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CROSS-BORDER FINANCING

Guaranty Trust in Mexico and Securitization

COMPARATIVE COMMERCIAL LAW
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INTRODUCTION

A combination of factors influence the ability for Mexican companies to obtain credit and financing at cost levels that allow them to be competitive in the domestic and international markets. Scarcity and high cost of commercial credit have been among the most significant economic problems facing Mexico in the past decade. Reform of Mexico's secured financing law was essential to provide legal principles necessary for asset based lending to take place in Mexico, which place a central role in the growth of the Mexican economy.

Credit availability from Mexican financial institutions also has been influenced by Mexican economy. Foreign financial institutions have been granting credit to Mexican companies, and have been assuming to a certain extent the credit risks involved. Foreign financial institutions look for the possibility to transfer the credit risk to a third party, which requires that the third party have some reason or need to assume the risk. Borrower guarantees the loan through the execution of several agreements, including one of the most common securities, the Guaranty Trust.

This document is divided in three sections. Section one will briefly describe the characteristics of secured transactions of common use in Mexico. Section two will focus in the Guaranty Trust in Mexico and the main provisions included into the Mexican Law of Negotiable Instruments and Credit Transactions ("LNICT"); Section three will explain how the legal figure of Securitization works in the United States and its benefits, and will discuss the risks of using the Guaranty Trust, as it is currently regulated in Mexico, as a financial asset, within the securitization scheme.

I. Security Transactions of Common Use in Mexico.

The Credit Risk

Most of the times when granting credit in Mexico, foreign financing institution look for the possibility to transfer the credit risk to a third party, which requires that the third party have some reason or need to assume the risk.

The third party, then, must either be a participant in the borrowing firm (an affiliate or a shareholder), or must have a compelling interest in ensuring that the borrower receives the loan. The imperatives of co-investment, for example, might create a compelling interest.

Such a need or interest is evident in firms, such as co-investors in real estate developments, industrial subcontractors or shelter operations, that in most cases benefit directly from the production of the Mexican customers.

Loan Agreements

The Main Contract.- Typically when a loan is granted to an individual or Mexican entity, a loan agreement is executed in English and Spanish versions with concurrent jurisdiction in Mexico and the United States, to allow the bank to pursue remedies in both countries. Consequently, the Loan Agreement has to comply with both Mexican and United States Law.

Ancillary Agreements.- The Loans are usually secured by real or personal guarantees, such as mortgages, pledges and guarantee trusts. In addition, sometimes-personal guarantees are granted in the form of bonds (“fianzas”), co-obligors (“avales”) and commercial bonds (“fianzas mercantiles”) issued by bonding companies, under the terms of the General Law of Bonding Institutions.

Also, the borrower and its guarantor “aval” generally execute a bilingual promissory note in favor of the lender that allows, in case of default, to file a lawsuit through a summary judicial proceeding, whereby plaintiff is entitle to obtain a preliminary attachment on goods owned by either the borrower of the aval.

US financial institutions have been granting loans to developers or owners of properties leased to subsidiaries of US corporations. Following, we will describe how a typical loan of this nature is granted to Mexican developers or landlords to finance their properties, through credit facilities known as “discount of leases”, whereby as a source of payment of such loans are the rents of same.

To be able to borrow funds, the developer ("borrower") must have a lease agreement or a built to suit lease agreement, executed with the subsidiary of the US corporation, and such lease is guaranteed by the lessee's US parent companies, whereby it unconditionally secures the fulfillment of all the obligations assumed by the Lessee, specially the obligation to pay the rent to the developer.

Along with the execution of the Loan agreement, the borrower and the bank execute a Pledge Agreement, whereby the rights to collect the rental payments derived from the lease are pledged for the benefit of the Bank. This document is executed in English and Spanish versions.

The borrower also executes an Assignment of Rents Agreement and of the corporate guaranty, whereby the borrower irrevocably assigns to the Bank all rentals due and payments derived from the Lease, as a non-exclusive source of payment of the Loan. This document is also executed in English and Spanish version. A notification of the Pledge and Assignment agreement to the Lessee and its parent company are sent by the borrower and acknowledge by lessee and its parent company.

The Borrower also, executes a Mortgage or a Guaranty Trust on the leased property in favor of the Bank to secure the Loan.

II. Guaranty Trust in Mexico

Guarantee Trust

By means of a trust agreement, the settlor conveys certain assets entrusted to a Mexican bank acting as trustee. The form of trust commonly used in Mexico is a three party transaction involving a settlor, a trustee and the lender as creditor beneficiary. The trust is used as a security device to place

liens on real estate; however, it is equally adaptable to movable property, and account receivables from certain types of operations.

Upon execution of the Trust agreement the settlor transfers title to the assets to the trustee who must either be a Mexican banking or surety institution, and is subject to the provisions of the Trust Agreement. Assets collateralized in a guarantee trust constitute the equivalent of a security interest for the benefit of the beneficiaries against creditors of the settlor/borrower. The trustee is empowered to dispose of or otherwise use the assets of the trust when settlor defaults payment on the loan or when the conditions specified in the trust agreement are breached.

The main benefit of the guaranty trust is that it is possible to execute on the collateral without having to resort to the judicial system, at least theoretically. To this effect, case law establishes that, given the legal nature of the trust, judicial intervention is not necessary in the enforcement proceedings.¹

Effective as of May 24, 2000, Mexico adopted a new secured transactions law.² Various provisions were added to the LNICT creating the guaranty trust and a non-possessory pledge as new security devices.

“The secured transactions law attempts to create security interests in all types of present and future collateral (proceeds and after-acquired property) and attempts to secure present and future obligations. The law also attempts to provide a purchase money feature and protects consumers (ordinary course buyers) from the reach of a lender’s security interest. Additionally, the law divests the debtor of legal

¹ See *Fideicomiso*, no es necesaria la intervencion de un organo jurisdiccional para la realizacion del fin, A.D. 45/77, informe 1977, segunda parte, pag. 36, as cited at www.natlaw.com/pubs/spmxbk3.htm at 16.

² See *Diario Oficial de la Federacion (Mexico) Decreto por el que se reforman, adicionan y derogan diversas disposiciones de la Ley General de Titulos y Operaciones de Credito, delCodigo de Comercio y de la Ley de Instituciones de Credito.* (May 23, 2000).

title to the collateral placing title with a trustee or secured party, who as the true titleholder, may, in case of default, enforce the security interest in an extra-judicial manner.”³

Following are the main features of the Guaranty Trust in Mexico provided by the new secured transactions law:

1.- Trustee.- Article 399 of the LNICT, provides that not only Mexican banking institutions can act as trustees but, also, insurance and bonding companies, non-bank financial institutions and national deposit warehouses.

2.- Multiple Guarantees.- Article 398 of the LNICT, sets the possibility that a single trust guaranty may secure various obligations for the benefit of one or several creditor beneficiaries.

3.- Assets Guaranty Trust.- Articles 401, 402, 403, 404 and 405 of the LNICT, state that any kind of movable assets can be the corpus of the trust guaranty and such assets can be used by the Settlor in its manufacturing process (in the case of raw materials, parts and components) and the finish products can be released by the Settlor to its clients without a lien, provided that the proceeds received thereunder, be transferred and subject to the trust guaranty.

The rights granted by Law to the Settlor according to the previous paragraph, will immediately cease upon notification received by Settlor of the foreclosure procedure initiated by creditor beneficiary in accordance with Law.

The risk of loss of the movable assets used by the Settlor in accordance with the provisions stated above, shall be the sole responsibility of Settlor. If the value of the assets in possession of Settlor diminishes and is not sufficient to cover the principal and interest of the indebtedness secured, Settlor is bound to transfer to the trust, additional assets to yield the difference.

³ John M. Wilson, Esq., *Mexico: New Secured Transactions and Commercial Registry Law*. Inter-American Trade Report published by the National Law Center for Inter-American Free Trade, Volume 7-Number 13, (July 3, 2000) (hereinafter referred to as Wilson) at page 1816.

4.- Requirements for the Use of the Assets by Settlor.- Article 406 of the LNICIT, state that if the assets are used by Settlor, the following main trust stipulations must be set:

- a).- The specific location of the assets subject to the trust.
- b).- Determination as to how the inspections will be conducted by creditor beneficiary on the assets and, the formulas to determine the reduction in value of the assets.
- c).- The minimum purchase price to be paid by the buyers of the products sold by Settlor.
- d).- The full identification of the buyers who shall purchase the products from Settlor.
- e).- Description of the manufacturing process to be conducted by Settlor and the destination of the products.

5.- Statute of Limitations.- Article 409 of the LNICIT, provides that the statute of limitation of the legal rights vested upon the creditor beneficiaries in the trust guaranty, shall be three years commencing on the date the obligations assumed by borrower/Settlor were due.

6.- Trustee's Indemnities.- Article 411 of the LNICIT, sets forth that Trustees shall indemnify settlors for at least 10% of the value of the principal and interest of the secured indebtedness, for trustees' wrong doings and negligence in the performance of their duties.

7.- Release of Payment Obligations.- Article 412 of the LNICIT, provides that the parties to the trust must stipulate therein, that in the case the proceeds resulting from the foreclosure of the assets subject to the trust, are not sufficient to cover full payment of the principal and interest of the secured indebtedness, the Settlor/borrower shall be released and forever discharged of its obligation to pay the balance of said indebtedness. Since this provision is of public policy, it can not be waived by the parties.

Guarantee trusts were more frequently used by the foreign or domestic lenders prior to the amendments of the Law, due to the release of payment obligation stated above.

III. Securitization

History of Securitization

The modern era of securitization began in 1970 when the United States government created the Federal Home Loan Mortgage Corporation (“FHLMC”).⁴ FHLMC joined its siblings, Government National Mortgage Association and Federal National Mortgage Administration, also called government sponsored entities, in making a secondary market in mortgages - that is, buying and selling mortgages.⁵ In the late 1970s, receivables other than mortgages began to be securitized.⁶

Due to its benefits securitization is expected to remain a significant source of financing in the years to come. In the US securitization transactions represent a large dollar volume of financing, and since it has benefited all the parties involved in this kind of transaction it would continue to represent a significant volume in the future. Securitization has developed in many different ways and financial assets have been securitized. It is foreseeable that new financial assets will be securitized as the needs of the market increases. Present issuers include financial institutions, finance companies, and many types of commercial businesses. Some issuers are large, some are small, some are highly rated, and some are not.⁷

How does securitization works?

⁴ Federal Home Loan Mortgage Corporation Act, Title III of the Emergency Home Finance Act of 1970, Pub. L. No. 91-531, 303(a), 84 Stat. 450, 452 (codified as amended at [12 U.S.C 1452](#)(a) (1994)) as cited at Clair A. Hill, Securitization: A Low-Cost Sweetener for Lemons, 74 Wash. U. L. Q. 1061 (1996) at 1121.

⁵ See Clair A. Hill, Securitization: A Low-Cost Sweetener for Lemons, 74 Wash. U. L. Q. 1061 (1996) (hereinafter referred to as Hill) at 1121.

⁶ *Id.* at 1122.

⁷ *Id.* at 1076, citing *See infra* Part IV.C.

Securitization⁸ is a financial technique firms use to raise financing. In a securitization transaction, a firm (regularly a financial institution) transfers rights in receivables or other financial assets to an entity (the “pool”). The pool’s financial assets consist in mortgage loans, automobile loans, credit card receivables, equipment leases and other kind of financial assets, where investors look to the assets themselves as the principal source of payment on the securities rather than to the credit of either the securities issuer or the entity benefiting from the securitization of the assets. The receivables often, but not always, have similar terms, maturities, and other salient characteristics.

The pool in turn issues securities to capital market (“pool securities”) to investors; the sales may be private placements or public offerings. Purchasers of pool securities may be institutional investors or individuals. The pool securities represent rights to receive payments from the receivables in the pool; however, the terms of the pool securities are often significantly different from the terms of the underlying receivables. The pool uses the proceeds from the sale of pool securities to pay the firm for the financial assets or receivables.

The investors buy the securities based on their assessment of the value of the financial assets, often without concern for the firm's financial condition.⁹ Thus, companies that otherwise cannot obtain financing now can do so; and companies that can obtain financing now may be able to do so at lower cost.¹⁰

⁸ A great deal has been written about securitization. See Clair A. Hill, *Securitization: A Low-Cost Sweetener for Lemons*, 74 Wash. U. L. Q. 1061 (1996) (Hill); Michael S. Gambro and Scott Leichtner, *Selected Legal Issues Affecting Securitization*, 1 N.C. Banking Inst. 31 (1997) (Gambro and Leichtner); Symposium: *The Universal Language of Cross-Border Finance*, 8 Duke J. Comp. & Int'l L. 235 (1998) (Symposium); Alfred J. Puchala, Jr., *Securitizing Third World Debt*, 1989 Colum. Bus. L. Rev. 137, (1989) (Puchala). Willys H. Schneider, *Selected United States Tax Issues in Cross-Border Securitizations*, 8 Duke J. Comp. & Int'l L. 453, (1998)(Schneider); Steven L. Schwartz, *The Alchemy of Asset Securitization*, 1 Stan. J. L. Bus. & Fin. 133 (1994) (Schwartz), Tamar Frankel, *Securitization: Structured Financing, Financial Asset Pools, and Asset-Backed Securities*, (1991 & Supp. 1994) (Frankel).

⁹ See Schwartz, *supra* note 8, at 141.

¹⁰ *Id.* at 141-142, 146.

“The pool securities can take many forms. They can be debt (senior or subordinated), equity (in one or more classes), or debt or equity payable only from the principal, or interest, on the pool receivables. The debt can be long or short term, and it can carry a fixed or floating interest rate. The equity also can have a stated interest rate. The debt is an obligation of the pool, secured by the pool's assets, the receivables. The equity represents an interest in the pool's assets.”¹¹

Other receivables that have been securitized include: lease receivables (including automobile, equipment, and aircraft leases), trade receivables, commercial loans, defaulting loans, boat loans, loans to low-quality borrowers, loans to small businesses, insurance premiums, export credits, franchise fees, airline ticket receivables, toll road receivables, health care receivables, nursing home receivables, mortgage servicing rights, rights to royalties, and tax receivables.¹²

Securitization involves: (1) selection ("pooling") of the receivables to be conveyed; (2) creation of the entity (the "pool") to which the receivables will be conveyed; (3) establishment of the terms of the securities to be issued by the pool; (4) conveyance of the receivables; (5) issuance of the pool securities; (6) establishment of mechanisms by which the receivables will be serviced (collected), and the amounts collected held until payment to the pool's securities holders; and (7) often, the issuance of the rating agency's rating and the insurer's guaranty.¹³

Benefits of Securitization

Some of the main benefits of securitization are the following:

1. Selling high risk weighted loans decreases the amount of capital a bank needs.¹⁴ High risk weighted loans require a bank to have enough capital to back the loans. A bank may invest the

¹¹ See Hill, *supra* note 5, at 1068.

¹² *Id.* at 1076-1077.

¹³ *Id.* at 1077-1078.

¹⁴ Securitization: Asset-Backed and Mortgage-Backed Securities (Ronald S. Borod ed., 1994) at 1.02.a.1, 1.04.a.2-.3., as cited at Hill, *supra* note 5, at 1125.

proceeds of the sale of high risk weighted loans in lower risk weighting loans decreasing the amount of capital a bank needs.

2. Selling loans also enables financial institutions to reduce certain "regulatory taxes."¹⁵

3. Securitization offers a better way to sell loans.¹⁶ Many loans can be sold at once, at a comparatively small discount from their face value.

4. Securitization worked very well to remove lower-quality loans from financial institutions' balance sheets.¹⁷ Financial institutions were able to remove many problem loans from their balance sheets in a comparatively short time.

Other benefits from securitization¹⁸ are: Improved asset/liability management; Improved liquidity; Spreading of credit risks; Assistance in meeting increased capital adequacy standards; Increased fee income; Minimize the costs of raising funds; Decrease the amount of interest rate risk to which they expose themselves; and increase in investment choices and decrease in the analytical costs of investment.

Cross-Border Financing. Risks and Considerations

The first step in any potential cross-border financing is to determine its jurisdictional framework, including the jurisdictions of the firm seeking financing and of the source of that financing.

Perfection

In a securitization transaction, perfection means protecting the investor's interest in the transferred financial assets from claims of the firm's creditors.¹⁹ Some jurisdictions have a filing or other public notice system for perfection.²⁰

¹⁵ See Hill, supra note 5, at 1125.

¹⁶ *Id.* at 1126.

¹⁷ *Id.*

¹⁸ These benefits are broadly discussed in Gambro and Leichtner, supra note 8.

¹⁹ See Frankel, supra note 8, at 37-40.

²⁰ *Id.* at 37.

Article 407 of the LNICT provides that the guaranty trust agreement must be in writing.

Depending in the amount of value of the movable property, parties must ratify its signatures before a Notary Public. The lien in real property must be certain in a Public Deed.

The guaranty trust affecting movable property must be recorded at the Public Commercial Registry located at the debtor's domicile. The guaranty trust affecting real property, or either movable or real property must be recorded at the place where the real property is located, or in the Special Registry, as it may correspond.²¹

Mexico enacted a new commercial registry law which creates a new method for recording security interests. This new law and operational system creates a centralized, notice-based, computerized registry system. "The perfection method provided by the new law²² is registration/filing under the new commercial registry law. The central focus of this reform is the introduction of an electronic filing system. The modern state of information technology has created new opportunities for a reorganization of the current registry system. A new legal and technology framework permits recording, storing, and notification of commercial operations via the use of an information and computer package based on speed and efficiency."²³

Priority

Priority refers to the ranking of multiple claims against a transferred asset. In a securitization context, it means that the pool's and investors' claims against the transferred financial assets are superior to any third-party claims, "first in time, first in right". Priority is normally accomplished, in a jurisdiction that perfects by filing, by being the first to file against the assets.

²¹ See LNICT, Art. 410.

²² Commercial Registry Law, *Diario Oficial de la Federacion*, May 29, 2000.

²³ See Wilson, *supra* note 3, at 1818.

Guaranty trust is perfected by filing. As stated before, the lien is recorded at the Public Registry of Commerce, to indicate priority, investors would not have to rely on the firm's representations, warranties, and covenants.

Commingling

Another risk is that cash proceeds of assets pledged or sold to a pool may be mixed, or "commingled," with the firm's own funds.²⁴ This risk to some extent reflects common sense: if the firm is freely permitted to use collections, a court may find the firm's control inconsistent with the pool's claim that it has a perfected interest in the collections.²⁵ Commingling can be prevented by using lockboxes, or by segregating cash flows. Control over cash flows - such as requiring obligors to make payments into a trust account located in the US - also may mitigate the perfection risk.²⁶ If these approaches are not available, one should ascertain whether proceeds are traceable, and ask local counsel whether traced proceeds are protected.²⁷

The new LNICT provides that affected movable property may cover after-acquired property and proceeds by permitting the parties to describe original and future collateral in general fashion, instead of a specific fashion as provided prior to the amendments of the law. Prior to the amendments it was almost impossible to create a lien in future property since some future and fungible goods cannot be described in detail.

The new LNICT is inconsistent with this respect. Some provisions removed the word "specific" but some other provisions did not. Some enforcement sections require that the collateral be described with specificity prior to the enforcement action.²⁸ Investors should place attention to this issue when

²⁴ Frankel, *supra* note 8, at 34, 40.

²⁵ Symposium, *supra* note 8, at 242.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *See* Wilson, *supra* note 3, at 1816.

reviewing the property affected by the guaranty trust, and be sure that the affected property is described in compliance with the law provision applicable to each case.

Preferential and Fraudulent Transfers

In a securitization context, preference and fraudulent transfer laws are unlikely to apply because any transfers of financial assets from the firm to a pool tend to be structured as sales for arm's length consideration.²⁹

Contractual and Legal Restrictions

There may be restrictions in the guaranty trust agreement pursuant to which may prohibit the assignment of rights to payment received thereunder. The guaranty trust should be reviewed in advance to see how it was structured and if there are any restrictions that could affect its sale or the enforcement of the original collateral. Special attention should be placed to any restrictive covenants in the agreement. One also must consider whether local law itself restricts the financing.

Enforcement Issues

Enforcement of rights is critical in the international context. It is not enough to have theoretical rights under the law. The legal system granting the rights may not be the same as the one in which enforcement occurs. "If investors can obtain jurisdiction over the firm in their own (or the pool's) jurisdiction, it may not matter that the firm has no significant assets outside of its home jurisdiction. Investors would simply sue where the firm has submitted to jurisdiction, obtain a judgment, and take the judgment to the firm's home jurisdiction to be enforced."³⁰ It is important to verify in advance if the judgment would be recognized and what, if any, defenses could be raised to its enforcement.

The new LNICIT vests title to the collateral in the creditor, or third party trustee, allowing the creditor to repossess the collateral in case of default. Theoretically, the creditor/owner can use the

²⁹ Symposium, *supra* note 8, at 242.

³⁰ *Id.* at 244.

property after default pursuant to the security agreement, including repossession and disposition. However is dangerous to base a summary enforcement procedure on the basis that the creditor, as opposed to the debtor, has all ownership rights.³¹

Not sufficient proceeds to cover full payment

The most important risk that should be consider is that the new LNICT provides that the parties to the guaranty trust must stipulate therein, that in the case the proceeds resulting from the foreclosure of the assets subject to the trust, are not sufficient to cover full payment of the principal and interest of the secured indebtedness, the Settlor/borrower shall be released and forever discharged of its obligation to pay the balance of said indebtedness. This provision is of public policy, and the parties cannot waive it.

Financial institutions should be more cautious in the use of this type of guaranty, and may only be acceptable if the value of the goods in trust is at least twice the value of the loan. This issue should be of main importance for the purchaser of this financial asset in a securitization transaction.

Currency Exchange

Currency exchange issues loom large in cross-border finance. The problem is that the currency in which investors invest may be different than the currency received to repay them. Investors generally prefer the exchange rate risk to be "hedged" through "swaps" and other derivative products.

Currency hedging is accomplished by entering into a swap with a third party to exchange the relevant currencies at the future settlement dates. The parties contractually agree in advance to the exchange rate that will be deemed to apply on those settlement dates to ensure that the currency conversion will yield sufficient dollars to repay investors.³²

Tax

³¹ See Wilson, supra note 3, at 1817.

³² Symposium, supra note 8, at 247.

There are three main tax issues in any securitization financing: whether a transfer of assets from the firm to the pool constitutes a sale or a loan; whether the pool used to effectuate the financing is itself subject to tax; and how investors in the pool's securities are taxed on their investment.³³

These issues should be discussed by taking into consideration the tax law of the parties' jurisdiction. If the transfer of assets from the firm to the pool is a sale for tax purposes, the firm may have to recognize tax loss or gain in its own jurisdiction. Alternatively, if the transfer is a loan for tax purposes, normally it is tax neutral from the firm's standpoint; but then there may be withholding taxes on interest paid on the loan.³⁴ Bi-lateral tax treaties can reduce or eliminate withholding taxes. A tax treaty exists between the United States and Mexico.

Another significant tax concern is the so-called "entity-level" tax. Such a tax can greatly reduce cash flow available to pay the pool's investors (unless the tax is offset by a deduction for interest paid by the pool on its debt securities).³⁵

If a US entity is deemed to be "doing business" directly or through agents in a foreign jurisdiction, or if a foreign entity is deemed to be "doing business" in another foreign jurisdiction or in the US, the tax rules of that other jurisdiction may also apply.³⁶ If an income tax treaty applies, an entity should not be subject to tax in another jurisdiction if it has no "permanent establishment" in the foreign jurisdiction.

Investors are taxed on their investment depending on the tax law of each investor's jurisdiction. Investors may be taxed on interest paid in the transaction.

³³ See generally, Frankel, *supra* note 8, at 45.

³⁴ Symposium, *supra* note 8, at 249.

³⁵ *Id.* at 250.

³⁶ *Id.*

CONCLUSION

Securitization is an efficient financial technique used by financial institutions to raise financing.

We could see that there are many benefits to the firm that sells its financial assets through securitization to a pool of investors. Although, it is very important to take into consideration all the risks that are involved in this kind of financial transaction.

Cross-border finance involves multiple legal systems with different terms and rules. It is important for the parties that are willing to participate in this kind of transaction to be aware of the fundamental legal principles of cross-border finance, in order to ask the right questions of local counsel and understand the response, its implications and risks.

Mexico has been working to adapt its legal system and security transactions to a new world of economic changes and demands. The new LNICT represents a giant step in the modernization of commercial lending law. The enactment of the new security devices: a guaranty trust and a non-possessory pledge, decreased the risks that are involved in a securitization scheme.

Although, there are still risks that the parties have to take consideration before applying this technique to the guaranty trust in Mexico, especially the fact that the new LNICT provides that the parties to the guaranty trust must stipulate therein, that in the case the proceeds resulting from the foreclosure of the assets subject to the trust, are not sufficient to cover full payment of the principal and interest of the secured indebtedness, the Settlor/borrower shall be released and forever discharged of its obligation to pay the balance of said indebtedness. The parties to the securitization transaction need to find a strategy to avoid this risk, since there are many cases in which the proceeds are not sufficient to cover the full payment of the debt.