

Chambers Acquisition Finance Practice Guide 2022: Mexico Chapter

Category: Banking & Finance, Publications, Securitizations & Structured Finance, Structured Finance, Tax, Uncategorized, Workouts & Insolvency

written by Nader, Hayaux & Goebel | July 7, 2022

Take a look at our contribution to the Mexican Chapter of the Acquisition Finance 2022 Global Practice Guide of #Chambers & Partners. The Mexican chapter was prepared by partners [Adrián López](#) and [José Humberto Rocha](#) covering the most significant aspects of acquisition finance transactions, ranging from LBO's to security arrangements.

“Mexican banks (including credit and risk committees) adapted very fast to the lockdown, and performed very well despite the pandemic restraints and the increased workload derived from numerous “COVID-19 restructurings”.

“As in many other jurisdictions, acquisition finance faces the challenge of creating comprehensive and reliable financial models for targets. In many sectors, it is expected that such uncertainty will begin to dissipate by the second semester of 2021, as vaccines become available to the population at large and companies can access more elements to adjust their business plans accordingly.”

You can read the full article at Chambers & Partners [website](#).

[Acquisition Finance_MEXICO_2022](#)

LexGTD T Telecoms & Media 2022 - Mexico

Category: Data Protection, Publications, Telecoms
written by Nader, Hayaux & Goebel | July 7, 2022

Partner [Julián Garza](#) and associate Regina Yarto contributed to the development of [Mexico's Telecoms & Media 2022 LexGTD T guide](#).

NHG contributed to the Telecoms & Media 2022 guide with an analysis of the key regulatory framework for the telecoms sector in Mexico, including licensing regimes, spectrum use, universal service obligations, data protection and much more.

[2022 Telecoms and Media - Mexico](#)

NHG joined the IDB's Sustainable Week 2022

Category: ESG, Events, Firm news, Sustainable Transition/ESG
written by Nader, Hayaux & Goebel | July 7, 2022

NHG was honoured to be invited by IDB Invest and participate in IDB's Sustainable Week 2022 #SW22, an event bringing together the most influential people involved in sustainable practices in Latin America and the Caribbean.

Our partner Yves Hayaux du Tilly was a speaker in the panel "*Climate Governance: Overcoming Hurdles of Board Leadership on Climate Change*", sharing his experience in climate action, advising directors on the implementation of the Principles of Effective Climate Governance in their boards, alerting directors on their fiduciary duties and potential liability as a consequence of the climate

emergency, and exploring alternatives for businesses to transition to net zero.

Climate change ceased to be a matter limited to ethical and environmental concerns of “tree huggers” to a climate emergency where the survival of our species is at stake and everyone faces a systemic risks of unknown proportions. Directors have no choice but to address same assuming their fiduciary duty or face the consequences. The Climate Governance Initiative and local chapters are here to help you in your journey.

“I am grateful for the opportunity to join other global and regional leaders to share solutions, best practices and tools that drive sustainable impact.” Yves Hayaux du Tilly

Nueva investigación en el mercado de autotransporte federal de pasajeros que utiliza terminales para el ascenso y descenso de pasajeros y servicios relacionados

Category: Antitrust, Legal Alerts, Uncategorized
written by Nader, Hayaux & Goebel | July 7, 2022

Investigación para determinar **la existencia de barreras a la competencia y libre concurrencia y/o insumos esenciales** a nivel nacional.

El 30 de junio de 2022, la Comisión Federal de Competencia Económica (COFECE) informó, a través de un aviso en el Diario Oficial de la Federación, el inicio de una investigación por la posible existencia de barreras a la competencia y libre concurrencia y/o insumos esenciales (artículo 94 de la Ley Federal de Competencia

Económica) **en el mercado de autotransporte federal de pasajeros que utiliza terminales para el ascenso y descenso de pasajeros, y servicios relacionados.**

La investigación podrá tener un plazo de 30 a 120 días hábiles (con dos posibles extensiones).

Si requiere información o asesoría legal respecto a esta investigación, contacte a nuestro equipo de competencia económica.

Investigation in the market of federal passenger transportation using terminals for boarding and disembarking of passengers

Investigation to determine **the existence of barriers to competition and/or essential inputs** at the national level.

On June 30, 2022, the Mexican Antitrust Commission (COFECE) reported in the Official Gazette, the initiation of an investigation regarding the probable existence of barriers to competition and/or essential inputs (article 94 of the Federal Antitrust Law) **in the federal passenger transportation market that uses terminals for the boarding and disembarking of passengers and related services markets.**

The investigation should take from 30 to 120 business days (with two possible extensions).

Any interested party can file information or documents with the Commission, so if you require information or advice regarding this investigation, please contact our antitrust practice group.

If you require information or legal advice regarding this investigation, please contact our antitrust team.

Nader, Hayaux & Goebel, Winners of the IFLR NET-ZERO TRANSITION Awards 2022

Category: Awards,ESG,Firm news,Sustainable Transition/ESG,Uncategorized
written by Nader, Hayaux & Goebel | July 7, 2022

NHG is committed to continuing to promote sustainable and net-zero practices. As such, we have created a community of business advisors in Mexico dedicated to climate governance, in order to move to a carbon neutral economy by 2050.

The involvement of NHG in Chapter Zero Mexico is an integral part of NHG's ESG Working Group for a Sustainable Transition, being pioneers in Mexico in offering its clients specialized legal advice for a transition to a low-carbon, resilient and conscious economy.

We encourage you to be part of this change and embrace this transition in your own businesses. By working together, we can bring the change our world needs.

NHG Net-zero Transition award

In 2019, the Climate Governance Initiative (CGI) of the World Economic Forum published the Principles for Effective Climate Governance and as from such date, local chapters of the CGI have been established to promote these principles among directors.

In 2020, the World Economic Forum <https://www.weforum.org/projects/climate-governance-initiative> requested NHG to lead the efforts of establishing Chapter Zero Mexico, as a member of the Climate Governance Initiative (CGI) <https://climate-governance.org/>

NHG formed and chaired the steering committee that worked for over a year developing the business and strategic plan to operate Chapter Zero Mexico

www.chapterzero.mx

NHG was one of the founding members that incorporated Chapter Zero Mexico as a non-for profit last October 2021.

NHG is Chapter Zero Mexico's legal expert, and provides legal advice to on all legal and regulatory implications of implementing a climate governance in boards of Mexican companies and is responsible of developing the material for directors of Mexican companies to understand the implications of climate change in their business, fiduciary duties, risks and opportunities and in general terms, implementing the principles on climate governance.

Chapter Zero Mexico is the local chapter of the Climate Governance Initiative.

The purpose of Chapter Zero Mexico is to create a community of directors in Mexico committed with climate governance to transition to a net zero economy by 2050 and to that effect, is developing the tools required by directors and boards to understand and assess the risks arising from climate change to develop risk mitigation and climate strategies for their transition to a net zero economy, as well as training programmes for directors of Mexican companies to develop the skills required to that effect, and setting the best practices in Mexico on climate governance.

To that effect, NHG leads and has been working with key partners such as Banorte, BBVA, BIVA, CONVIVE, Deloitte, EGADE, ENUMA, GIST Impact, HSBC, SURA and Siemens.

As part of our commitments to achieving a fast and efficient transition, NHG is committed to supporting the non-profit organization Chapter Zero Mexico, to create a community of directors in Mexico committed to the Climate Governance Principles to transition into a carbon neutral economy by 2050, under the auspices of the World Economic Forum's Climate Governance Initiative (the "Principles").

Description of initiative

NHG has been leading a group of Mexican experts in establishing the local chapter of the CGI in Mexico and is one of the founding members of Chapter Zero Mexico.

Climate change is not a consequence of fossil fuel use, it is the result of a consumption-based economic system. The whole world must migrate to a circular economy.

Everyone must participate in the change, therefore the financial system is the first to participate in order to incentivise the shift to green and sustainable finance.

Given this situation, we are creating in Mexico a community of business advisors committed to climate governance, in order to move to a carbon neutral economy by 2050.

This change is not something they can achieve alone, it requires specialised advice and NHG is part of the support committee and the ones who bring together the experts and companies or partners involved.

Date completed

If the migration to a new model is not promoted and executed, climate and economic system risks could create a systemic crisis that could end the current financial system and structure.

- Chapter Zero Mexico was incorporated as non-profit organization in October 2021, as of December 2022 it had developed its own website, created a digital communication platform, secured more than 28 strategic partnerships with ongoing negotiations with than 15 additional partners.
- The involvement of NHG in Chapter Zero Mexico is an integral part of NHG's ESG Working Group for a Sustainable Transition, being pioneers in Mexico in offering its clients specialized legal advice for a transition to a low-carbon, resilient and conscious economy. (February 2021)

Lawyer(s) from your team involved: [Yves Hayaux du Tilly](#) and [Héctor Arangua](#)

Why it is innovative or impactful:

Chapter Zero México is the only organization in Mexico focused in providing directors the knowledge and tools to develop climate governance strategies

incorporating ESG standards in their business operations.

Achievements:

- Drafted the Spanish version of the Principles on Climate Governance and developed the Exhibit on Legal Developments for the Spanish version of such Principles.
- Contributed the section on Mexico for the Primer on Climate Change: Director's Duties and Disclosure Obligations" https://chapterzero.mx/wp-content/uploads/2021/06/CGI_.pdf published on June 2021 by The Climate Governance Initiative and various of its local chapters, including Chapter Zero Mexico, the Commonwealth Climate and Law Initiative (CCLI), and the Canada Climate Law Initiative, covering ten civil law countries, including Mexico plus the EU and ten common law jurisdictions.
- Developed a Toolkit with Deloitte Mexico to identify the level of compliance with the Principles of Climate Governance.
- Design of the "First Mexican Climate Governance Programme for the Financial Sector" in partnership with EGADE.
- Establishment of strategic alliances with academia, companies and investors.
- Launch of a dedicated website providing information and material on climate governance.
- Continued collaboration with the Climate Governance Initiative (CGI) as Mexico's local chapter and contributions for the development of materials distributed worldwide, such as "Quick Guide to COP26", CGI's statement on COP26, among others.
- Developed a Litigation Guide on ESG related matters (pending to be published).

Corporate Mergers & Acquisition

2022 | Chambers & Partners Global Practice Guides

Category: Mergers and Acquisitions, Publications, Uncategorized

written by Nader, Hayaux & Goebel | July 7, 2022

NHG contributed to the latest Mexico's trends and developments on Corporate Mergers & Acquisition 2022 | Chambers & Partners Global Practice Guides, with a complete overview of the market, developed by partners Michell Nader and Julián Garza.

[Review here the Chambers & Partners T&D website](#)

[Review here the PDF](#)

NHG appoints three Of Counsels

Category: Firm news, Of Counsel

written by Nader, Hayaux & Goebel | July 7, 2022

Nader, Hayaux & Goebel is pleased to announce that [Federico Vergara](#), [José Manuel Zavala](#) and [Gabriel González](#) have become Of Counsels of the Firm.

Federico Vergara is an accomplished lawyer, who has worked as an associate at NHG for several years and has strong experience advising clients on structured finance, banking and finance, private equity and project finance transactions.

José Manuel Zavala is a prominent lawyer who has also worked at the Firm for a number of years, advising public and private companies on mergers, acquisitions, joint ventures, private equity and corporate governance matters.

Gabriel González, who joins the Firm to strengthen our antitrust practice, specialises in a variety of disciplines, including cartel behaviour and abuse of dominance investigations, leniency applications, opinions for cross-ownership and public bids, as well as trial-like procedures and constitutional actions. He has also developed risk prevention programs for several companies. Prior to his private practice, Gabriel worked at the Mexican Federal Antitrust Commission.

As part of our strategy, we are investing in the future of the Firm, seeking to grow our practice areas, strengthening our team and driving the growth of our people.

These promotions are part of our commitment to providing the highest quality service to our clients.

Nueva Regulación de la SEC sobre Cambio Climático

Category: ESG, Legal Alerts

written by Nader, Hayaux & Goebel | July 7, 2022

Introducción

El pasado mes de marzo de 2022, la SEC propuso nuevas directrices para mejorar y uniformar la información relacionada con el cambio climático con el fin de satisfacer las necesidades de los inversionistas. Muchos emisores intentan activamente satisfacer la demanda de esta información por parte de los inversionistas, pero los métodos actuales de revelación son bastantes irregulares. Las normas propuestas facilitarán a los emisores la revelación de estos riesgos de manera más homogénea, lo que beneficiará tanto a los inversionistas como a los emisores.

Contenido de la información propuesta

Las normas propuestas requerirían que los registrantes locales y los emisores privados extranjeros registrados (ambos, un emisor) revelen información sobre:

- Cómo los riesgos relacionados con el cambio climático identificados por el emisor han tenido o se prevé que tengan un impacto importante

en el negocio y los estados financieros consolidados del emisor a corto, mediano y largo plazo;

- Cómo esos riesgos identificados relacionados con el clima han afectado o se prevé que afecten la estrategia, el modelo de negocio o las perspectivas del emisor;
- Los procedimientos del emisor para identificar, analizar y gestionar los riesgos relacionados con el cambio climático;
- Una descripción del plan, incluyendo las métricas y objetivos relevantes utilizados para identificar y gestionar cualquier riesgo físico y de transición, si el emisor ha adoptado un plan de transición como parte de su estrategia de gestión de riesgos relacionados con el cambio climático;
- Una descripción de los escenarios considerados para evaluar la resiliencia de su estrategia empresarial a los riesgos relacionados con el cambio climático;
- Información sobre el precio y cómo se fija si un solicitante de registro emplea una tarifa interna de las emisiones de carbono;
- El impacto de los sucesos relacionados con el clima (como el mal tiempo y otras catástrofes naturales) y las operaciones de transición en las rúbricas de los estados financieros consolidados de un emisor, así como las estimaciones e hipótesis financieras utilizadas en los estados financieros;
- Las emisiones directas de Gas de Efecto Invernadero (GEI) del emisor (Alcance 1) y las emisiones indirectas de emisiones de GEI (Alcance 2) procedentes de la electricidad comprada y otras formas de energía, reveladas por separado, expresadas tanto por los GEI constituyentes desagregados como en el agregado, en términos absolutos (excluyendo las compensaciones) y en términos de intensidad (por unidad de valor económico o de producción);
- Si son relevantes, las emisiones indirectas de las operaciones anteriores y posteriores en la cadena de valor de un emisor (Alcance 3), o si el emisor ha establecido un objetivo o meta de emisiones de GEI que incluye las emisiones del Alcance 3, en términos absolutos, sin incluir compensaciones, y en términos de intensidad; y
- Si el emisor ha establecido públicamente objetivos o metas relacionados con el clima.

Al día de hoy no hay una fecha cierta sobre cuándo entrarán en vigor estas normas, pero se entiende que las normas propuestas se adoptarán con una fecha de entrada en vigor en diciembre de 2022.

Es imperativo que los emisores comiencen a evaluar el impacto de estas regulaciones dentro de sus organizaciones y tomen medidas inmediatas para su implementación. En el caso de las empresas públicas y los emisores de otras jurisdicciones, incluido México, es razonable esperar que se aplique una normativa muy similar a corto plazo, por lo que sugerimos que se adopten medidas inmediatas para la adopción de criterios de gobernanza climática.

The Securities and Exchange Commission (“SEC”) unveils Proposed Climate Disclosure Rules

Introduction

The SEC proposed new guidelines last March 2022, to improve and standardize climate-related disclosures in order to meet investor needs. Many issuers are actively attempting to address investor demand for this information, but current disclosure methods are fragmented and uneven. The proposed rules will make it easier for issuers to disclose these risks more homogeneously, which will benefit both investors and issuers.

Content of the Proposed Disclosures

The proposed rules would require local registrants and registered foreign private issuers (each an issuer) to disclose information about:

- The issuers board and management's regulation and control of climate-related risks;
- How any climate-related risks identified by the issuers have had or are anticipated to have a major impact on the issuers business and consolidated financial statements in the short, medium, and long term;
- How those identified climate-related risks have affected or are projected to affect the issuers strategy, business model or outlook;
- The issuers procedures for identifying, analyzing, and managing climate-related risks;
- A description of the plan, including the relevant metrics and targets used to identify and manage any physical and transition risks, if the issuer has adopted a transition plan as part of its climate-related risk management strategy;
- A description of the scenarios considered to assess the resilience of its business strategy to climate-related risks;
- Information regarding the price and how it is set if an issuer employs an internal carbon pricing;
- The impact of climate-related occurrences (such as severe weather and other natural disasters) and transition operations on an issuers consolidated financial statements line items, as well as the financial estimates and assumptions used in the financial statements;
- The issuers direct Green House Gas (GHG) emissions (Scope 1) and indirect GHG emissions (Scope 2) from purchased electricity and other forms of energy, separately disclosed, expressed both by disaggregated constituent GHG and in the aggregate, in absolute terms (excluding offsets) and in terms of intensity (per unit of economic value or production);
- If relevant, indirect emissions from upstream and downstream operations in an issuers value chain (Scope 3), or if the issuer has set a GHG emissions target or goal that includes Scope 3 emissions, in absolute terms, without including offsets, and in terms of intensity; and
- If the issuer has publicly set climate-related targets or goals.

As of this date there is no specific date as to when these rules will enter into force, but it is assumed that the proposed rules will be adopted with an effective date in December 2022.

It is imperative that issuers start assessing the impact of these regulations within their organizations and taking immediate steps towards their implementation. For public companies and issuers in other jurisdictions, including Mexico, it is reasonable to expect very similar regulation to be implemented in the short term so we suggest immediate action on adopting climate governance standards.

For further information in relation to the above, please contact your usual contacts at Nader, Hayaux and Goebel or Partner Héctor Arangua.

Norma Oficial Mexicana NOM-029-SE-2021, “Prácticas comerciales - requisitos informativos para la prestación del servicio de Tiempo Compartido (NUEVA NOM)

Category: Legal Alerts, Real Estate

written by Nader, Hayaux & Goebel | July 7, 2022

Norma Oficial Mexicana NOM-029-SE-2021, “Prácticas comerciales - requisitos informativos para la prestación del servicio de Tiempo Compartido (Cancela a la NOM-029-SCFI-2010)”

El 28 de marzo de 2022 el Comité Consultivo Nacional de Normalización (“CCONNSE”) de la Secretaría de Economía publicó en el Diario Oficial de la Federación la “Norma Oficial Mexicana NOM-029-SE-2021, Prácticas comerciales - requisitos informativos para la prestación del servicio de Tiempo Compartido (la “NOM”), la cual entrará en vigor a los 180 días naturales contados a partir del día de su publicación, es decir, el 28 de septiembre de 2022.

Mediante dicha publicación se canceló la “NOM-029-SCFI-2010, “Prácticas comerciales - requisitos informativos para la prestación del servicio de Tiempo Compartido”. A continuación exponemos los puntos más relevantes que modifica la NOM:

- Se incluye una prohibición de utilizar publicidad engañosa y abusiva, así como incurrir en prácticas comerciales coercitivas o desleales. Adicionalmente, el proveedor o prestador intermediario adoptarán las medidas necesarias para evitar el ofrecimiento de la ingesta de bebidas alcohólicas en la realización de actividades promocionales.
- Se agregan varios requisitos de formato para los contratos, así como varios requisitos que deben contener las carátulas de los mismos.

- Los contratos de adhesión deben contener una cláusula donde se especifique que la celebración del mismo en ningún momento constituye un derecho real sobre el inmueble sujeto a la prestación del servicio de tiempo compartido.
- Para la venta de tiempo compartido el proveedor debe acreditar que el bien inmueble está afecto a la prestación de servicio de tiempo compartido, para lo cual debe presentar la constancia de inscripción definitiva en el Registro Público de la Propiedad.
- Se agrega que, en caso de cancelación del contrato, dentro del término previsto para ello en el contrato, la devolución de la inversión total inicial debe hacerse dentro de los quince días hábiles siguientes a la fecha de notificación al proveedor o prestador intermediario de la cancelación del contrato. En caso de incumplimiento a lo anteriormente mencionado, el proveedor o prestador intermediario debe pagar de manera adicional un interés moratorio del 9% anual sobre las cantidades no devueltas.
- Las penas convencionales para ambas partes por incumplimiento del contrato, deben ser razonables, equitativas, proporcionales y recíprocas.
- Se establece un procedimiento de Evaluación respecto del cumplimiento con la presente NOM que estará a cargo de Unidades de Inspección.

Mexican Official Norm NOM-029-SE-2021, “Commercial practices - information requirements for the provision of timeshare services (Cancels NOM-029-SCFI-2010)”

On March 28, 2022, the National Consulting Committee of Standardization (Comité Consultivo Nacional de Normalización) (“CCONNSE”) of the Ministry of Economy (Secretaría de Economía) published in the Federal Official Gazette “Mexican Official Norm NOM-029-SE-2021, Commercial practices - information requirements for the provision of timeshare services (the “NOM”), which will become effective 180 calendar days from the date of publication, that is, on September 28, 2022.

The NOM replaces NOM-029-SCFI-2010, “Commercial practices - information requirements for the provision of timeshare services”. Below are the most relevant items modified:

- It includes a prohibition to use misleading and abusive advertising, as well as to incur in coercive or unfair commercial practices. Additionally, the

supplier or intermediary provider shall adopt the necessary measures to avoid offering the consumption of alcoholic beverages in promotional activities.

- Several requirements are added regarding the format of contracts. Furthermore, various requirements are also added for the cover page.
- Contracts must contain a clause specifying that the execution of the contract at no time constitutes an “in rem” right over the property subject to the provision of the timeshare service.
- For the sale of timeshare, the supplier must prove that the property is subject to timeshare services, for such purposes, time share services provided must show the evidence definitive registration in the Public Registry of Property.
- In the event of cancellation of the contract, within the term provided for such purpose in the agreement, a full refund of the initial investment must be made within fifteen business days following the date of notification to the supplier or intermediary of the cancellation of the contract. In the event of breach with the foregoing, the supplier or intermediary must additionally pay late payment interest at an interest rate of 9% per annum on the unreturned amounts.
- Penalties for both parties for breach of contract must be reasonable, equitable, proportional and reciprocal.
- The NOM establishes a compliance assessment with its terms to be carried out by Inspection Units.

Should you require further information regarding the above, please contact your usual contacts at Nader, Hayaux & Goebel.

Nueva investigación en el mercado

de comercio electrónico minorista en México

Category: Antitrust, Legal Alerts

written by Nader, Hayaux & Goebel | July 7, 2022

El 31 de marzo de 2022 la Comisión Federal de Competencia Económica publicó el inicio de una investigación por la posible existencia de barreras a la competencia y libre concurrencia y/o insumos esenciales, en el mercado de comercio electrónico minorista en territorio nacional.

New investigation in the retail e-commerce market in Mexico

On March 31, 2022, the Federal Antitrust Commission announced the commencement of an investigation for the possible existence of barriers to competition and/or essential inputs in the retail e-commerce market in Mexico.