

# 3rd Edition of The Legal500's Global Guide to Real Estate

Category: Publications, Real Estate

written by Nader, Hayaux & Goebel | December 2, 2019

[Vanessa Franyutti](#), [Alejandro Rojas](#) and [Rainer Walz](#) contributed to the 3rd edition of [The Legal 500: Real Estate Country Comparative Guide](#).

The aim of this guide is to provide its readers with a pragmatic overview of the law and practice of real estate law across a variety of jurisdictions.

Each chapter of this guide provides information about the current issues affecting real estate in a particular country and addresses topics such as ownership proof, due diligence, taxes, planning and zoning restrictions, mortgages and environmental contamination as well as insight and opinion on the most common issues in their respective country.

The Q&A template for each chapter has been provided by François Bonteil of Clifford Chance.

You can download a [free copy of the Mexico chapter here](#).



# Chambers Acquisition Finance Practice Guide 2019: Mexico Chapter

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

written by Nader, Hayaux & Goebel | December 2, 2019

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.

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

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## Creation of the Mexican Federal Agency of Civil Aviation

Category: Legal Alerts

written by Nader, Hayaux & Goebel | December 2, 2019

On October 16, 2019, a decree was published in the Federal Official Gazette (Diario Oficial de la Federación) creating the Federal Agency of Civil Aviation (Agencia Federal de Aviación Civil, by its acronym in Spanish “AFAC”), an independent governmental agency (órgano desconcentrado) of the Ministry of Communications and Transportation (Secretaría de Comunicaciones y Transportes, by its acronym in Spanish “SCT”).

According to the decree, the AFAC was created primarily to increase supervision and ensure greater compliance with safety measures and activities provided for in the different aviation laws, regulations, international treaties and other aviation directives. The foregoing, in order to address the recommendations made by the Federal Aviation Administration of the United States of America (FAA), as a result of the audit carried out during the period 2006-2012 as part of the International Aviation Safety Assessment Program (IASA); the FAA recommended the creation of a regulatory entity for the aviation industry with technical and supervisory authority, as well as with administrative autonomy. Therefore, unlike the General Bureau of Civil Aviation (by its acronym in Spanish “DGAC”) which was an administrative unit with no autonomy within the SCT, the AFAC is an independent governmental agency (órgano desconcentrado) with technical, operational and administrative autonomy.

With the exception of the authority to grant concessions in connection with civil aviation and airport matters, which has been reserved exclusively to the head of the SCT, the AFAC will assume all of the functions of the DGAC, including the ones related to the Mexican Aviation Registry.

AFAC’s new attributions in connection with airport matters include **(i)** submitting applications for the granting of concessions for airport administration, operation, development and construction to the head of the SCT, and **(ii)** coordinating studies and evaluations, as well as the purchase or, as the case may be, necessary expropriations of real property for the construction of airports. We assume the AFAC will play a more prominent role in the plans of the Federal Government in airport matters.

The Agency will have a general director to be appointed and removed freely by the President, at the proposal of the head of the SCT.

The creation of the AFAC became effective on the day following the decree’s publication; within the following 180 days, the head of the SCT shall **(i)** propose to the President the corresponding amendments to the Internal Regulations of the SCT, and **(ii)** issue the AFAC Organization Manual to regulate its functions and purpose.

We understand that, given the greater autonomy of the AFAC, the intention is to make the decision making process more efficient and thus improve the response

time and technical capabilities *vis-à-vis* the aviation industry.

*For further information with respect to the Federal Agency of Civil Aviation, please get in touch with your regular contacts at Nader, Hayaux & Goebel.*

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# Update: Amendments to the Pension Funds Systems Law

Category: Legal Alerts

written by Nader, Hayaux & Goebel | December 2, 2019

On September 30, 2019, the Mexican Senate (*Cámara de Senadores*) approved the legislative proposal introduced by the Federal Executive Branch of the Mexican Government, (the “**Proposal**”), which was approved by the House of Representatives (*Cámara de Diputados*) on April 30, 2019, to amend various provisions of the Pension Funds Systems Law (*Ley de los Sistemas de Ahorro para el Retiro*) (the “**SAR Law**”). The Senate in turn reverted its comments to the House of Representatives. If the Proposal is approved by the House of Representatives, the President must promulgate the Proposal and order its publication in the Official Gazette.

The following are the main amendments to the SAR Law proposed by the Mexican Congress:

## **New operating model for Afores**

The Retirement Fund Administrators (*Administradoras de Fondos para el Retiro*) (“**Afores**”) will operate through Specialized Retirement Fund Investment Funds (the “**Fiefores**”) which will replace the Specialized Retirement Fund Investment Companies (“**Siefores**”). Furthermore, the Proposal contemplates that the Pension Funds System Commission (*Comisión Nacional del Sistema de Ahorro para el Retiro*) (“**Consar**”), with the prior opinion of the Ministry of Finance (*Secretaría de*

*Hacienda y Crédito Público*) (“**SHCP**”), the Securities and Banking Commission (*Comisión Nacional Bancaria y de Valores*) (“**CNBV**”), and the Mexican Central Bank (*Banco de México*) (“**Banxico**”), shall determine the investment regime, the levels of liquidity and market risk for the Fiefores. However, if the opinion of SHCP, CNBV and/or Banxico is not favorable, Consar may approve the investment regime as long as it justifies its decision in its quarterly report before the Mexican Congress.

Siefores will have a 12 month period from the date the publication date of the amendment to request approval from Consar to convert the Siefores into Fiefores, including the amendment to their bylaws to comply with the corporate governance provisions applicable to Fiefores pursuant to the revised SAR Law. If the application is not timely submitted or the authorization of Consar is not obtained within such 12 month period, the respective Siefore will enter into a state of dissolution and liquidation.

### **New investment opportunities**

Fiefores will have access to greater investment opportunities than Siefores had, including the possibility of investing directly in securities registered in the National Securities Registry not offered through a public offering, as long as the Afore obtains its prior board approval with the affirmative vote of all of its members, in accordance with general provisions to be issued by Consar.

Fiefores will be able to **(1)** receive money deposits used as collateral in repo transactions, secured lending and derivative financial instruments, **(2)** carry out securities lending transactions and repurchase agreements, including over securities issued by companies, as well as credits or loans only in their capacity as creditors, **(3)** receive cash deposits as long as they are used as collateral in repurchase transactions, securities lending and derivative financial instruments, **(4)** acquire international securities authorized by Consar, **(5)** carry out loan, credit and repurchase transactions to satisfy the liquidity levels established by Consar, **(6)** carry out short transactions with securities used as collateral under pledge agreements, and **(7)** grant guarantees corresponding to repo agreements, loans, credits and derivative transactions, in accordance with the provisions issued to such effect by Banxico.

It is not yet possible to define the scope in the changes to the investment regime or

if it will represent a more flexible investment regime. This scope will be defined in the secondary regulation issued by Consar.

### **Performance Fee**

Fees charged by Afores will have an additional component that will be calculated on the basis of the investment returns received by pension holders through their investments in the Fiefores. Consar will publish a specific calculation methodology for such new component. Such performance component may serve to align the interests of investment managers, pension holders and Afores.

### **Withdrawal of voluntary deposits**

Pension holders will be allowed to withdraw their voluntary deposits from their retirement funds at any time.

Consar, SHCP and Banxico must issue secondary regulation in this regard. As soon as the secondary regulations are published, we will follow up on this release. Additionally, in a period not exceeding six months from the date of the amendment, the Federal Executive Branch must summon the assembly of a National Working Group for the Diagnosis and Proposal of the Amendment of the Pension Systems. Such Group will be composed of and function in accordance with the guidelines dictated by SHCP, incorporating experts in financial, social security, legal or pension matters, representatives of workforce, employees, and a representative of each Parliamentary Group in the House of Representatives and Senators of the Mexican Congress. The Working Group must submit a report to the head of the Federal Executive Branch and to the Mexican Congress.

*For further information with respect to the Proposal and applicable regulation, please get in touch with your regular contacts at Nader, Hayaux & Goebel.*

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# Nader, Hayaux & Goebel sponsor 7th edition of LexMex Conference in London

Category: Events, Firm news

written by Nader, Hayaux & Goebel | December 2, 2019

For the 7th consecutive year, the Mexican Chamber of Commerce in Great Britain (MexCC) in partnership with The Law Society of England and Wales and in collaboration with The Bar Council, the Mexican bar associations ANADE, BMA and INCAM, the ICC and UNAM organized the Lex Mex Conference.

[Yves Hayaux du Tilly](#), honorary chairman of the MexCC, opened the event welcoming an audience formed mainly by solicitors, Mexican lawyers and barristers. The conference began with a presentation on the state of Mexico's economy by Rodrigo Aguilera, former analyst at the Economist Intelligence Unit, who outlined the current contrasting tendencies in Mexican economy.

This year's keynote speech was addressed by Dr Issa Luna Pla, academic secretary of the Legal Research Institute (IIJ) of UNAM. Dr Luna Pla presented the work that she is doing in the Observatory of Corruption and Impunity in UNAM mapping networks of corruption as an instrument to understand their modus operandi. Dr Luna Pla also explained the current status of implementation of the National Anticorruption System.

In this occasion, the "Year in Review" panels were on: Criminal Law, Commercial Litigation and Arbitration, Employment Law and Green Finance.

In the panel on Criminal Law, Amanda Pinto QC, vice chair of the Bar Council, described the current challenges and complexities in England of disclosure issues in a digital age and the special measures available for giving evidence, and access to justice related matters; and Victor Oléa Peláez, vice president of BMA explained the various implications and challenges of the new adversarial model in criminal law currently in effect in Mexico.

The panel on Commercial Litigation and Arbitration was moderated by Frederico Singarajah QC, barrister at Hardwicke Chambers, with the participation of Elías Mendoza of Guerra González Abogado; Horacio Paredes Vázquez of Malpica Iturbe Buj y Paredes (MIBP); and Sergio Rodríguez of Labastida, Rodríguez & Perchemlian as panellists. They described the differences in arbitration and litigation in Mexico and in England, providing the audience useful recommendations on how to navigate the Mexican courts system and rules applicable to arbitration in Mexico.

The Labour and Employment Law panel was moderated by Adrián Ojeda, president of ANADE and featured a presentation by Héctor González Graf, partner at MGGL, on the practical aspects of the complex new reform to the employment and labour justice system in Mexico.

The panel on Green Finance had no precedent in the Lex Mex. The panellists explained key concepts of green finance and raised awareness of the relevance of the topic. The speakers in the panel were Chantalle Thomson from The Carbon Trust and Yves Hayaux du Tilly partner at Nader, Hayaux & Goebel and Isabel Miranda, consultant in risk management and business development moderated the panel.

In the last panel “Legal Perspectives of Doing Business in and with Mexico” Lucía Guijarro, Senior Legal Counsel at Honeywell, and Leopoldo Hernández, partner at KermaPartners, explained fundamental elements to consider when doing business in Mexico and the differences and similarities between civil and common law from a business and corporate perspective.

Justice of the Mexican Supreme Court Fernando Franco González-Salas, after being introduced by Lord Daniel Brennan QC, made a presentation about the reform to the Mexican labour and employment justice system. Justice Franco explained that the reform involves a whole new justice model, a new paradigm and therefore, it implies a new labour culture. The point of the reform, he explained “is to have a better administration of labour justice, that rectifies all the defects and deficiencies that the former justice model presented.”

David Greene, vice-president of The Law Society, gave the final remarks to close the morning conference.

In the afternoon, some of the attendees, including Adrián Ojeda Cuevas, president of Asociación Nacional de Abogados de Empresa Colegio de Abogados (ANADE); Ana Elena González Treviño, director of the Centre for Mexican Studies of King's College London; Ángel Junquera Sepúlveda, president of Ilustre y Nacional Colegio de Abogados de México (INCAM); Colchuma Ali, deputy head of Mexico of the FCO; Elías Mendoza, partner at Guerra González Abogados; Héctor González Graf, partner at MGGL; Horacio Paredes, partner at MIBP; Issa Luna Pla head of the Observatory of Corruption and Impunity of IIJ-UNAM; James Dauris, head of the Latin America Department in the FCO; Justice Fernando Franco of the SCJN; Leopoldo Hernández, partner at KermaPartners; Lizette Robleto Howarth, international programmes manager of The Law Society; Richard Atkins QC, chair of the Bar Council; and Víctor Oléa Peláez, vice president of Barra Mexicana Colegio de Abogados (BMA) participated in the first Lex Mex Workshop which was moderated by Yves Hayaux du Tilly, partner of Nader Hayaux & Goebel.

The Lex Mex Workshop aimed to identify specific topics, discuss ideas and agree on specific projects in which the Mexican and British legal sector can work together through the year to achieve a more plausible impact in improving the legal system of both countries. The following topics were discussed in the Workshop: fight against corruption; anti-money laundering; judicial independence and the role of lawyers in defending the rule of law.

For more information about the Lex Mex and other events organized by the MexCC, please contact Milène Hayaux du Tilly, Executive Director of the MexCC ([milenehayaux@mexcc.co.uk](mailto:milenehayaux@mexcc.co.uk))

### **On the Mexican Chamber of Commerce in Great Britain**

The Mexican Chamber of Commerce in Great Britain (MexCC) was formed in 2011 with the support of key stakeholders in the bilateral relationship to represent the Mexican private sector in the UK, support Mexican investors, businesspeople and traders enter the UK market, and UK investors, businesspeople and traders interested in doing business in Mexico and raise Mexico's profile as a business partner, promoting Mexico as an investment and trade destination. The MexCC is a non-for-profit private sector organization funded by its members and sponsors

consisting of businesses from entrepreneurs to multinational corporations across a range of sectors like, energy, financial services, food & drinks, infrastructure, insurance, etc. The MexCC works in coordination with both Governments, their respective Embassies and promotion agencies, as well as with other private sector organisations in Mexico and the UK, and is the authoritative voice of the Mexican private sector before the international business community in London. For more info please visit: <http://www.mexicanchamberofcommerce.co.uk/>

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# Antitrust Attorney-Client Privilege Regulations

Category: Antitrust, Legal Alerts

written by Nader, Hayaux & Goebel | December 2, 2019

The Mexican Federal Antitrust Commission (“Commission”) published new regulations regarding attorney-client privilege (“Regulations”) that became effective on September 30th, 2019.

The Regulations are aimed at establishing a process whereby information resulting from legal advice rendered to clients is qualified as protected with attorney-client privilege and therefore not be considered as evidence.

While the process to analyze the protection request is in progress, the Commission shall take the necessary steps to isolate and preserve the information confidential until the corresponding Committee determines whether or not the request to protect the information is granted.

In the event the information is considered by the Committee as protected by attorney-client privilege, then the exclusion process described in the Regulations must be implemented. Otherwise, in the event the Committee considers the attorney-client privilege is not applicable, it will inform the corresponding unit

within the Commission so it can dispose of or use such information.

These new Regulations entail a significant challenge to duly protect legal advice provided to clients under attorney-client privilege.

For further information with respect to the regulations, please get in touch with your regular contacts at Nader, Hayaux & Goebel.

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# Guide to Private Company Acquisitions

Category: Mergers and Acquisitions, Practices Areas, Publications

written by Nader, Hayaux & Goebel | December 2, 2019

Partner [Diego Sánchez](#) and Associate [Miguel Ángel González](#) have published the guide to Private Company Acquisitions in collaboration with Thomson Reuters.

This Q&A provides jurisdiction-specific commentary on Practice note, Asset acquisition documents: Cross-border and forms and is part of Thomson Reuters' Cross-border private company acquisitions.

You can read the full Q&A document [here](#), or for a full list of jurisdictional Q&As visit [Thomson Reuters website](#).

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# Proposed Tax Amendments in the 2020 Budget Bill

Category: Legal Alerts, Tax

written by Nader, Hayaux & Goebel | December 2, 2019

On September 8, 2019, the Executive delivered to the Mexican Congress the Budget Bill for 2020, which includes the proposed “Decree by which various provisions of the Income Tax Law, Value Added Tax Law, Law on Special Tax on Production and Services and the Fiscal Code are amended, added and repealed” (the “2020 Tax Amendments”). Below we highlight the most relevant proposed tax modifications that will be discussed by Congress in the following days.

## **Income Tax**

- Updating of the concept of permanent establishment, in accordance with recommendations set forth in action 7 of the BEPS Project.
- Revision of the provisions addressing hybrid mechanisms, in accordance with recommendations set forth in action 2 of the BEPS Project.
- Modification of various provisions of the Law referring to the Preferential Tax Regimes, differentiating the income obtained through tax transparent foreign entities and vehicles, from the income related to preferential tax regimes obtained through controlled foreign entities.
- Introduction of a general rule addressing income realized by tax transparent foreign entities and vehicles.
- Establishment of a new limitation on the deduction of interest setting a cap equal to 30% of the Adjusted Tax Profit, as well as modification of the thin capitalization rules.
- Incorporation of the provision that was previously included in the Federal Revenue Act, allowing the reduction of the employee profit sharing upon calculating advanced monthly payments.
- Addition of a new set of rules dealing with income generated by Mexican resident individuals from the sale of goods or the provision of services through the Internet, technological platforms, and similar

computer applications.

- Elimination of private REITs (FIBRAS), which will trigger the payment of the tax generated by the transfer of the assets to the trust as regulated under transitory provisions.

### **Value Added Tax Law**

- Taxing digital services provided by non-residents with no PE in Mexico, as well as digital intermediation services between third parties provided by non-residents with no PE and by Mexican residents.
- Withholding of tax payable to labor outsourcing service providers.
- Rules dealing with activities not subject to VAT and their impact on credits.
- Repeal of the possibility to offset VAT favorable balances against other taxes due.

### **Excise Tax on Production and Services**

- Repeal of the possibility to offset favorable excise tax balances against other taxes due.

### **Federal Fiscal Code**

- Establishment of a general anti-abuse rule (GAAR) aimed at transactions that are deemed to lack a business purpose and resulting in a tax benefit.
- Amendment of the rules governing the offset of favorable tax balances, now excluding the possibility of being applied with respect to taxes withheld from third parties.
- Introduction of the obligation for tax advisors to disclose reportable transactions, as well as the possibility of performing tax audits to review the compliance therewith and assessing penalties for non-compliance.
- Addition of various provisions aimed at challenging companies that issue, market and use tax invoices from non-existent operations.

For further information with respect to the Proposed Tax Amendments, please get in touch with your regular contacts at Nader, Hayaux & Goebel.

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# Cartels Chambers Global Practice Guide: Mexico Chapter

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

written by Nader, Hayaux & Goebel | December 2, 2019

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.

You can read the full article [here](#) or go to Chambers & Partners [website](#).

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# NHG experts contribute to the 9th edition of The Projects and Construction Review

Category: Infrastructure, PPPs and Government Procurement, Publications

written by Nader, Hayaux & Goebel | December 2, 2019

Partner [Vanessa Franyutti](#) and Associate [Alejandro Alfonso](#) contributed to the Mexican Chapter of The Projects and Construction Review, 9th Edition.

Project financing and construction law are highly specialised areas of legal practice. Although there is an increased perception that project financing and construction

law are global issues, the local knowledge offered by leading experts in 19 countries has shown that to understand the world, we must first make sense of what happens locally; to further advance our understanding of the law we must resist the modern view that all that matters is global and what is regional is of no importance.

The entire Mexico chapter can be downloaded [here](#). More information on the publication can be found on The Law Reviews' [website](#).

