

# Regulación de riesgo cibernético en el sector financiero (Legal Industry)

Category: Banking & Finance, Publications, Securities and Capital Markets, Securitizations & Structured Finance, Structured Finance  
written by Adrián Trejo Santiago | July 17, 2024

NHG contributed to the [15<sup>th</sup> edition of Legal Industry Magazine \(Revista Industrial\)](#) with the Article: “Regulación de riesgo cibernético en el sector financiero”.

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# Reformas a diversas disposiciones de la Ley General de Sociedades Mercantiles

Category: Legal Alerts, Securities and Capital Markets  
written by Adrián Trejo Santiago | July 17, 2024

El 20 de octubre de 2023 se publicó en el Diario Oficial de la Federación la reforma a diversas disposiciones de la Ley General de Sociedades Mercantiles (“**LGSM**”) en materia del uso de medios telemáticos para la realización y celebración de asambleas de las sociedades mercantiles (la “**Reforma**”) que entrará en vigor el 21 de octubre de 2023.

## Objetivos

Antes de la Reforma, la LGSM requería que las asambleas de accionistas fueran presenciales. La posibilidad de que a una reunión realizada por Medios Telemáticos (según se define más adelante) en tiempo real a través de plataformas digitales se le

podiera otorgar el carácter jurídico de “asamblea” era remota, derivado de que la legislación aplicable aún no reconocía dicha posibilidad.

Como consecuencia de la contingencia sanitaria por el coronavirus SARS-CoV-2 (COVID-19) y los avances tecnológicos, la Reforma reconoce el uso de nuevas herramientas para la comunicación, la implementación de nuevas prácticas en las sociedades mercantiles y la modernización del marco jurídico en general, con el fin de autorizar la posibilidad de celebrar asambleas de accionistas y socios, así como de los órganos de administración y vigilancia de las sociedades mercantiles, mediante distintos medios telemáticos, es decir, cualquier medio electrónico, óptico, o de cualquier otra tecnología, (“**Medios Telemáticos**”) impulsando la facilitación y agilización de las mismas mediante plena certeza jurídica en cuanto a su celebración.

Los objetivos de la Reforma consisten en: **(i)** habilitar como medio equivalente a la presencia física en asambleas y reuniones societarias, a aquéllas efectuadas mediante el uso de cualesquiera Medios Telemáticos; **(ii)** permitir que las asambleas de socios o accionistas, así como las reuniones de los órganos de administración y vigilancia, se puedan llevar a cabo total o parcialmente mediante la asistencia presencial o virtual de sus asistentes mediante el uso de Medios Telemáticos; **(iii)** el reconocer que los Medios Telemáticos para documentar actas, minutas y demás documentos ya se encontraban previstos en el Código de Comercio y Código Civil Federal, y no se busca hacer obligatorio el uso de uno u otro, sino reforzar la plena libertad de las sociedades mercantiles en cuanto a la elección de la forma de documentación de dichas asambleas; y **(v)** flexibilizar el requisito de celebración de asambleas en el domicilio social, permitiendo entonces a los accionistas y socios poder acordar cómo y dónde se celebrarán dichas asambleas fuera del domicilio social.

## **Resumen de puntos relevantes de la Reforma**

### **1. Estatutos sociales de la sociedad**

- La reforma al artículo 6 de la LGSM dota de legalidad a todas las asambleas virtuales, no solo en casos de fuerza mayor, señalando que la escritura o póliza constitutiva de una sociedad deberá contener las reglas para la celebración de

asambleas de accionistas o socios y de los órganos de administración, resultando que los estatutos podrán contemplar que unas y otras podrán celebrarse de forma presencial o mediante el uso de Medios Telemáticos que permitan la participación de la totalidad o una parte de los asistentes por dichos medios en la asamblea o junta de que se trate, siempre y cuando la participación sea simultánea y se permita la interacción en las deliberaciones de una forma funcionalmente equivalente a la reunión presencial.

- En cuanto a la acreditación de la identidad de los asistentes de la asamblea, la Reforma propone que las sociedades deberán en términos generales, determinar la pauta para la celebración de las asambleas mediante Medios Telemáticos. Dicho lo anterior, se considerará que la forma de acreditación de identidad de sus miembros podrá ser determinado por la propia sociedad.

## **2. Medios electrónicos en las sociedades mercantiles.**

- En cuanto a la asamblea de accionistas o socios y sesiones del órgano de administración tanto de las sociedades anónimas como de las sociedades de responsabilidad limitada, con el fin de aplicar el uso de Medios Telemáticos y facilitar la asistencia de sus asistentes, las reformas a los artículos 75, 80, 81, 82, y 143 de la LGSM consideran lo siguiente:

- o Las resoluciones de los administradores o gerentes podrán adoptarse mediante el uso de Medios Telemáticos si así lo establecen los estatutos sociales de la sociedad.

- o Dichas sesiones realizadas por Medios Telemáticos no se considerarán realizadas fuera del domicilio social de la sociedad.

- Derivado de la posibilidad de celebrar asambleas por Medios Telemáticos, se deberá establecer en los estatutos sociales de la sociedad, las formalidades que deberá observarse en la celebración de asambleas por Medios Telemáticos.

## **3. Particularidades**

- La reforma a los artículos 186 y 194 de la LGSM establece que las convocatorias de las asambleas se realizarán mediante publicación electrónica en el portal de la Secretaría de Economía, con la anticipación que fijen los estatutos, pudiendo las sociedades pactar que las asambleas y sesiones del consejo de administración puedan llevarse a cabo con la totalidad o una parte de sus asistentes mediante el uso

de Medios Telemáticos. La convocatoria deberá estar disponible para los accionistas en dichos Medios Telemáticos.

- Respecto de la firma de las actas de asamblea, dichas actas deberán primeramente asentarse en el libro respectivo de la sociedad y deberán ser firmadas, ya sea mediante firma autógrafa o electrónica por los miembros facultados en las asambleas.
- Las resoluciones adoptadas fuera de asamblea realizadas por Medios Telemáticos no se considerarán realizadas fuera del domicilio social de la sociedad.

#### Consideraciones

- La LGSM es de aplicación supletoria a la Ley del Mercado de Valores. Por ende, las sociedades anónimas promotoras de inversión, las sociedades anónimas promotoras de inversión bursátil y las sociedades anónimas bursátiles podrán celebrar asambleas mediante el uso de Medios Telemáticos, siempre que cumplan con lo establecido en la LGSM y se realice la correspondiente reforma a sus estatutos sociales.
- La ley no establece de manera clara la forma o método idóneo para la acreditación de la identidad de los participantes de una asamblea a ser celebradas por Medios Telemáticos. Adicionalmente, el legislador no estableció que dicho método deba ser fijado por el Ejecutivo Federal a nivel de disposiciones generales, reglamentos o normas oficiales mexicanas. Derivado de lo anterior, las sociedades tendrán libertad para determinar dichos métodos.
- Mientras más claro sea el método determinado por las personas morales, más seguridad jurídica se otorgará a las personas que participan en dichas asambleas o sesiones del órgano de administración o vigilancia.
- Consideramos que los interesados podrán interponer medios de defensa ordinarios como la acción de nulidad para cuestionar la validez de las reuniones celebradas a través de Medios Telemáticos, en la medida que los medios y métodos determinados por las personas morales no den pleno cumplimiento a las directrices establecidas en la LGSM y en los estatutos sociales.
- Aquello relacionado con las convocatorias a asamblea de las sociedades de responsabilidad limitada mediante publicación hecha en el sistema electrónico de la Secretaría de Economía, entrará en vigor en un plazo de seis meses contados a partir del 20 de octubre de 2023.

Para mayor información en relación con lo anterior, por favor contacte a Michell Nader S. (mnader@nhg.com.mx); Jorge Bojalil O. (jbojalil@nhg.com.mx); Natalia Pliego N. (npliego@nhg.com.mx) o a cualquiera de sus contactos habituales en Nader, Hayaux & Goebel.

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# Cartels 2023 Chambers Global Practice Guide: Mexico Chapter

Category: Antitrust, Banking & Finance, Capital Markets, Compliance, Publications, Securities and Capital Markets  
written by Adrián Trejo Santiago | July 17, 2024

Our Partner [Alejando Mendiola](#) contributed to the Chambers Global Practice Guide - Cartels, Mexico chapter. The Cartels guide provides expert legal commentary on the key issues for businesses with competition matters. The guide covers the important developments in the most significant jurisdictions.

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You can read the full article [Cartels\\_MEXICO 2022 L&P](#) or go to Chambers & Partners [website](#).

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# Uncertainty in financial markets and its effects on hostile takeovers in Mexico

Category: Mergers and Acquisitions, Publications, Securities and Capital Markets  
written by Adrián Trejo Santiago | July 17, 2024

The International Bar Association latest Corporate and M&A Law Committee eBulletin published an article written by our partner Ana Paula Telleria and associate Jenny Ferrón.

Learn more about the effects and opportunities of uncertainty in Mexico’s financial markets on the hostile takeovers.

“As the price of shares and other types of securities declines, and the uncertainty in financial markets in Mexico continues, Mexican issuers are experiencing decreases in their market capitalisation compared to their book value. This lays the ground for hostile takeovers of public companies.”

“A comprehensive analysis of defense mechanisms in place within a target, which

includes their validity vis-à-vis compliance with applicable regulation, must be exhausted before any takeover strategy is determined and put into action. Some takeover strategies may even include prior discussions with relevant investors and the issuers' board as allies to surpass hurdles built into the issuer as poison pills.”

[Click here to read the complete article.](#)

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# **Extension for certain obligations for issuers of listed securities, in connection with the Emergency Declaration of Force Majeure made by the General Health Council of Mexico**

Category: Legal Alerts, Securities and Capital Markets

written by Adrián Trejo Santiago | July 17, 2024

As a result of the health contingency caused by the coronavirus SARS-CoV-2 (COVID-19), declared as a force majeure health emergency by the General Health Council (*Consejo de Salubridad General*), the National Banking and Securities Commission (*Comisión Nacional Bancaria y de Valores*) (“**CNBV**”) issued on April 9, 2020, a statement through which it grants an extension for certain periodical reporting obligations of issuers, such as quarterly reports and annual reports (the

**“Statement”**).

The main extensions granted are the following:

**1. Deadline to file the following information is extended to July 3, 2020:**

- Letter to board members and relevant directors requesting information regarding their shares;
- Letter to brokerage houses requesting the list of shareholders they represent;
- Annual report (including the external auditor’s consent to include in such report the audit report); and
- Quarterly information.

**2. Deadline to file the following information is extended to July 8, 2020:**

- Audit and corporate practices committees reports;
- General director’s report;
- Board of director’s report;
- Secretary of the board of directors’ report regarding the state of the corporate books;
- Audited financial statements;
- External auditor’s independence letters; and
- External auditor’s reports and statements.

**3. Deadline to file the following information is extended to September 1, 2020:**

- For funds of funds: **(a)** annual report (including the external auditor’s consent to include in such report the audit report); **(b)** audited financial statements; **(c)** external auditor’s independence letters; and **(d)** external auditor’s reports and statements.
- Report on the following shareholders: **(a)** board members and relevant directors with at least 1% of the capital stock; **(b)** shareholders with 5% or more of the capital stock; and **(c)** 10 main shareholders.

You may find the complete Statement [here](#).

The CNBV did not grant an extension to issuers' statutory obligation of holding yearly meetings on or before April 30, and it even expressed that meetings (which under applicable regulations must be held in-person), held remotely through virtual means, "would create the risk that, eventually, such meetings' validity could be contested". Such consequence that was analyzed by us in our Newsletter dated April 8, 2020. A complete text of our previous Newsletter and the options that we explain in detail for issuers of listed securities in the case of meetings, may be viewed [here](#).

For more information regarding the above, please contact [Michell Nader S. \(mnader@nhg.com.mx\)](mailto:mnader@nhg.com.mx), [Ana Paula Telleria R. \(atelleria@nhg.com.mx\)](mailto:atelleria@nhg.com.mx), [Jorge Bojalil O. \(jbojalil@nhg.com.mx\)](mailto:jbojalil@nhg.com.mx) or your usual contacts at Nader, Hayaux & Goebel.

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**Considerations regarding certain obligations for issuers of listed securities, arising from the Emergency Declaration of Force Majeure made by the General**

# Health Council of Mexico

Category: Legal Alerts, Publications, Securities and Capital Markets

written by Adrián Trejo Santiago | July 17, 2024

As a result of the health contingency caused by the coronavirus SARS-CoV-2 (COVID-19), declared as a force majeure health emergency by the General Health Council (*Consejo de Salubridad General*) pursuant to the resolution published in the afternoon edition of the Official Federal Gazette (*Diario Oficial de la Federación*) on March 30, 2020 (the “**Contingency**”) and the measures recommended by the applicable authorities to prevent its spread (the “**Measures**”), issuers of securities listed on the securities exchanges must consider the impact on their obligations, especially those of an in-person, face to face, nature.

## 1. **Meetings**

For the holding of issuers’ annual meetings that must take place during the month of April or, in the case of meetings previously called or that due to their nature are not convenient or possible to postpone (for example, the authorization for the renewal of repurchase funds), we have analyzed the options available to such issuers in light of the Contingency, *on the understanding that each case must be analyzed individually to determine the best option available to an issuer within the framework of the applicable legislation:*

**(a) Force Majeure.** The occurrence of acts of God or force majeure events does not result in the establishment of mechanisms that are not provided for by law and go beyond the expressly established statutory agreements. The occurrence of acts of God or force majeure events would not result in the Meeting being held by other means than those expressly agreed.

**(b) In-person nature.** Applicable regulation provides that the Meetings have an in-person nature. The possibility that a reunion, held by remote means in real time through digital platforms, be legally considered as a legal Meeting is remote. The foregoing since applicable regulation does not recognize this possibility, so the physical presence of the participants must be deemed as an essential requirement.

Article 178 of the General Law of Business Organizations (*Ley General de Sociedades Mercantiles*) ("**LGSM**") was amended in 1992 to include the possibility for shareholders to adopt unanimous resolutions in lieu of a Meeting in the event that all voting shareholders of a company unanimously agree so in writing. The LGSM has been amended several times, the last time on June 14, 2018, and the legislator has not amended the requirement for Meetings to be held in-person. Likewise, the Securities Market Law (*Ley del Mercado de Valores*) ("**LMV**") published on December 12, 2005, has also been amended on several occasions, the last time on January 9, 2019, and it has not amended the requirement that Meetings must be held in person.

If the legislator had wanted to allow for shareholders' or security holders' Meetings to be held remotely or through technological platforms, as is the case in other countries, such possibility would have been contemplated in the legislative reform of 2019. We can therefore conclude that the only exception to the physical attendance requirement is the one already established by law, which allows shareholders to adopt unanimous resolutions in lieu of a Meeting.

Even if the issuer should take steps in order to argue the legality of a remote reunion, these will not provide certainty to the shareholders and/or security holders of the issuer, since there are few arguments for such reunion to be considered a Meeting. Such reunions that are intended to be considered as Meetings may be easily challenged by any shareholder, security holder or interested third party, and may be challenged by opposition actions filed within 15 days of the reunion by holders of 20% of the securities, or through a nullity claim, which has no statute of limitations.

The CNBV has the authority to interpret the LMV for administrative purposes. In the event of an opposition or nullity action, the applicable authority to apply the LMV and the LGSM shall be the judge hearing the case.

This situation leads us to propose certain measures that will allow an Issuer to hold a Meeting that complies with the Measures, such as the following:

**i. Relevant information.** The Issuer shall make available to the shareholders and/or security holders, and to the general public, with 15 days in advance or as

established in the applicable agreements, all information related to the agenda contained in the applicable call.

**ii. Fewer number of attendees.** To comply with the Measures, the issuer, the shareholders or the common representative must advocate that the least possible number of people attend the Meeting.

It is recommended that the issuer and/or the common representative contact those shareholders and/or security holders who have processed their attendance passes to the relevant Meeting, in order to propose that the greatest possible number of shareholders and/or security holders grant a special power of attorney to one or two persons who will appear at the Meeting on their behalf and exercise the corresponding votes in the manner in which they are expressly instructed to that effect.

**iii. Additional Acts.** Although the Meetings will have a small number of people present, the highest standards of hygiene must be taken at all times and the Measures must be complied with.

Depending on the nature of the Meeting and the matters to be discussed, the presence of a public attester may be requested to attest the holding of the Meeting and the events that take place thereat. The public attester shall assess the importance of the request to determine the possibility of attending the Meeting it under the Measures.

**iv. Compliance with other Applicable Provisions.** It is worth mentioning that it is not possible to limit the right of any shareholder or security holder to assist and participate at a Meeting, since that would be a violation to the LGSM and the LMV, and therefore, access to the Meeting must be granted to any person who requests it if they have the right to participate therein. However, applicable federal or local provisions that limit the number of persons that may gather in a closed space during the Contingency must be observed. Subject to determining the constitutionality and legality of such Measures, it is recommended that they be observed and that if a greater than permitted number of participants attend, the Meeting be suspended and deferred, since otherwise there would be arguments to seek the nullification of the Meeting for non-compliance with public order regulations.

In the event that the holding of a Meeting is necessary for the continuous operation of a company dedicated to an activity considered as essential pursuant to the Measures and other applicable resolutions made by applicable federal and local authorities, the specific case should be analyzed to determine whether or not the Meeting should be held.

## **2. Board of Directors and/or Technical Committee**

Issuers generally have flexible arrangements - including real-time remote means - for decision-making through their board of directors and/or technical committees. It is relevant that each issuer determine the provisions applicable in this case and, to the extent permitted by its governing documents and applicable regulation, seek to adopt as many decisions as possible that do not concern a Meeting through these corporate bodies.

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**Chambers Acquisition Finance  
Practice Guide 2019: Mexico**

# Chapter

Category: Banking & Finance,Capital Markets,Publications,Securities and Capital Markets

written by Adrián Trejo Santiago | July 17, 2024

Our Partners [Adrián López](#) and [José Humberto Rocha](#) contributed to the Chambers Acquisition Finance Practice Guide 2019: Mexico Chapter. The Acquisition 2019 guide provides expert legal commentary on key issues for businesses. The guide covers the important developments in the most significant jurisdictions.

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## Cartels Chambers Global Practice Guide: Mexico Chapter

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# 8th Edition: Fundraising for the Private Equity sector in Mexico

Category: Mergers and Acquisitions, Publications, Securities and Capital Markets

written by Adrián Trejo Santiago | July 17, 2024

Nader, Hayaux & Goebel have contributed the chapter on “Fundraising” in the eighth edition of *“The Private Equity Review”*, a title published by Law Business Research. Editor of the publication is Stephen L. Ritchie, Partner at Kirkland & Ellis LLP. The entire book can be downloaded as PDF [here](#). The Mexico chapter authored by [Hans P. Goebel C.](#), [Héctor Arangua L.](#), [Adalberto Valadez H.](#) and [Miguel Ángel González J.](#) can be downloaded [here](#).

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