deal Through

REAL ESTATE M&A

Mexico

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OVERVIEW

Typical transaction structures – public companies
What is the typical structure of a business combination involving a publicly traded real estate-owning entity?

The typical structure of a business combination involving a publicly traded real estate-owing entity involves, depending on the final purposes of the business, the creation of: (1) the Mexican version of real estate investment trusts (FIBRAS); or (2) development capital certificates (CKDs).

FIBRAs are trusts incorporated under Mexican law and must issue asset-backed securities (CPIs) as consideration for the trust estate; such securities are placed among the general investment public through any of the existing Mexican stock exchanges. Lastly, the main purposes of FIBRAs are the acquisition or construction of real estate property to be leased to third parties; acquisition of rights to earn income derived from the lease of real estate property; and the granting of financing for the acquisition or construction of immovable property with mortgage guaranty of leased property. This structure was first introduced by certain amendments made to the Mexican Income Tax Law in 2004, which involved a tax benefit to promote the Mexican real estate market.

Another similar investment vehicle used for this type of structure is the CKD. This structure also involves a trust and the issuance of asset-backed securities in any of the existing Mexican stock exchanges; however, its main difference in comparison to FIBRAs is that these trusts are for the development of real estate projects, whereas FIBRAs focus on the management of real estate projects. Additionally, the trusts that issue CKDs contemplate two important periods in their life span: the investment period (generally, three to five years) and the divestment period (generally, four years), which are established on a finite basis, giving the instrument a termination date set from the beginning, making these instruments a long-term investment vehicle.

Typical transaction structures – private companies
Are there any significant differences if the transaction involves a privately held real estate-owning entity?

The typical structure for privately held real estate-owning entities can also involve the use of trust agreements, without involving asset-backed securities nor traded stock in the exchange market. This difference is significant in view of the heavy regulation that surrounds publicly traded entities. The above is also important from a tax perspective, considering that these privately held real estate entities receive greater tax benefits in the use of trust agreements than public entities.

Typical transaction process
Describe the process by which public and private real estate business combinations are typically initiated, negotiated and completed.

Real estate business combinations can be divided into three phases, the first being the preparatory phase, whereby the parties enter preparatory documents in connection to the transaction (eg, LOI or promise of sale agreements). The main purpose of the execution of the preparatory documents is to set forth the main business terms and conditions for the parties to enter into the transaction and provide a certain level of certainty that the parties are willing to enter into the transaction. Next is the due diligence phase, whereby a due diligence process is conducted in connection to the real estate property, based on which the feasibility of the project or business to be conducted is confirmed or reconsidered, providing the grounds for the negotiation of the transaction. Also, during this phase, the parties usually determine the tax and business structure that best fits the applicable transaction. Phase three involves the preparation and execution of final agreements (eg, purchase and sale agreements or contribution agreements), by means of which the transfer of ownership takes place, additionally in this last phase, the corresponding registration in the public registry of property is done to reflect that transfer of ownership.

LAW AND REGULATION

Legislative and regulatory framework

What are some of the primary laws and regulations governing or implicated in real estate business combinations? Are there any specific regulations or laws governing transfers of real estate that would be material in a typical transaction?

Any real estate transaction has an important tax component. The relevant laws and regulations are federal tax laws, such as federal income tax law and federal value added tax law. Local tax laws regulating taxes payable upon the transfer of real estate assets are also relevant. Also, participants in the real estate sector also need to consider urban development, land use and territorial environmental zoning regulations and programs, which, depending on the zone where the business will be located, could apply the federal, regional or local ordinances. Such regulations and programs state the provisions relating to the feasibility of the zoning (industrial, services, commercial, among others) where the real estate target will be located.

Also, it is key to consider if the real estate property of the transaction is subject to any agrarian regimen, in which case, federal laws have specific regulations regarding transactions related to those agrarian properties.

Cross-border combinations and foreign investment

Are there any specific material regulations or structuring considerations relating to cross-border real estate business combinations or foreign investors acquiring an interest in a real estate business entity?

Foreign investors may invest in real estate and only need to obtain a permit from the Ministry of Foreign Affairs or a record from such ministry that the corresponding notice was provided before acquisition, as provided by the Foreign Investment Law.

However, there are certain exceptions to this rule. First, foreigners cannot hold the status of *ejidatarios* (as defined in the Agrarian Law) and therefore cannot be assigned rights over such real estate under the agrarian regime.

Further, foreign ownership of real estate is limited to land outside the designated restricted zone – that is, any area within 100 kilometres of any neighbouring border or 50 kilometres of any coast. However, the Foreign Investment Law provides that foreigners may acquire interests in real estate located in the restricted zone if the same is to be used for non-residential purposes, or through a trust, subject to the following provisions:

- a permit must be obtained from the Ministry of Foreign Affairs; and
- the trust must have a maximum duration of 50 years, which may be renewed for another 50 years.

Choice of law and jurisdiction

What territory's law typically governs the definitive agreements in the context of real estate business combinations? Which courts typically have subject-matter jurisdiction over a real estate business combination?

Under Mexican regulations, the law that governs the definitive agreements in the context of real-estate business combinations is the local law, with respect to the location of the real estate property. On the other hand, the courts that will have subject-matter jurisdiction are typically the ones applicable regarding the location of the real estate property; however, the parties may select other courts.

It is key to note that certain real estate transactions involving cross-border parties, may be structured via a private purchase agreement entered under US laws and subject to US courts. In these cases, the transfer of property (and thus, the title of the real estate) must be granted in a separate definitive agreement subject to the local law of the location of the real estate property. Typically, these definitive agreements are simple title transfers complying with local requirements and the indemnities and obligations are agreed in the private purchase agreement. This structure allows the parties to seek for more favorable laws and/or jurisdictions, including laws and jurisdictions familiar to the parties as well as to, in certain cases, expedite the enforcement of indemnities and/or representations of the parties under such agreement.

Further, for lease agreements, the general rule is that the applicable law is that of the location of the property and the jurisdiction, the civil local courts of the location of the property. The jurisdiction at local civil courts could result in uncertainty about the expertise and fairness of the procedure. In this sense, recently, the Mexican Supreme Court issued criteria stating that, if the purpose of the lease agreement is commercial, then, the courts that would be entitled to review these matters are the federal commercial courts, which are, generally speaking, more experienced in business transactions and provide more certainty on the fairness of the procedure. These criteria allow investors to have more certainty over their investments in real estate assets in Mexico.

APPROVAL AND WITHDRAWAL

Public disclosure

What information must be publicly disclosed in a public-company real estate business combination?

Considering real estate investment trusts (FIBRAs) and development capital certificates (CKDs) as the typical structures for public real estate business combinations, it is important to note that these have the same information disclosure obligations as other publicly traded entities. Specifically, they are required to submit financial information on a quarterly basis and an annual report once a year. The annual report must contain an analysis of their annual results and a description of the main assets, when talking about real estate assets, they must describe the terms of the lease agreements executed in connection with those main real estate assets. The disclosure of particularly large transactions or other developments that could be considered as relevant must also be undertaken whenever such relevant events occur.

Duties towards shareholders

Give an overview of the material duties, if any, of the directors and officers of a public company towards shareholders in connection with a real estate business combination. Do controlling shareholders have any similar duties?

It is fair to say that the real estate component in public entities does not change the material duties of directors and officers. We can say that they have the same as those of any other public entity, meaning that directors and officers are subject to duty of care and duty of loyalty.

Duty of care or diligence provides that they shall carry out their duties creating value for the company acting in good faith and in the company's best interests. The violation of this duty can result in the payment of an indemnification amount.

On the other hand, duty of loyalty provides that any director or officer who has an interest contrary to the interests of the company, must disclose such conflict to the other directors, and abstain from any discussion and vote on the respective matter.

Shareholders' rights

What rights do shareholders have in a public-company real estate business combination? Can parties structure around shareholder dissent or rejection of a real estate business combination, and what structures are available?

When talking about a real estate public combination, we need to take into consideration that the transaction would involve the acquisition of the real estate trust certificates (CBFIs) of a FIBRA by means of a tender offer. The Mexican Securities Market Law regulates tender offers and sets forth its requirements and process. In connection to the price of the CBFIs, the tender offer needs to be made using the same price for all holders that convey their CBFIs, additionally to guarantee the fairness of the price of the tender offer, the technical committee of the FIBRA shall obtain a fairness opinion by an independent expert regarding the offering price, to comply with their fiduciary duties with respect to holders of CBFIs.

If the tender offer is launched with the ultimate purpose of cancelling the registry of the CBFIs issued by a FIBRA in the National Securities Registry and the listing in any of the existing Mexican Stock Exchanges, the offeror shall acquire at least 95 per cent of the CBFIs to obtain the approval of the CBFIs Extraordinary Holders Meeting with the favourable vote of the holders representing at least 95 per cent of the outstanding CBFIs.

Termination fees

Are termination fees typical in a real estate business combination, and what is their typical size?

Termination or break-up fees for private transactions are entirely dependent on the parties to any particular transaction and are not particularly affected by their real estate component. There is no standard or customary break-up fee structure since their presence and scope vary on a case-by-case basis.

In the case of a publicly traded vehicle (such as a FIBRA or a CPI), termination fees are more common regarding agreements executed with the corresponding investment vehicle's managers. However, the size thereof is dependent on the size of the real estate portfolio and overall business.

Takeover defences

Are there any methods that targets in a real estate business combination can employ to protect against an unsolicited acquisition? Are there any limitations on these methods?

A target may employ any of the applicable legal protections available to all companies in Mexico (special shareholder rights, rights of first offer and first refusal among existing shareholders, key person provisions, etc). There are no specific protections arising from a real estate business operation as opposed to any other line of business. Limitations on applicable protections may apply based on the organisation structure of the legal entity in question (eg, more comprehensive shareholder rights are available for a SAPI (investment promotion commercial company) than a SdeRL (limited liability company)).

Publicly traded vehicles may establish investment guidelines or be targeted at specific qualified investors. Furthermore, the corporate rights of public acquirers may be tailored in such a way that a large acquisition of the publicly available certificates does not affect the overall management and decision-making of the vehicle in general.

Notifying shareholders

How much advance notice must a public target give its shareholders in connection with approving a real estate business combination, and what

factors inform this analysis? How is shareholder approval typically sought in this context?

Corporate decision-making within a target is not affected by the real estate component of the target. Internal regulations, such as timing and advance notices to shareholders follow the target's organisational and governance documents. Regarding public vehicles, the minimum legal requirement pursuant to article 64-bis 1 of the Securities Market Law for advance notice for holding a shareholders' meeting is 10 days. Shareholder approval is sought through the publication of marketing material detailing the estimated benefits and characteristics of any given real estate business combination.

TAXATION AND ACQUISITION VEHICLES

Typical tax issues and structuring

What are some of the typical tax issues involved in real estate business combinations and to what extent do these typically drive structuring considerations? Are there certain considerations that stem from the tax status of a target?

On the one hand, sellers must pay Mexican income tax on the sale of real estate located in Mexico. The applicable tax rate varies depending on the seller (ie, 30 per cent for Mexican entities, up to 35 per cent for Mexican individuals, and for non-Mexican tax residents either 25 per cent on the agreed consideration or 35 per cent on the applicable capital gain).

On the other hand, buyers must pay real estate transfer tax (ie, ISAI) when acquiring real estate in Mexico. The applicable tax rate varies depending on the state in which real estate is located (from 1 per cent to 6 per cent on the market value or the agreed consideration, whichever is higher).

For certain investments and under specific situations, these taxes may not be triggered if Mexican trusts are used as investment vehicles, where no transfer of property, for tax purposes, of real estate takes place.

Mitigating tax risk

What measures are normally taken to mitigate typical tax risks in a real estate business combination?

Not applicable.

Types of acquisition vehicle

What form of acquisition vehicle is typically used in connection with a real estate business combination, and does the form vary depending on structuring alternatives or structure of the target company?

Real estate developers commonly use trusts (where Mexican banks act as trustees) as vehicles of ownership and collateral for the development of projects. Mexican trusts allow for the creation of a bankruptcy remote vehicle (ideal for collateral purposes) and have the benefit of acting as tax transparent vehicles.

Notwithstanding the above, depending on the type of investment, Mexican corporations (ie, *sociedades anónimas*) can also be used as vehicles of ownership.

The advantages and disadvantages of a given structure depend on:

- the type of real estate being developed;
- whether the resulting project is destined for the sale or lease of real estate;
- access to bank financing; and
- the investors' particular tax regime (whether they are Mexican tax individuals or entities or non-Mexican tax residents).

TAKE-PRIVATE TRANSACTIONS

Board considerations in take-private transactions

What issues typically face boards of real estate public companies considering a take-private transaction? Do these considerations vary according to the structure of the target?

Take-private transactions require careful consideration regardless of the target's line of business. While the status of the target's real estate portfolio may affect the deal's overall valuation and price point, there is not much else to consider based purely on the real estate factor. For these types of transactions, a board should consider whether bringing an experienced management team through the acquirer is worth the often-aggressive leverage imposed on equity, and if the economic projections once taken private are realistic, beneficial and sustainable in the long term.

Time frame for take-private transactions

How long do take-private transactions typically take in the context of a public real estate business? What are the major milestones in this process? What factors could expedite or extend the process?

A take-private transaction (specifically regarding real estate) can vary based on the negotiation process. From the legal perspective, the biggest factors that could delay a transaction, such as this one, would be obtaining government consents such as approvals regarding antitrust matters from the Federal Antitrust Commission, the de-listing of the company from all public markets and registries and the formalisation of the transaction documents themselves, which while not too complex per se, may reflect significant hold-ups due to negotiation setbacks on the business side.

NEGOTIATION

Non-binding agreements

Are non-binding preliminary agreements before the execution of a definitive agreement typical in real estate business combinations, and does this depend on the ownership structure of the target? Can such non-binding agreements be judicially enforced?

Regardless of the ownership structure of the target, it is common to enter into preliminary agreements such as promise to purchase agreements and binding or non-binding letters of intent. These preliminary agreements allow the parties to set forth the main business terms and conditions for the parties to enter into the transaction and provide a certain level of certainty that the parties are willing to enter into the transaction.

However, if the content of the non-binding agreement shows that there is an offer and an acceptance, it can be argued that it constitutes a valid, perfect, and binding legal act, and consequently, its enforcement could be demanded. Thus, it is key to properly draft preliminary agreements to avoid any potential liabilities in such regard.

Typical provisions

Describe some of the provisions contained in a purchase agreement that are specific to real estate business combinations. Describe any standard provisions that are contained in such agreements.

Common representations relating to the legal and physical status of real estate are the specific provisions included in a sale contract and therefore provisions are included to specify the consequences of a misrepresentation.

Mexican law does not include a specific disclosure obligation; however, it is common practice to disclose all information relating to the current status of the property including, environmental, tax and economic condition of the property.

According to Mexican law, a seller must warrant a buyer from any hidden defects and provide a warranty that the transferred real estate was of his or her property, and therefore the buyer's possession will not be affected by a third party alleging a better right.

Stakebuilding

Are there any limitations on a buyer's ability to gradually acquire an interest in a public company in the context of a real estate business combination? Are these limitations typically built into organisational documents or inherent in applicable state or regulatory related regimes?

The limitation to gradually acquire an interest in a public company depends on the specific stake acquisition requirements in a public company. Such limitations are typically built into organisational documents of the specific entity.

Certainty of closing

Describe some of the key issues that typically arise between a seller and a buyer when negotiating the purchase agreement for a real estate business combination, with an emphasis on building in certainty of closing. How are these issues typically resolved?

In many cases, antitrust approvals are required for closing of a real estate transaction, depending on the value of the transaction and the parties involved in the transaction. As a general rule, antitrust approval is usually obtained as there is low risk that a concentration can occur in Mexican real estate markets; however, it is approximately a two-month process that requires disclosing sensitive information that the parties would need to take into account when planning on closing a transaction.

Additionally, real estate transactions related to projects that are to be developed, may be subject to the obtention of all relevant licenses, permits and feasibility studies, among others. Securing all relevant environmental permits and entitlements is also often included as conditions precedent for closing real estate transactions.

Lastly, and due to some inefficiencies of local authorities, the obtention of public records required to register a transaction in the correspondent public registry is taking longer than usual and so for diligence purposes this could create some delays and in some cases uncertainty as to whether the transaction would be able to be registered in a timely manner.

Environmental liability

Who typically bears responsibility for environmental remediation following the closing of a real estate business combination? What contractual provisions regarding environmental liability do parties usually agree?

According to the General Law for the Comprehensive Management of Wastes and its Regulations, those who contaminate the soil be accountable in terms of environmental responsibility for remediating any contamination (soil and even surface or groundwater); however, owners or lessees may also be responsible according to such regulations.

The usual contractual provision regarding environmental liability that parties agree on is an indemnification in the event of evidence of any contamination (soil and water), for the following 12 years after the closing of a real estate business, since that is the statute of limitations for environmental liability prosecution, which runs from the date when the environmental damage has been caused. Such provisions also include payments of all costs for any remedial action, environmental damage, any administrative sanction and any damage to a third party caused by the detected contamination.

Other typical liability issues

What other liability issues are typically major points of negotiation in the context of a real estate business combination?

It is common practice to disclose all information relating to the status of the real estate and, if breached, the buyer may rescind the corresponding agreement and request payment of any damages.

In virtue of the above, in addition to environmental liabilities, disclosures regarding tax matters of the real-estate business combination are a major topic of negotiation.

Sellers' representations regarding leases
In the context of a real estate business combination, what are the typical representations and covenants made by a seller regarding existing and new leases?

This depends on the type of leased real estate; however, covenants and representations on the following topics are included:

- use and access to the property;
- licenses and permits;
- terms and duration;
- rent (compensation);
- rent increases;
- security deposits;
- insurances;
- options to renew the lease or to expand the leased premises; and
- purchase options and similar.

It is common to require sellers to obtain estoppel certificates from tenants certifying the abovementioned topics and acknowledging the reliance of the buyer of such certifications for the acquisition.

DUE DILIGENCE

Legal due diligence
Describe the legal due diligence required in the context of a real estate business combination and any due diligence specific to a real estate business combination. What specialists are typically involved and at what point in the transaction are the various teams typically brought in?

The due diligence varies depending on the class of asset to be acquired and the business purpose for which such asset will be used. However, generally and, given the importance of the public registries of property, due diligence regarding real estate is focused on reviewing whether the information provided by the seller to the buyer is reflected in the corresponding entry in the public registry of property and ensuring that no lien or encumbrance is registered.

It is common for the information included in registered deeds regarding the surface of the real estate not to match the actual real estate or the information included in the cadastral registries of the municipality. When real estate is destined for development, these differences can affect the registration process, construction potential and permitting; therefore, it is important to identify any issues and attempt to resolve any differences beforehand.

Another important aspect is the environmental status of specific real estate. Phase I studies are usually carried out as part of the due diligence process for real estate property.

Further, due diligence includes ensuring that the specific real estate has no due fees in relation to real estate tax, ministration water rights or other relevant services.

For real estate that will be used for a specific purpose, due diligence must be conducted on the urban specifications, including:

- any licences or permits associated with existing or potential constructions; and
- the feasibility of public services.

Finally, for beachfront real estate, it is important to review the status of the federal zone maritime concession, which allows real estate owners to use (not construct) the beach located in front of their property. As sea tides may move beach boundaries, beachfront concessions may move in favor or to the detriment of concessionaries. Due diligence in this regard is aimed at confirming that the concession is in place, paid for and that there are no constructions on its surface.

For the due diligence process, normally real estate and environmental legal experts review the previously mentioned information and determine if there are any relevant findings that could affect the transaction.

Searches

How are title, lien, bankruptcy, litigation and tax searches typically conducted? On what levels are these searches typically run? What protection from bad title is available to buyers, and does this depend on the nature of the underlying asset?

The review consists in whether the information provided by the seller to the buyer is reflected in the corresponding entry in the public registry of property and ensuring that no lien or encumbrance is registered.

For this process, the notary public in charge of the transaction will request to the corresponding public registry of property the preventive notices (***avisos preventivos***) and the no-lien certificates to determine if there are any liens. Additionally, the notary public will request a valuation of the property and a certificate of no amounts owed for property tax.

The buyers have access to title insurance policies to cover certain contingencies that may arise in the case of irregular title.

Representation and warranty insurance

Do sellers of non-public real estate businesses typically purchase representation and warranty insurance to cover post-closing liability?

It is not very common to purchase representation and warranty insurance; as mentioned above, the most common insurance hired is on title.

However, depending on the seller's financial capability to pay for any indemnities under the purchase agreements, buyers usually require sellers to grant specific guarantees, such an escrow and/or corporate guarantees.

Review of business contracts

What are some of the primary agreements that the legal teams customarily review in the context of a real estate business combination, and does the scope vary with the structure of the transaction?

The most important document during the review is the title deed to the property subject matter of the acquisition. Other documents that are normally reviewed are any agreements constituting liens on the property, lease agreements, easements agreements, management agreements, service provision agreements or any others that could be affected by the transaction. The review aims to identify any relevant provisions with respect to rights and obligations assignment, change of control or any other provision that could in any way affect the transaction.

The scope of the review may vary depending on the transaction; however, whenever real estate is involved, the review should be carried out in a similar way but with certain peculiarities depending on the nature of the transaction and the use of the property subject matter of the acquisition.

BREACH OF CONTRACT

Remedies for breach of contract

What are the typical remedies for breach of a contract in the context of a real estate business combination, and do they vary with the ownership of target or the structure of the transaction?

The general rule is that, in the event of any breach, the party in compliance may claim from the party in breach the strict performance of the obligation or the rescission of the agreement and in both cases the payment of damages. If the enforceability of the obligation proves impossible, rescission may be requested.

It should be noted that if the purchaser transfers the property onerously to a good-faith third-party acquirer, in the event of rescission, the property cannot be restored; consequently, the remedy will be limited to damages. The foregoing does not apply to purchases and conditional sales in which such clauses are registered in the Public Registry of Property, since the seller may claim the restitution of the property even if it is owned by a third party.

Another common remedy in ad mesuram sales is the rectification of the price due to an error in the measurements.

Finally, a misrepresentation that was a determining motive for entering into the agreement, may cause the counterparty to claim de nullity of the agreement.

FINANCING

Market overview
How does a buyer typically finance real estate business combinations?

It usually depends on the purchaser and, to a certain extent, the size of the deal; thus it is fair to say that it is common to secure indebtedness before closing and to structure the deal as a 'finance acquisition', where lender borrows money to buyer as borrower to acquire and secure the real estate property that remains as collateral.

Seller's obligations
What are the typical obligations of the seller in the financing?

Usually, all the obligations of the seller are negotiated with the purchaser, meaning that the seller is not necessarily involved with the lender. Notwithstanding the above, lenders usually require certifications from tenants, information from the seller and must carry out due diligence similar to the due diligence carried out by buyers.

Also, it is commonly agreed that for certain acquisitions the closing of the transaction shall be contingent on the buyer obtaining financing.

Repayment guarantees
What repayment guarantees do lenders typically require in the context of a property-level financing of a real estate business combination? For what purposes are reserves usually required in the context of property-level indebtedness?

The most common repayment guarantees that lenders typically require:

- mortgages over real estate; and
- guarantee trust agreements, which may include not only the real estate, but also funds from the project, licences, agreements and insurance policies.

Guarantee trust agreements are also used in the financing of offices, retail stores and industrial parks, since the trust is an adequate vehicle to capture and secure lease agreements executed with tenants and the cash flow resulting therefrom.

Borrower covenants
What covenants do lenders usually insist on in the context of a property-level financing of a real estate business combination?

Some common covenants included in financing agreements are:

- performance by the borrower;
- supervision in case of development and construction by specialised project managers;

- use of funds and proceeds resulting from the sale of units in the development;
- warranty of title to the real estate;
- minimum conditions for the sale or lease of units in the development;
- insurance requirements;
- care and use of the property;
- restrictions in relation to creating liens and encumbrances over the property; and
- covenants designed to maintain the financial independence of the financed project from other projects being constructed by the developer.

Typical equity financing provisions

What equity financing provisions are common in a transaction involving a real estate business that is being taken private? Does it depend on the structure of the buyer?

These types of transactions occur when development capital certificates (CKDs) sell their asset portfolio and the CKD fund will cease to exist once all assets are sold and dividends are paid to investors, and so relevant discussions arise on who and how such fund will secure the indemnity obligations. Exactly for this reason, many transactions of this nature are structured as 'as is – where is' to avoid the need to keep a complex collateral structure or oblique investor to maintain their investment until the indemnity obligations are terminated.

COLLECTIVE INVESTMENT SCHEMES

REITs

Are real estate investment trusts (REITs) that have tax-saving advantages available? Are there particular legal considerations that shape the formation and activities of REITs?

Indeed. There are publicly traded real estate investment trusts in Mexico (commonly known as FIBRAS and CPIs). These vehicles are subject to the Securities Market Law, and while they do benefit from certain tax provisions, they do so to a lesser extent than privately operated trusts.

A private trust, as opposed to a publicly traded one, has numerous tax advantages, as under certain circumstances they can be considered transparent for tax purposes, and receive a different tax treatment from legal entities if they were to operate a real estate business directly. The advisability of creating a private trust for the management or development of a real estate project would depend on the size of the real estate portfolio, the ultimate purpose, and several other factors, including the payment of fees to trustees, which can be costly.

Private equity funds

Are there particular legal considerations that shape the formation and activities of real estate-focused private equity funds? Does this vary depending on the target assets or investors?

This varies significantly depending on the target assets and advisers. There is no single dominant strategy for the creation of a private equity fund, whether real estate-oriented or otherwise.

UPDATE AND TRENDS

Key developments of the past year

Are there any other current developments or emerging trends that should be noted?

The current trends in and prospects for the Mexican real estate market centre on the nearshoring effect, which has led to an unprecedented relocation of production and supply chains along the country's northern border. As a result, the demand for space in the industrial real estate market has experienced and it is expected that will continue to show significant increases during 2023 thanks to the nearshoring effect.

Naturally, the increase in production and supply chains in Mexico resulting in increases in industrial spaces involves an increase in the workforce working in such industrial spaces. As a result of this, there is a significant increase expected in demand of residential spaces in the areas with increased nearshoring impact (ie, the Mexican norther border).

Further, as part of reforms to the Mexican pension fund sector, which has grown and evolved consistently over the past two decades, Mexican pension funds (AFORES) have become primary sources of capital and financing for projects. AFORES initially focused on infrastructure and energy projects; however, over the past few years they have turned their attention to real estate developments.

Finally, the hospitality market grew considerably after covid-19 and is expected to continue its upward trend in the next few years.