

## International Special Report

## Latin American Legal and Tax Regimes

### Analysts

Greg Kabance (United States)  
+1 312 368-2052  
greg.kabance@fitchratings.com

Sam Fox (United States)  
+1 312 606-2307  
samuel.fox@fitchratings.com

Mark Salgado (United States)  
+1 312 368-2080  
mark.salgado@fitchratings.com

Eduardo D'Orazio (Argentina and Uruguay)  
+54 11 5235-8100  
eduardo.dorazio@fitchratings.com

Jayne Bartling (Brazil)  
+55 11 4505-2600  
jayme.bartling@fitchratings.com

Erick Campos (Costa Rica, Panamá; El Salvador, Guatemala & Honduras)  
+506 296-9182  
erick.campos@fitchca.com

Glaucia Calp (Colombia)  
+571 326-9999  
calp@drcolombia.com.co

Jose Castro (Chile)  
+562 499-3306  
jose.castro@fitchratings.cl

Rogelio Arguelles Cavazos (Mexico)  
+52 81 8335-7179  
rogelio.arguelles@fitchmexico.com

Johanna Izquierdo (Peru)  
+511 444-5588  
johanna.izquierdo@aai.com.pe

Jorge Yanes (Venezuela and Dominican Republic)  
+58 212 286-3356  
jorge.yanes@fitchvenezuela.com

### ■ Summary

Fitch Ratings conducted a regional analysis of the different regulations and tax regimes that govern the structured finance markets in the Latin American countries. The goal of this report is to present the description of the general framework under which the structured finance market works in each country. Fitch believes this analysis may help to understand the characteristics of the transactions rated in each market. Basic points, such as the existence of a Trust Law and isolation of assets from the claims of creditors of all parties to the transaction, are presented in this analysis.

A tax treatment analysis is also presented to demonstrate how the fiscal environment encourages (or not) the development of the structured finance market in each country and how this environment affects the structures in some of them. In the Annex on page 15, we present general characteristics for the transactions in the Latin American countries.

We may have countries/markets in which we do not have a specific trust law, but the general legal framework for the country provides for special-purpose vehicles (SPVs), allowing for isolation of assets and protection against seller/originator creditors. In other cases, there is a legal instrument (i.e., a fideicomiso or patrimonio separado) that acts as a bankruptcy-remote entity in order to achieve insolvency segregation of the assets from the insolvency estate of the issuer. We can conclude that, in general, in most of the markets in the region, the isolation of assets can be achieved. In addition, in some markets, the trust law was successfully tested (especially in asset-backed securities [ABS] transactions) under the situation of a seller/servicer Chapter 11 type reorganization.

Regarding the regulations affecting the rating agency industry, in general, the agencies are regulated in almost all the countries. In most cases, the local regulations also require all public offerings to be rated by at least one rating agency (in some countries, two ratings are required). In other cases, although the rating is not mandatory for public offering, the regulations for institutional investors (pension funds and insurance companies are the most important investors in almost all the countries of the region) establish specific investment rules, requiring them to invest in securities that have at least one rating (and stating a minimum rating level, in some cases).

Despite the differences among the degree of development of the markets within the region, public local ratings are widely used in almost all of them. Although ratings may be not compulsory in some countries, financial trusts generally seek at least one rating before placing a particular security on the market.

## ■ Argentina

### Legal Framework

Structured finance transactions took off in 1996 following the passage of the Argentine Trust Law (Law 24,441) in 1995, which provided the legal framework necessary for the development of the securitization market.

The trust (fideicomiso) can be created by a trust contract (contrato de fideicomiso). There is a trust whenever a person (seller) transfers the trust property title to another person (trustee) who must manage it for the benefit of whoever is appointed by the trust contract (beneficiary) and transfer it upon a specific period of time or fulfillment of a term to the seller, the beneficiary or the trustee. Transferring through a trust contract has the effect that the trust property constitutes an equity separate from that of the trustee and the seller (Article 3 of the Law).

Article 19 of Law 24.441 regulates financial trusts (fideicomiso financiero). The National Securities Commission (Comision Nacional de Valores) has published some regulations regarding financial trusts: i) the beneficiary may be any natural or legal person; ii) the trustee is a financial institution or a company that has a special license by the National Securities Commission; and iii) the beneficiary is the owner of a certificado de participación or a titulo representativo de deuda.

There is flexibility regarding the kind of assets that can be held by a trust. These assets are segregated from those of the seller, the trustee and the beneficiary and cannot be involved in any enforcement or insolvency procedure involving the trustee or the seller.

The trustee can issue certificados de participación (participation certificates) and titulos de deuda (debt securities).

The law has been particularly helpful for transactions involving ABS, given that a seller's liquidation will not prevent the underlying assets' cash flow from being channeled into the trust on behalf of the investors. However, there is uncertainty as to whether these rules would apply to future flow transactions during a Chapter 11 type reorganization. Nonetheless, investor experience has generally been positive. This does not apply to public-sector

companies, in which investors have had several bad experiences.

### Regulations Affecting Rating Agencies

Currently there are four rating agencies operating in the market: Fitch, S&P, Moody's and Evaluadora Latinoamericana (the only local company). Financial trusts are not required to be rated in order to make a public offering.

However, both the Superintendencia de AFJPs and the Superintendencia de Compañías de Seguros (the government regulator of insurance companies) establish specific investment rules requiring institutional investors, such as pension funds and insurance companies, to invest in securities that have at least one rating, with the minimum rating being 'BBB'(arg).

Consequently, although ratings are not compulsory in nature, financial trusts generally seek at least one rating before placing a particular security on the market. This explains why around 97% of total issues are rated.

### Fiscal Treatment of Trustees

While financial trusts with existing assets are generally subject to income taxes, their tax base can effectively be reduced to zero, if certain requirements are met, to allow for interest and dividend payments to be deducted from taxes. These requirements include the following: i) that a trust be created for the sole purpose of securitizing homogeneous assets, provided that the creation of the trust and the public offering of participation certificates and debt securities be made pursuant to the regulations of the CNV; ii) that homogeneous assets originally included in the trust shall not be substituted by others, except in case of replacement of one asset for another due to delinquency or default; iii) that the term of duration of the trust, only in the event of instruments of credit, be related to the term of the final settlement of the trust assets or of the credit rights that form them, respectively; and iv) that the total gross benefit of the trust be exclusively paid out of the income resulting from the trust assets or of those that constitute them and of those resulting from their realization and from the temporary financial placements admitting that an amount no higher than 10% of such total income derives from other transactions made to maintain the value of said assets.

Other taxes, such as value added, gross revenue and stamp taxes, must be paid by the trustee.

#### Fiscal Treatment of Investors

According to the Argentine Trust Law, all profits resulting from the sale, exchange, barter, conversion or disposal of trust securities are income tax exempt. The same applies to interest income, as well as to any gains resulting from reinstatements and adjustments of the principal for fixed-income securities and participation certificates issued by the trustee. However, the rule does not apply to corporations, including sociedades anónimas (publicly traded companies), sociedades de responsabilidad limitada (limited-liability companies) and sociedades en comandita simple (limited partnerships), among others.

Tax exemptions are only applicable if the above-mentioned securities are placed through a public offering and issued by the trustee of the trust created for the securitization of these assets.

Interest income from a trust's debt securities is taxable for local corporations acting as investors, but it is exempt for Argentine individuals and foreign investors (who are not required to pay Argentine income taxes).

The income stemming from a trust's participation certificates is not considered within a beneficiary's earnings. This rule applies to local and foreign investors, with respect to Argentine income taxes. Foreign investors must analyze the tax regulations applicable in their respective countries.

Financial transactions and payments resulting from the issuance, subscription, placement, transfer, amortization, interest and settlement of debt securities and participation certificates are exempt from value-added taxes, as long as these are related to financial trusts created for asset securitization and the securities involved are placed through public offerings. Once the aforementioned requirements have been met, any income from a trust's debt securities and participation certificates will be tax exempt.

Resident individuals must include the trust's securities within their total taxable assets (personal assets tax). Taxes on credits and debits of bank accounts, as well as stamp taxes, must be paid by the investor.

In sum, the trustee is eligible for certain tax benefits, if the aforementioned requirements are met. From the investor's perspective, the fiscal treatment for securitized structures is neutral compared with other fixed-income securities.

#### Main Investors

While pension funds and insurance companies are by far the most important investors in Argentina (with their participation continuing to increase over the years), only about 5% of their funds are invested in financial trusts. On the other hand, individuals have increased their participation in financial trusts since the crisis took place in 2001, as they are perceived as a relatively safe option.

#### ■ Brazil

##### Legal Framework

The general legal framework for Brazil's structured finance market provides for two SPVs, Fundos de Investimento em Direitos Creditórios (FIDCs, asset-backed investment funds) and Certificados de Recebíveis Imobiliários (CRIs, real estate backed certificates) issued by securitization agents under a fiduciary regime.

FIDCs are bankruptcy-remote vehicles providing for the isolation of the assets and protection against the originator's creditors. However, there are currently no precedents in terms of such a structure being tested. Nonetheless, in Brazil it is important to establish the true sale of assets to the FIDC through a formal sales agreement.

Although CRIs issued by securitization agents under a fiduciary regime provide for the isolation of assets and protection against seller/originator creditors, segregating assets and liabilities from those of other tranches or issues, the fiduciary structure does not protect the assets against fiscal and labor-related claims of the securitization agent. However, such obligations are closely monitored by other parties involved in the transaction.

##### Securitization Agents

CRIs are issued by securitizadoras (securitization agents) in conformity with Law 9.514/97 and regulated by the Comissão de Valores Mobiliários (CVM, the Brazilian Securities and Exchange Commission). Securitization agents act as fiduciary trustees to certificateholders for real estate related transactions (e.g., residential mortgage-backed

securities [RMBS] and commercial mortgage-backed securities [CMBS] only. Trustees may participate in more than one securitization, with each transaction encompassing assets and liabilities that are isolated from all other assets and liabilities held by the securitization agent. To date, securitization agents have been used for both a single transaction (acting as a single-purpose entity) or for various transactions (acting as trustee on behalf of multiple investor interests at the same time), with all issues being isolated from each other.

## FIDCs

Similar to Spain, Portugal and France, in 2001 Brazil published norms regarding the utilization of investment funds (FIDCs) as vehicles for securitizations. The funds act as bankruptcy-remote entities separate from the originators of the assets, with structured instruments being secured by either existing assets or future flows.

### **Main Participants in Structured Finance Transactions**

**FIDCs:** The main participants in a structured finance transaction are the fund manager (equivalent to the trustee), the custodian (equivalent to the primary servicer) and the originator (equivalent to the special servicer).

Similar to a trustee in a traditional securitization structure, the fund manager has the power to perform any activity or duty related to managing the assets of the fund. Responsibilities include the filing of documentation, the performance of cash flow waterfall allocations, the announcement of early amortization events and communication with investors in general. In addition, the fund manager is responsible for hiring all other parties involved in the transaction.

To Fitch, the potential insolvency of the fund manager is an important consideration. If a fund manager becomes insolvent, the most likely action would be its substitution, with the decision made by an investor assembly. So far, the replacement of fund managers has been relatively swift in the case of poor quality service. However, there are currently no precedents in terms of insolvencies.

A registered custodian, whose role is similar to that of a primary servicer, is accredited by the CVM. The contract between the custodian and the fund manager must specify all responsibilities and procedures in

order to assure the integrity of the transaction. The custodian's responsibilities include the gathering of documentation and information, as well as the analysis of the assets backing the transaction, subjecting them to certain eligibility criteria prior to their acquisition. It should be noted that, in Brazil, primary servicing is still concentrated among a small number of participants.

For most transactions, the fund manager may hire the originator to service the delinquent assets. Although the use of the originator generates certain efficiencies in terms of collection, it is important the transaction be structured in such a way that it allows for these functions to be undertaken by other parties, such as the custodian as back-up servicers, if required.

## Securitization Agents

Participants in a CRI transaction include securitization agents (e.g., trustees), servicers (including master and specialty servicers) and fiduciary agents. Securitization agents hold many of the same responsibilities as fund managers for FIDC structures. Master servicers are generally a third party focusing on RMBS, whereas the role of specialty servicer is generally assumed by the originator when the securitization process involves home loans originated by construction companies.

Fiduciary agents represent the investors' interests by monitoring the securitization agents' performance on a daily basis. It is the fiduciary agent's responsibility to call an investor assembly in the event of early amortization. In addition, the fiduciary agent assumes the securitization agent's responsibilities in the event of bankruptcy.

For both FIDC and CRI transactions, payment collection can easily be segregated from other cash flows of the originator. All payments are made electronically through any financial institution in Brazil. After clearance, payments are transferred into an account designated for a particular transaction, thereby mitigating commingling concerns.

## Regulations Affecting Rating Agencies

In Brazil, rating agencies are not subject to local regulations and are, therefore, not required to be registered or certified with local authorities. However, the CVM does regulate the use of ratings within the local capital market, requiring all public offerings (e.g., CRI and FIDC units) to be rated by at least one rating agency operating in the country. In

the case of FIDC units, nonpublic offerings are defined, among other things, as follows:

- The units, or series of units, issued exclusively for one investor or unified group of investors with a common purpose;
- The investor, or unified group of investors, adhere to a signed declaration acknowledging the risks involved in the transaction, including the possibility of total loss of the capital invested, as well as the absence of a rating for the issue;
- The fund's bylaws establish that the fund will be required to register with the CVM and obtain a rating for the issue prior to it trading in the secondary market.

There are six ratings agencies currently operating in Brazil, with three of them being international agencies (Fitch Ratings, Standard & Poor's and Moody's) and the remainder being local companies (Austin Rating, LF Rating and SR Rating).

Fixed-income investment funds and pension funds must allocate at least 80% of their net asset value in Brazilian federal government fixed-income securities and/or in private-sector, fixed-income securities considered to be "low credit risk," as defined by a locally established rating agency. While these regulations give rating agencies the responsibility to define what constitutes low credit risk, Fitch believes investors should ultimately make this determination, taking into consideration their particular investment needs. Thus, although investors generally regard any rating equal to or higher than 'BBB-'(bra) as being low risk, many investors have established policies that only permit investments in securities rated 'A-'(bra) or higher.

For low credit risk investments, fixed-income investment funds and pension funds may allocate up to 20% of net worth in CRI issues, while for FIDCs, investment funds and pension funds may allocate up to 20% and 10%, respectively, of net worth. For a single issuer, investment funds are limited to investing up to 10% of net worth in any FIDC or CRI issuer. Pension funds may invest up to 20% of net worth in any CRI issuer and up to 25% in any single FIDC. Conversely, for pension funds, investments in CRIs with at least two ratings that are considered low credit risk are not subject to issuer concentration limitations.

## ■ Chile

### Legal Framework

The passage of Law 19,301 in 1994 represented an amendment to Law 18,045 (which regulated Chilean capital markets prior to that date), providing the legal framework necessary for the development of the Chilean securitization market. The new law accomplished this by establishing the concepts of sociedades securitizadoras (structuring agents) and activos securitizables (securitized assets), with the latter including mutuos hipotecarios and letras hipotecarias (RMBS).

The introduction of Law 19,623 in 1999 allowed securitization firms, through Articles 132 and 135, to acquire the rights to payment flows and other written transferable credits or rights, such as credit cards, accounts receivable and student loans.

The aforementioned laws introduced securitized instruments as a new investment option, using the sociedad securitizadora as an intermediary to form a separate trust through the issuance of securities backed by certain types of loans.

According to these laws, the sociedad securitizadora is required to form a separate trust for each structured instrument, clearly distinct from the firm's common equity. Consequently, the liquidation of the sociedad securitizadora would only affect the firm's common equity. Similarly, the liquidation of a trust backing a specific instrument would not affect the sociedad securitizadora as a whole or any other trust originated by the agent.

Once assets are transferred to a separate trust, the general creditors of the sociedad securitizadora cannot affect any of the assets, regardless of their origin or credit quality.

Finally, the creditors of a separate trust include the investors of a specific debt issue and, in certain cases, the trustee and the investors' representative, as well as the fund manager (through accrued salary).

So far, only eight securitized structures (four of which have been classified by Fitch) have been liquidated in Chile. All of these structures were mortgage-backed securities that had been weakened by the prepayment crisis in 2003–2005, with the maximum loss equivalent to 3.26% of the initial amount of the preferred series rated by Fitch.

Regulations Affecting Rating Agencies

According to Chilean regulations, all securitized structures need to have at least two ratings in order to be placed through a public offering. While investors in general seek securitized bonds with at least one investment-grade rating, large investors are required by law to purchase securitized structures with a rating equal to or higher than ‘A’(chl).

There are currently four rating agencies operating in Chile, three of which are active in the structured finance market. Fitch is the only international rating agency, with the remainder being local agencies affiliated or associated with foreign companies.

Fiscal Treatment of the Investor

Investors in Chile pay a 17% tax on interest earned from preferred and subordinate bonds.

Fiscal Treatment of the Issuer

Issuers pay interest on debt issues, as well as taxes on seals (an initial 1.5% of the total value of the debt issue) and stamps, as long as the tax was not paid prior to the purchase of the asset.

Separate trusts are tax exempt for life, with taxes payable only on capital gains after the asset’s liquidation to pay the subordinated series.

Fiscal Treatment of the Originator

If taxes on seals and stamps have not been paid by the portfolio, the issuer, acting as an intermediary, will charge them to the originator. If the sale of the portfolio generates profits, the originator pays a 17% tax on these earnings.

Main Investors

Pension funds and insurance companies are by far the main investors in Chile, with other investment funds and individuals representing a significantly smaller portion of the market.

■ Colombia

Legal Framework

The legal framework regulating securitizations in Colombia is provided for by Law 35 of 1993 and Laws 510 and 546 of 1999 (with their respective decrees), as well as Resolution 400 of 1995, establishing the legal structure under which securitizations are carried out. According to these regulations, there are several possible legal options for undertaking securitizations in Colombia.

Irrevocable Trust Agreements Through Independent Equity (Trusts)

The trustee transfers the assets (or the money needed to purchase the assets) to be placed in the trust through this mechanism. The fiduciary representing the trust will then issue the structured securities and collect the proceeds obtained from the offering, becoming the legal representative of the securities’ investors.

Investment Trusts

The securitization process can take place through investment trusts established for the sole purpose of holding a specific public offering or through the registration of the transaction with the Registro Nacional de Valores y Emisores using an already existing trust to provide the secondary market with additional liquidity. The aforementioned trusts are managed by trust companies.

Investment Funds

In this case, the securitization process is carried out through investment funds created to collect and manage resources from the public, making use of collective portfolios that are owned by multiple investors at the same time. These funds are managed by brokerage firms.

According to Article 68 of Law 964 (the Capital Market Law) issued in 2005, all securitization transactions require the establishment of either a

Fiscal Treatment — Colombia

Type of Tax	Taxable Concept	Financial Trusts	Party Responsible of Paying the Tax
Income Tax	Net Earnings	Financial trusts are not subject to this tax.	Trustee
Income Tax	Net Earnings	Investors are generally taxed on interest income, though not for mortgage-backed securities.	Investor
Value-Added Tax	Fees/Commissions	Tax Exempt	Trustee
Tax on Interest Paid	Assets	Tax Exempt	Investor
Tax on Expected Minimum Income and Personal Assets	Assets	Tax Exempt	Investor

separate trust or an SPV managed by a bank without forming a separate trust. Both are independent and separate vehicles created for the exclusive purpose of paying the obligations related to a particular structure. The assets backing a particular structure are therefore isolated from the originator's and trust's assets, protecting them from any legal action undertaken by creditors in the event of bankruptcy.

#### Regulations Affecting Rating Agencies

The rating of securities placed through public offerings is mandatory in the Colombian capital market. In addition, pension funds, insurance companies and investment trusts managed by trust companies can only invest in rated securities. In the case of fondos de pensiones y cesantías (unemployment and pension funds), investments in local issues can only be made when these securities have been rated at least 'BBB-'(col) (long-term securities) or 3 (short-term securities) by a rating agency that has been authorized by the Superintendencia Financiera de Colombia.

There are two credit rating agencies currently operating in Colombia: Duff & Phelps de Colombia, which is affiliated with Fitch Ratings, and BRC Investor Services, which is a local rating agency.

#### ■ Costa Rica

##### Legal Framework

Although a specific law regulating securitizations does not currently exist in Costa Rica, structured securities can be issued using financial trusts as SPVs. Financial trusts are defined by the Código de Comercio de Costa Rica as equity that is separate and independent from the trustee/fiduciary, as well as an extremely versatile legal vehicle that can provide for a very specialized purpose, governing the use of funds and the duties and rights of the parties involved.

The trust's versatility allows for the segregation of assets by removing them from the originator's balance sheet, effectively separating the originator's risk from the trust's risk. In addition, the trust defines the way in which cash flows are obtained and investors are paid. An analysis of Fitch-rated securities indicates the aforementioned separation of risks does indeed take place.

A typical securitization transaction involves three parties: the originator of the assets, in charge of

transferring the assets to the financial trust; the fiduciary or trustee responsible for managing the financial trust (a function that can be carried out by a third party as well); and the investors or beneficiaries of the financial trust, who purchase the bonds issued by the trust. Traditionally, commercial banks have functioned as fiduciaries or trustees during a public offering.

Securitizations can also be carried out through fondos de inversión derivados de procesos de titularización (structured finance investment funds), which issue shares to purchase cash flow generating assets, distributing the fund's earnings (from the cash flow generated by the assets) among its investors. These funds are managed by the Sociedades Administradoras de Fondos de Inversión (SAFIs), which are regulated by the Superintendencia General de Valores de Costa Rica (SUGEVAL).

In the near future, the market is expected to be driven by the introduction of a law that creates a secondary market for mortgages, the improvement of the Ley de Concesión de Obras Públicas (the law regulating public works concessions) and the establishment of securitization agents (with one agent currently in the process of being approved by SUGEVAL).

#### Regulations Affecting Rating Agencies

Although a security is required to be rated by at least one agency in order to be placed in the capital markets, no minimum rating is specified for a public offering to be carried out. However, major institutional investors, such as pension funds, are required to invest in securities with a rating equal to or higher than 'A'(cri), a major factor to be considered when structuring a public deal. Currently, there are five rating agencies operating in Costa Rica: Fitch (the only global rating agency), two local ratings agencies and two agencies with a presence in two or more Latin American countries.

#### Fiscal Treatment

Financial trusts have the advantage of not being taxed on asset transfers between parties, having to pay solely the corresponding government fees. However, the trust's earnings are taxable, as is the interest earned by investors on the bonds contained within the trust.

## ■ Mexico

### Legal Framework

Mexican authorities introduced the Nueva Ley del Mercado de Valores (the New Capital Market Law) in June 2006, with new regulations for the fixed-income and structured finance markets coming into effect on Dec. 25 of that year. Regarding securitized transactions, the new law allows for the issuance of certificados bursátiles (fiduciary notes) through irrevocable trust agreements, with the issued notes (certificados bursátiles fiduciarios [CBFs]) comprising the trust's assets.

Through these fiduciary notes, investors may claim ownership rights to a portion of the assets comprising the trust. In addition, investors receive a percentage of all income generated by these assets and principal payments attributable to their investment, as well as the capital gains obtained through the sale of all assets backing their notes. According to Article 317 of the Ley General de Títulos y Operaciones de Crédito (LGTOC), the aforementioned rights (with the exception of principal and interest payments) are also contained in certificados de participación ordinarios (CPOs).

The CBFs differ from the latter in that they do not need to be registered prior to the offering, making the placement of these notes relatively easier. In addition, due to the significant growth experienced in the fiduciary notes market in the recent past, CBFs can benefit from a more established secondary market. While the total value of a CBF offering is not subject to any limitations or legal opinions, the total value of a CPO offering depends on the assessment of the asset's value obtained through a valuation process. Finally, CBFs differ from CPOs in that they do not require assets to be transferred to the trust prior to a public offering.

Fiduciary notes can be composed of several series, with each series having specific rights, depending on its preferential payment status. Consequently, certificados bursátiles preferentes (preferred fiduciary notes) and certificados bursátiles subordinados (subordinate fiduciary notes) can be issued, each with a different preferential status within the payment waterfall. Fiduciary notes may be backed by one or more securities at once and, conversely, a security may back one or more fiduciary notes at the same time. Securities must be deposited in an institution eligible to hold these types of deposits. Coupons may

be attached to fiduciary notes for interest payments and principal amortizations, with coupons often being negotiated separately. Finally, it should be noted that only banks and brokerage firms can act as trustees for CBF offerings.

The Mexican financial system is regulated by four commissions: the Comisión Nacional Bancaria y de Valores (CNBV, the Banking and Brokerage Commission), the Comisión Nacional de Seguros y Fianzas (CNSF, the Insurance and Surety Commission), the Comisión Nacional del Sistema de Ahorro para el Retiro (CONSAR, the Pension Fund Commission) and the Comisión Nacional para la Defensa de los Usuarios de Servicios Financieros (CONDUSEF, the Commission in Defense of the User of Financial Services). All four commissions report directly to the Secretaría de Hacienda y Crédito Público (SHCP, the Finance Ministry) and indirectly to the Banco de México (BANXICO, the central bank of Mexico).

There are three types of entities involved in the Mexican capital market: regulatory authorities, such as the SHCP, BANXICO and the CNBV (the Banking and Brokerage Commission); operating entities, such as issuers, brokerage firms, structuring agents, banks, private investors and investment firms; and support entities, such as the Mexican Stock Exchange, the Asociación Mexicana de Intermediarios Bursátiles (the Mexican Stockbroker Association), the Academia Mexicana de Derecho Financiero (the Mexican Academy of Financial Legislation), the Calificadoras de Valores and the Calificadoras de Sociedades de Inversión (rating agencies), the Sociedades para el Depósito de Valores (companies holding security deposits) and the Instituto para el Depósito de Valores (Indeval).

In addition, there are three types of issuers: the public sector, including local governments and government institutions; the private sector, including financial institutions and nonfinancial companies; and companies with both government participation and private capital.

Structured instruments are offered through fideicomisos emisores (issuing trusts), which are similar to bankruptcy-remote SPVs in other countries. The placement of debt securities by issuing trusts involves the "true" sale of the assets. Similar to other countries, the true sale is commonly carried out through a fideicomiso de administración y fuente de pago (which in Mexico is the same issuing trust),

Mexican Residents — Fiscal Treatment 2006

(Investment Instruments and Tasas de Retención por Intereses)

Instrument	Denomination	Type of Instrument	Institutional Investors		Individuals	
			Interest Income and Capital Gains	Repurchase Agreements (Repos)	Interest Income and Capital Gains	Repurchase Agreements (Repos)
<b>Issued Before Jan. 1, 2003</b>	Pesos	Fixed Interest Rate; Tenor Greater than Three Years	Retention 0.5% of Capital	Retention 0.5% of Capital	Retention 0.5% of Capital	Retention 0.5% of Capital
	UDIs	Fixed Interest Rate; Tenor Greater than Three Years	Retention 0.5% of Capital	Retention 0.5% of Capital	Tax Exempt — No Retention	Tax Exempt
	Pesos	Semiannually Adjusted Rate; Tenor Greater Than Three Years	Retention 0.5% of Capital	Retention 0.5% of Capital	Tax Exempt up to First Coupon Payment no Retention	Tax Exempt
	Pesos, UDIs and Foreign Currency	Others	Retention 0.5% of Capital	Retention 0.5% of Capital	Retention 0.5% of Capital	Retention 0.5% of Capital
<b>Issued After Jan. 1, 2003</b>	Pesos	Fixed Interest Rate; Tenor Greater than Three Years	Retention 0.5% of Capital	Retention 0.5% of Capital	Retention 0.5% of Capital	Retention 0.5% of Capital
	UDIs	Fixed Interest Rate; Tenor Greater than Three Years	Retention 0.5% of Capital	Retention 0.5% of Capital	Retention 0.5% of Capital	Retention 0.5% of Capital
	Pesos	Semiannually Adjusted Rate; Tenor Greater than Three Years	Retention 0.5% of Capital	Retention 0.5% of Capital	Retention 0.5% of Capital	Retention 0.5% of Capital
	Pesos, UDIs and Foreign Currency	Others	Retention 0.5% of Capital	Retention 0.5% of Capital	Retention 0.5% of Capital	Retention 0.5% of Capital

UDIs – Unidades de inversiones.

established as the final destination for servicing the debt. All income generated by a portfolio's assets are deposited in this trust, which manages the money according to the objectives defined by the structuring agent.

Generally, it is the originator's responsibility to collect payments, although, in order to provide the investor with less uncertainty, some transactions involve an administrador de activos financieros de crédito de respaldo" (a back-up servicer), as well as a master servicer.

Regulations Affecting Rating Agencies

The New Capital Market Law provides rating agencies with a regulatory framework to operate in the Mexican financial market. Regulations introduced through this bill establish the rules for mergers and splits of credit rating agencies, the minimum requirements regarding the companies' codes of conduct and all of the information (financial, administrative and operational) that needs to be presented to the commission. In addition, the law defines the application process (including all required documentation and information) for opening a credit rating agency in Mexico.

Prior to holding a public offering, debt securities need to be rated by at least one rating agency

authorized by the SHCP through the CNBV. Depending on the company's objectives and target market, certain institutional investors, such as the CONSAR, establish additional requirements, investing only in securities that have at least two credit ratings, that have been purchased through a public offering and for which a daily price is available. Although private placement securities do not need to be rated, investors have approached rating agencies in the past to obtain an independent opinion regarding a security's credit quality.

Traditionally there have been three ratings agencies operating in Mexico: Fitch, Moody's and S&P, with authorities recently approving the opening of a fourth rating agency, HR Ratings.

■ Panama

Legal Treatment

Similar to the Costa Rican case, there is no specific securitization law in place in Panama. However, structured instruments may be issued through financial trusts, defined by the country's trust law as an SPV. The financial trust separates the originator's risk from that of the trust, clearly specifying the duties and rights of each party, as well as the use of funds and the manner in which cash flows are obtained and investors are paid. Entities acting in the

capacity of trustee are required to obtain a fiduciary license issued by the Comisión Nacional de Valores de Panamá (the Panamanian Securities and Exchange Commission).

Fitch has received positive legal opinions regarding the actual separation of risks between originators and trusts, as assets are kept off the originator's balance sheet.

#### Regulations Affecting Rating Agencies

Credit ratings are not mandatory for securities to be placed through a public offering in Panama. However, institutional investors have requested credit ratings for certain issues in the past. Among the five ratings agencies registered with the Comisión Nacional de Valores de Panamá, Fitch is the only global entity, with the remainder being regional companies with a presence in two or more Latin American countries.

#### Fiscal Treatment

Capital gains obtained from the sale of a bond are tax exempt; in addition, income taxes, taxes on dividend payments and complementary taxes are not applicable to the structure, provided the security has been issued by an entity registered with the Comisión Nacional de Valores. Similarly, investors are not required to pay taxes on their interest income, provided the bond has been issued through an initial public offering in the Bolsa de Valores de Panamá (Panamanian Stock Exchange) and authorized by the Comisión Nacional de Valores.

#### ■ Peru

The Peruvian legislation defines two types of trusts for the isolation of assets backing a security: the fideicomiso bancario (banking trust), in which the company originating the assets issues the bond backed by the trust, and the fideicomiso de titulización (securitization trust), in which the trust issues the security.

#### Banking Trusts

The laws governing this type of trust include Law 26,702 (which is the general law regulating the financial system), Resolution SBS 1010-99 (which provides norms for trusts and other companies in the fiduciary service business) and Resolution SBS 084-2000 (which establishes trust accounting rules).

The company issuing the security transfers the assets to the fiduciary in order to form an SPV or trust,

separating the assets from the originator's and trustee's balance sheets and thereby protecting them from the creditors of the parties involved in the process. The transfer of assets needs to be registered in the corresponding public registry, while the transfer of other asset classes (such as shares, commercial paper and receivables) needs to obtain an endorsement and/or fulfill other legal requirements.

The following companies are authorized to act as fiduciaries: the Corporación Financiera de Desarrollo (COFIDE, a state-owned bank lending exclusively to other banks), fiduciary service companies, banks and other financial service institutions (financieras), microfinance institutions (Cajas Municipales de Ahorro y Crédito, Cajas de Crédito Popular, Cooperativas de Ahorro y Crédito, Cajas Rurales and Entidades de Desarrollo de la Pequeña y Micro Empresa) and insurance companies.

The fiduciary has the authority to manage, use, dispose of and recover the assets contained in the trust in order to fulfill the purpose for which the trust was formed. It should be noted that under Peruvian legislation, the transferred assets remain on the originator's balance sheet, with the fiduciary required to keep separate accounts for each of the trusts under its authority. In addition, there is a probationary period of six months, during which the originator's creditors may terminate the transaction.

#### Securitization Trusts

This type of trust is governed by the Texto Único Ordenado of the Capital Market Law, approved by Supreme Decree No. 093-2002-EF; the Reglamento de los Procesos de Titulización de Activos (the rules that regulate the securitization process of assets), approved by Comisión Nacional Supervisora de Empresas y Valores (CONASEV) Resolution No. 001-97-EF/94.10; and the accounting norms for sociedades tituladoras (securitization agents) and patrimonios de propósito exclusivo (SPVs), approved by CONASEV Resolution No. 093-98-EF/94.10.

The securitization process may take place through any of the following SPVs:

- Patrimonios fideicomitidos (securitization trusts);
- Patrimonios de sociedades de propósito especial (trusts established by special-purpose agents); and

- Others considered identical to the above, as established by the CONASEV through its general instructions.

CONASEV is the entity in charge of controlling and supervising all natural and legal persons involved in the securitization process, with the aforementioned description only referring to securitization trusts, as there are currently no special-purpose agents operating in the country.

#### Regulations Affecting Rating Agencies

The Capital Markets Law published in 1996 introduced the concept of credit ratings, requiring a debt security or structured instrument to be rated by at least two rating agencies prior to its initial public offering. Credit ratings are also mandatory in the case of secondary offerings but are optional in all other instances. However, an exception to this rule was published by CONASEV in November 2006 through Resolution No. 130-2006-EF/94.11, establishing that public offerings aimed exclusively at “accredited investors” require only one credit rating.

Pension funds are allowed to invest in the following: 1) instruments issued through a public offering, when these have previously been rated by two independent credit rating agencies; 2) private placements, when these have been rated by at least one rating agency (except for project finance, in which case a minimum of two ratings is required); and 3) securities issued by the central government and the Banco Central de Reserva del Perú (Peruvian Central Bank).

While no minimum ratings are established for the purchase of securities, private pension funds (AFPs) are required to accumulate reserves that represent between 0.08% and 7% of their total investment in a particular security, depending on the rating of the acquired instrument, which may vary from ‘AAA’(pe) to ‘D’(pe).

However, since some companies defaulted on their debt and underwent restructuring during economic crisis of the late 1990s, institutional investors are now concentrating on issues with a minimum rating of ‘AA-’(pe). Consequently, the securitization process represents an alternative for small and medium-sized companies to obtain a rating that may be acceptable to institutional investors.

There are currently four rating agencies operating in Peru, with Apoyo & Asociados Internacionales

(Fitch’s partner) being the only company associated with an international agency. The other rating agencies are Riesgo Pacific Credit Rating S.A.C (previously associated with Duff & Phelps), Class y Asociados S.A. Clasificadora de Riesgo and Equilibrium Clasificadora de Riesgo S.A. (previously associated with Thompson Bank Watch).

#### Fiscal Treatment

Until December 2008, all interest income and capital gains stemming from securities issued through a public offering are income tax exempt. Starting in January 2009, Peruvian residents will be subject to a 6.5% income tax applicable to both interest income and capital gains, while nonresidents will pay a 30% tax rate on interest income and a 5% tax rate on capital gains. These rates will be applied to all public offerings taking place after March 10, 2007, with structuring agents retaining the proper amount on behalf of the beneficiary. However, issues carried out prior to this date will continue to be income tax exempt after January 2009.

For interest income generated by debt securities issued by any of the above-mentioned legal persons through a public offering in accordance with the local capital markets law, the value-added tax will not apply until Dec. 31, 2009.

The capital markets law establishes that for securitization trusts, the earnings or capital gains generated by a security will be attributed either to the trustee, the originator, the beneficiary or a third party, as stipulated in the securitization contract:

- i) If the securitization contract establishes that the transferred asset or right returns to the originator when the trust is dissolved:
  - The income that may be generated when transferring assets for the creation or extinction of the trust is income tax exempt.
  - The transferred assets and/or rights need to be recorded by the trust at the originator’s cost.
  - The assets will continue to be depreciated or amortized by the trust on the same terms as if these assets had stayed in the hands of the originator.
- ii) If the securitization contract were to establish that the transferred asset or right does not return to the originator when the trust is dissolved, the fiduciary transfer will be treated as a sale at the time of the

transfer, with the originator paying the 30% income tax.

The aforementioned tax treatment is not applicable to banking trusts, as fiduciary transfers are not taxable when banking trusts are involved in a securitization process. In addition, the trustee considers the assets and/or rights to be part of the trust, being responsible for the income tax these may generate.

#### Main Investors

The Peruvian capital market is quite shallow, accounting for only a small number of issuers. This, combined with steady growth in pension funds, has led to an excess demand for securities, which in turn has resulted in declining interest rates. While institutional investors' available funds (i.e., total demand for securities) reached approximately \$20 billion in 2006, fixed-income securities recorded a total amount outstanding of only \$8.5 billion during the same year, with 52% of the debt issued by the private sector and the remainder being offered by the government. As of April 2007, pension funds and mutual funds accounted for about 75% of all investments in debt securities and structured instruments.

#### ■ El Salvador

##### Legal Framework

Although Salvadorian legislation currently does not provide a legal framework for securitizations, a proposed law dealing with this issue has been on the table for several years.

Despite the absence of a specific securitizations law, two structured finance transactions involving auto loans have been carried out using an incorporated company as an SPV with the sole purpose of issuing and trading these securities on local and/or foreign stock exchanges. The two transactions raised a total of \$20 million and \$36 million, respectively. In addition, as part of the ratings process, the true separation between the originators' and the trusts' risks were confirmed for both of these structures.

##### Regulations Affecting Rating Agencies

El Salvador's regulations establish that a security must have at least one rating for a public offering to take place and at least two ratings for pension funds to be able to participate. Of the four rating agencies registered in El Salvador, Fitch is the only global

company, with the remainder being regional entities present in some Latin American countries.

##### Fiscal Treatment

As the SPV is an incorporated company (as opposed to a trust) tax benefits apply to neither the SPV nor the investors involved in a structured deal.

#### ■ Guatemala

There is no specific law regulating structured transactions in Guatemala, although financial trusts may be used for securitization purposes. So far, there have been no structured finance deals in this country.

As credit ratings are optional in Guatemala, only two rating agencies (Fitch and a regional company) are registered with the Registro del Mercado de Valores y Mercancías de Guatemala.

#### ■ Nicaragua

At present, there are no securitized structures registered in the Nicaraguan capital market, although the Ley de Mercado de Capitales de Nicaragua (the Capital Market Law) provides for the securitization of assets through fondos de titularización (securitizations funds) managed by a sociedad administradora, which is required to keep securitized assets in a bank acting as trustee.

For a particular securitization fund to be approved by authorities, the assets need to be rated prior to their securitization. There are currently no credit rating agencies registered with Nicaraguan authorities.

#### ■ Honduras

Securitized structures are nonexistent in Honduras. However, the Ley del Mercado de Valores de Honduras (the Capital Markets Law) provides the means to realize structured deals through fideicomisos de titularización (securitization trusts).

At present, Fitch is the only rating agency registered in Honduras. Credit ratings are mandatory for public offerings in this country.

#### ■ Venezuela

##### Legal Framework

Ever since the Venezuelan Trust Law was introduced in 1956, local financial trusts have been used as SPVs for most structured finance transactions taking place in the local capital market. According to Venezuelan

law, only banks and insurance companies are to act as trustees, clearly isolating the trust's assets from those of the trustee. Thus, although some banks were liquidated during the 1994 financial crisis, the trusts that these banks established continued to exist. An exception to the aforementioned rule was the creation in 2006 of Títularizadora Occidental de Descuento, an SPV with certain covenant, governance and debt limitations that intended to simulate a local trust without being one.

Structured instruments, like other securities issued in the local market, have been regulated by the capital market law published in 1998, with specific securitization rules introduced in 2002 substituting those originally defined in 1993.

#### Principal Participants in the Venezuelan Structured Finance Market

Structured finance deals in Venezuela have historically been related to banks and, more recently, the corporate sector. The most prominent examples on the banking side are the auto loan receivables issued by Banco Mercantil (in 1997) and Citibank (in 1998). On the corporate side, particularly noteworthy is the case of one large structured deal related to a maritime transportation company backed by future cash flows stemming from a medium-term contract signed with a highly rated oil company.

It should also be noted that in Venezuela, structured transactions generally involve the true sale of the underlying assets to the financial trust. The level of specialization in Venezuela until now has been limited due to the market's lack of depth, resulting in one agent acting simultaneously as originator and servicer in a standard structured finance transaction.

#### Regulations Affecting Rating Agencies

Between 1994 and 2002, the law required a security to be rated by at least two agencies. While at present ratings are not compulsory in nature, most structured instruments have at least one rating, as this facilitates security placement among investors.

#### Primary Investors

Investors are typically composed of trusts, investment funds and insurance companies. Private pension funds are nonexistent in Venezuela, and bank investment portfolios usually focus on local sovereign bonds.

#### ■ Dominican Republic

The Dominican structured finance market is still in its infancy, as no securitizations have been placed locally since the Capital Market Law was introduced in 2000. However, some Dominican companies have placed structured finance issues in the global capital market (e.g., Cap Cana in 2006). As specific trust laws (and therefore trustees) do not exist in this country, the Dominican law (similar to the Chilean law) establishes the concept of titularizadoras (securitization agents) as bankruptcy-remote, special-purpose entities for structured finance transactions.

Some local banks and supranationals are currently planning to establish a securitization agent in the Dominican Republic, with one titularizadora in charge of creating an SPV for each asset class and acting as the servicer for most transactions. Considering the increasing importance of the local mortgage industry, mortgage-backed securities are expected to be among the first structured instruments issued in the Dominican Republic. Even though individual local investors (primarily pension funds) are still very small in size, it should be noted that the private pension system has grown at an annual 70% rate since its introduction in 2003, reaching \$993 million at year-end 2006 (a 45% increase, year over year), or nearly 3% of GDP.

#### ■ Uruguay

The Uruguayan Trust Law, issued in December 2003, is similar to the Argentine law in that it provides for asset isolation and protection from the creditors of other parties (originators/sellers, servicers and trustees) involved in the transaction. There are currently no precedents in terms of a structure being tested.

Although the Uruguayan capital market is still quite undeveloped, some hybrid transactions have taken place, both before and after the introduction of the Trust Law in 2003. Most of these transactions used future cash flows to finance or restructure the debt of a government (or subgovernment) regulated sector of the economy that was facing financial difficulties.

The fiscal treatment of financial trusts is changing, as authorities intend to make securitized structures neutral compared with other fixed-income securities.

## Regulations Affecting Rating Agencies

There are five ratings agencies authorized in Uruguay, with three of them being international agencies (Fitch, Standard & Poor's and Moody's)

and the remainder being local companies. The pension funds, the main investors, can only invest in rated securities.

■ Annex: Transaction Characteristics

Argentina

The Argentine structured finance market's focus on agricultural export securitizations through peso-denominated issuance of a short tenor (less than one year) has slowly diminished over the past few years. Hence, greater investor confidence has allowed for an extension in maturities and greater asset class diversification.

ABS transactions are dominating the market. Around 79% of 2006 issues were composed of consumer, personal loans and credit cards deals. The main characteristics of these transactions are as follows:

- Static pools/not revolving, principally for fiscal reasons.
- Denominated in Argentine pesos.
- Diversified portfolios.
- Significant excess spreads.
- Generally sequential structures (in terms of amortization).
- Depending on current interest rates and tenor, either a fixed or variable rate (with a cap for the latter) will be chosen for a particular security.
- After the crisis, there were no currency mismatches between the trust's assets and liabilities.

These features underline the short-term nature of the transactions, with revolving structures only being used for certain types of credit card deals.

At times, the trust will buy the portfolio at a discount, causing a difference between the nominal and real overcollateralization (OC). In these cases, the potential effect of prepayments needs to be evaluated, as these may not only lead to a loss in excess spread but also to capital losses for a rated security. During the past few years, market transactions with negative OC have become quite common. However, due to the short-term nature and structural features (i.e., sequential in capital) of the majority of these transactions, the OC generally becomes positive only 3–4 months after issuance.

Brazil

Fundos de Investimento em Direitos Creditórios (FIDC) is the most widely used SPV in the Brazilian securitization market since its creation in 2001 by the CVM. Instruction No. 356/01, the first regulation governing FIDCs, has been amended by subsequent

instructions (No. 393/03, No. 435/06, No. 442/06 and No. 446/06) between 2003 and 2006. This legislation contributed to stimulating the Brazilian debt market by creating a tax-efficient capital structure for securitizations through SPVs.

FIDCs may be either closed-ended or open-ended funds, each with different tax and legal implications for the investor. While closed-ended funds have a defined amortization schedule, open-ended funds may be purchased or redeemed by the investor at any time over the fund's life. FIDCs may be established with either a defined or undefined life, with some FIDC's being privately distributed, in which case a rating is not necessary.

Currently, most FIDCs allow for revolving assets within their portfolios, in which excess cash collections are used to purchase additional assets. While a revolving structure may be more efficient in terms of operational costs than a static structure, it also may introduce new risks associated with management's ability to service the security and control liquidity levels, as well as to assure, among other things, that amortizations are properly met.

Chile

The principal features of securitized structures in Chile are as follows:

- Use of both static and revolving pools:
  - Static: Mortgage loans, auto loans.
  - Revolving: Consumer loans, credit cards and Invoices.
- Generally, waterfall structures with fixed amortization timetables.
- Fixed interest rates are commonly used.
- All structures are denominated in local currency, either in pesos or unidades de fomento (U.F., units indexed to inflation). Currency swaps are used to mitigate foreign exchange risk for the three structures that employ dollar-denominated assets and U.F.-denominated liabilities.

Colombia

**Asset Classes Used in Structured Transactions**

- Securitized loans, CDOs.
- Mortgage loans.
- Receivables.

- Future cash flows (used exclusively for utilities, public infrastructure and services, as well as agricultural and fishing products).
- Real estate and construction projects.

### **Types of Securities**

- **Fixed-Income Securities:** These generate a return to investors in the form of fixed, periodic payments and either return principal at maturity or amortize over the life of the security.
- **Equity Securities:** These represent a percentage of the equity of the trust or securitized fund, with the investor's participation in earnings (or losses) being proportionate to his/her capital contribution with respect to the total value of the trust or fund.
- **Mixed Securities:** These include both the right to claim a fixed sum and the right to participate through shares in the equity of the trust or securitized fund.

#### Costa Rica

Structured instruments currently include mortgage-backed securities and future cash flow transactions stemming primarily from the rental of hydroelectric plants (83% of total debt issues). In the past, some issues have been backed by future cash flows from university matriculation fees.

#### Mexico

During the first quarter of 2007, bonos respaldados por hipotecas (Borhis, mortgage-backed securities), combined with a CDO placement by Deutsch Bank, represented 30% of the total debt issued by the Mexican private sector.

Borhis are fiduciary notes issued by the Sociedades Financieras de Objeto Limitado (SOFOL, financial companies with specific objectives) and banks to securitize part of their mortgage loan portfolios. In order to be approved by the Sociedad Hipotecaria Federal (SHF) as Borhis, certificates need to fulfill the following prerequisites:

- The senior fiduciary notes series requires a 'AAA'(mex) rating from at least two rating agencies.
- The offering has to be carried out as a passthrough.
- The custodian keeping the records must be independent from the manager of the mortgage loan portfolio backing the issue.

- The mortgage loans must comply with the eligibility criteria recommended by the SHF.

There are currently two types of Borhis in the Mexican capital market: the previously described Borhi tradicional (traditional mortgaged-backed securities) and the Borhi fungible (mortgaged-backed securities with retapping options). The difference between the two is that for the latter, only part of the issue is backed with mortgage loans, with the remainder being backed by cash used for the acquisition of new mortgage loans which, in turn, will back future issues of fiduciary notes.

The payment waterfall of a Borhi, whether traditional or with retapping options, establishes that the payment of expenses, commissions and fees comes before interest payments and principal amortizations of the fiduciary note. The expenses can be classified as follows:

- **Preferential Payments:** These are payments the trust needs to make before any other expense is paid. Included are management fees, insurance fees, minimum salary unidades de inversión (UDI) swaps (if applicable) and other items that need to be paid to a third party in the form of a passthrough.
- **Monthly Expenses:** These are items the trust needs to pay to continue operations. Included are stock exchange fees and fees charged by regulators, trustees, common representatives and ratings agencies.

Once these expenses are covered, interest payments and amortizations related to the fiduciary notes can be made. During the first two years ending in first-quarter 2006, structured issues used a single waterfall payment scheme, in which no distinction is made between interest/amortization payments and the total amount deposited in the trust's general account. Under this scheme, it is possible that in the event of financial stress, a portion of the principal payment from borrowers is used to make interest payments on fiduciary notes. Thus, securitized issues began using twin waterfall payment schemes in second-quarter 2006, as these clearly distinguish between interest and capital payments, in addition to identifying the income from the recovery of delinquent loans and allowing for more transparency in cash flow management.

In addition, Borhis use contingent flows as credit enhancements, with the most commonly used credit enhancements as follows:

- **Build Up**—consisting of building OC to a target level using excess spread for the prepayment of fiduciary notes.
- **Turbo**—allowing for accelerated amortization of fiduciary notes using a fixed percentage of excess spread for their prepayment.
- **Triggers**—permits the accelerated amortization of fiduciary notes using a flexible percentage of excess spread for their prepayment until reaching the target OC level. The most commonly used triggers are related to the delinquency status of the loans backing the issue.
- **Reserves**—function as a complement to OC, with the most common types being liquidity reserves and reserves for interest payments on fiduciary notes.

One of the most commonly used internal credit enhancements for Borhis are mezzanine series. Since their debut in June 2006, 13 out of 15 offerings have used this subordination method. On the other hand, the most commonly used external credit enhancement for Borhis is the garantías de pago oportuno (timely payment guarantees), which can be either fully wrapped or partially wrapped. The most active market participants have been the SHF, FMO, IFC, FGIC and AMBAC. While the first three have used only partial guarantees, the last two have been participating in fully wrapped offerings.

Five out of 28 offerings have been peso denominated, with the remainder being denominated in inflation-indexed UDIs. Securitized certificates pay a fixed interest rate over the total pesos' or UDIs' denominated value. On the other hand, the mortgage loans backing these issues can be expressed in either nominal pesos (paying fixed or variable interest rates) or in pesos indexed to the minimum salary, with the latter requiring a swap from the SHF to cover the potential gap between inflation and minimum salary.

## Panama

There are currently 13 securitized issues in Panama, with the majority of them (57% of total debt issues)

being mortgage-backed securities. Given the expected economic growth and increased investment resulting from the Panama Canal expansion project, there should be ample opportunity for the issuance of additional securitized structures in the near future.

## Peru

The Peruvian Capital Market is highly dollarized, nevertheless during the last years this has started to change, with an increase in the issuance in local currency, reaching the 50.8% of the total. Nevertheless, the dollarization remains high in the SF issues, reaching the 75.1% of the total SF market during 2006 (90.8% in 2005). According to the preferences of the institutional investors, the amortization schedule has changed from bullet to mortgage style, as well as the requirement of higher ratings.

The institutional investors prefer to buy only senior tranches, reason that the subordinate series are only bought by the originator or its shareholders.

Regarding the waterfall structure, the only thing that keeps a higher position to interest and capital payments are the expenses of the trustee. In a few structures that have partial guarantees, the flows that enter the trust are used to repay the guarantor, before the senior debt in case the execution of the guarantee. Nevertheless, in some cases the guarantor doesn't have recourse to the trust or it is subordinate to the debt service of the senior debt.

## Venezuela

New regulations for structured instruments introduced in 2002, require an over-collateralization of at least 20% for all assets, regardless of their risk. This rule, combined with the fact that local capital markets are still largely undeveloped, has led to a limited number of structured finance transactions in Venezuela.

However, with banks expected to improve their tight equity/asset ratios through structured finance transactions (creating a separate trust that would allow them to remove certain assets from their balance sheets), the number of transactions in the Venezuelan capital market might grow significantly in the near future (an increase in activity has already been observed in the recent past).

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