

Banking & Finance Chambers Global Practice 2021

Category: Banking & Finance, Publications

written by Gonzalo Martínez P. | October 7, 2021

Our partners Michell Nader and Julián Garza, from Nader, Hayaux y Goebel, contributed to the banking and finance guide with an overview of the impact on the loan market in Mexico due to Covid-19, as well as legal developments in foreign and domestic lending activities in Mexico.

1.1 Impact of Regulatory Environment and Economic Cycles

The recession that the COVID-19 pandemic brought about during 2020 certainly impacted the loan market in Mexico and in most other jurisdictions; needless to say, economic conditions changed dramatically, as did the need for, and availability of, financing funds.

The impact of the pandemic was also felt in an increase of defaults in existing loans. The risk for many companies of being unable to comply with their debt obligations, as well as the potential risk for Mexican banks to face serious capitalisation and reserves issues as a result thereof, prompted Mexican banking authorities to enable transitory regulations that eased technical and regulatory requirements applicable to Mexican banks, in an effort to facilitate their navigating through the crisis.

2021 has seen renewed expectations in terms of growth. As a result, the loan market in Mexico is currently more stabilised. Markets are fairly liquid and loans are flowing in a variety of forms, including in Mexico and across the border. The Mexican banking system is solid and foreign lenders' appetite remains strong to lend into Mexico.

As previously mentioned, COVID-19 seriously impacted the loan market. Regulations were successfully enacted to reduce the impact in the banking industry during a transition period. Nevertheless, efforts to reactivate the economy fell short and no significant funds were injected into the commercial business market, which has delayed the recovery of many companies and businesses, and their access to

financings

[Find the complete texto here.](#)

The SCJN sets forth criteria applicable to the late payment of premium

Category: Firm news, Insurance and Reinsurance

written by Nader, Hayaux & Goebel | October 7, 2021

On February 17, 2021, the First Chamber of the Mexican Supreme Court of Justice (“**SCJN**”) issued a judicial precedent pursuant to which it determined that notwithstanding the insurance premium is paid, in case this is done after the 30-day grace period, the insurance contract terminates, even if the insurer received the premium.

The rationale of the First Chamber of the SCJN is based on the assumption that the insurance contract is bilateral, onerous and aleatory, and is perfected at the moment in which the contracting party becomes aware of the acceptance of the offer made by the insurer, and additionally, according to the Insurance Contract Law (the “**Law**”), from the due date for payment of the premium, the contracting party has a grace period of 30 calendar days to pay the premium.

If the Insurer has not received the payment of the premium prior to 12 o’clock of the last day of the 30-day term, the effects of the insurance contract cease automatically and the insurer is released from its obligations.

Even if the contracting party pays the premium after said term and the insurer

accepts the late payment, the effects of the insurance contract may not be rehabilitated.

According to the criteria of the SCJN, once the insurance contract is terminated, there must be a new offer from the insured and same shall be agreed with the insurer to formalize a new insurance contract.

The late payment of the premium or of any of its installments does not constitute an offer and the receipt of the payment by the insurer does not constitute a tacit consent.

Any late payment of the premium shall be deemed a deposit that may be applied to the premium if the new insurance contract is executed; if it is not executed, it shall be reimbursed to the insured as an undue payment.

Furthermore, on February 24, 2021, the First Chamber of the SCJN issued another judicial precedent resulting from contradicting rulings between two Collegiate Courts of the same circuit but from different specialties, which establishes that pursuant to article 41 of the Law the insurance contract is invalidated when payment of the insurance premium is made outside the grace period of 30 calendar days, even when the insurer does not immediately refuse such payment.

In this case, the rationale of the First Chamber of the SCJN, consistent with the judicial precedent described above, is based on the premise that the first paragraph of article 40 of the Law establishes that if the contracting party does not pay the premium or the corresponding installment, in case it is paid in installments, within the grace period of 30 calendar days, the effects of the insurance contract will cease automatically at 12 o'clock on the last day of such term.

Article 41 of the Law further provides that any agreement that intends to waive the effects of the provisions of the first paragraph of Article 40 of the Law shall be invalid.

Therefore, it is considered that the effects of the insurance agreement irrevocably terminate in case of late payment of the premium or of any of its installments, which is an invariable consequence of the non-payment within the term foreseen for such

purpose.

Consequently, it may not be deemed that receiving the late payment rehabilitates the effects of the insurance contract and constitute an agreement to waive the effects of the first paragraph of article 40 of the Law, as the foregoing would not be valid pursuant to article 41 of the Law.

NHG's Preliminary Observations

- It is a common practice for insurers to receive late premium payments and, in general terms, if the loss occurs after the insurer receives the late payment of the premium, the insurer fulfills its obligations under the insurance contract.
- The judicial precedents release the insurers from any liability under insurance contracts in which premiums have not been paid within the grace period set forth in article 40 of the Law, and require that the insurers accept a new offer from the insured, in order for a new insurance contract to become effective.
- If an insured pays, after the grace period the premium corresponding to the insurance contract, the insured will be required to obtain an express acceptance from the insurer in which the insurer confirms the acceptance of the risk; otherwise, the insurance contract will be deemed invalid and will not produce any legal effect.
- We recommend to carefully analyze the rehabilitation clauses currently used in insurance contracts to confirm whether these clauses constitute, on their own, an express consent from the insurers to accept the risk in case of untimely payment of the premium or, if applicable, adjust them to comply with the judicial precedents.

La SCJN define criterios para el tratamiento del pago extemporáneo de la prima

El 17 de febrero de 2021, la Primera Sala de la Suprema Corte de Justicia de la Nación (la "**SCJN**") emitió una tesis jurisprudencial conforme a la cual determinó que el pago de la prima de seguro fuera del plazo genérico de 30 días produce la

terminación del contrato de seguro, no obstante que la aseguradora haya aceptado el pago extemporáneo.

El razonamiento de la Primera Sala de la SCJN parte de la base que el contrato de seguro es bilateral, oneroso y aleatorio, y se perfecciona en el momento en que el contratante tiene conocimiento de la aceptación de la oferta por parte de la aseguradora, y además, que conforme a la Ley sobre el Contrato de Seguro (la "**Ley**"), a partir del vencimiento de la prima, el contratante tiene un plazo de 30 días naturales para pagarla.

Si la aseguradora no recibe el pago antes de las doce horas del último día del plazo de 30 días, los efectos del contrato de seguro cesan automáticamente y la aseguradora se desvincula del cumplimiento de sus obligaciones.

Aun y cuando el contratante pague la prima después de dicho plazo y la aseguradora acepte el pago extemporáneo, no se rehabilitan los efectos del contrato de seguro.

Conforme al criterio de la SCJN, una vez terminado el contrato de seguro, debe existir una nueva oferta del asegurado y la aceptación de la aseguradora para que exista un nuevo contrato de seguro.

El pago extemporáneo de la prima o de alguna de sus parcialidades no constituye una oferta y la recepción de dicha prima por parte de la aseguradora no constituye un consentimiento tácito.

El pago extemporáneo de la prima solamente se puede considerar como un depósito a ser aplicado a la prima si el nuevo contrato de seguro se perfecciona, de no perfeccionarse, ésta se deberá reembolsar al asegurado al tratarse de un pago de lo indebido.

Por otra parte, el 24 de febrero de 2021, la Primera Sala de la SCJN emitió una tesis jurisprudencial por contradicción de tesis entre dos Tribunales Colegiados del mismo circuito pero de distinta especialidad, en la que se establece que el pago de la prima de seguro fuera del plazo genérico de 30 días naturales, aun cuando la aseguradora no rehúya de inmediato esa exhibición, constituye un convenio nulo en términos del artículo 41 de la Ley.

En este caso, el razonamiento de la Primera Sala de la SCJN, consistente con la tesis jurisprudencial anteriormente descrita, parte de la base que el primer párrafo del artículo 40 de la Ley establece que si el contratante no realiza el pago de la prima o de la fracción correspondiente, en caso de pago en parcialidades, dentro del plazo genérico de 30 días naturales, los efectos del contrato de seguro cesan automáticamente a las 12 horas del último día del plazo.

El Artículo 41 de la Ley establece que es nulo cualquier convenio que pretenda privar los efectos de las disposiciones del primer párrafo del artículo 40 de la Ley.

Por lo anterior, la SCJN considera que el pago extemporáneo de la prima o de alguna de sus parcialidades implica que, indefectiblemente, ha ocurrido la cesación de los efectos del contrato de seguro, consecuencia invariable de la omisión del pago dentro del plazo previsto para ello.

Por lo tanto, admitir que la eventual aceptación del pago extemporáneo rehabilita los efectos del contrato de seguro, constituye un convenio que pretende privar de sus efectos al primer párrafo del artículo 40 de la Ley y, en consecuencia, es nulo, de conformidad con lo dispuesto en el artículo 41 de la Ley.

Observaciones Preliminares de NHG

- En la práctica, es común que las aseguradoras reciban la prima de forma extemporánea y por lo general, si el siniestro ocurre después de que la aseguradora recibe el pago de la prima, ésta cumple con sus obligaciones bajo el contrato de seguro.
- Las tesis jurisprudenciales liberan a las aseguradoras de cualquier responsabilidad bajo los contratos de seguro en los que la prima no se haya pagado dentro del plazo de gracia que establece el Artículo 40 de la Ley, y requieren que las aseguradoras acepten una nueva oferta del asegurado, para que el contrato de seguro surta efectos.
- Si un asegurado paga extemporáneamente la prima correspondiente a su contrato de seguro, deberá obtener una aceptación expresa de la aseguradora del riesgo, ya que de no hacerlo, el contrato de seguro es nulo y no produce efecto legal alguno.
- Sugerimos analizar cuidadosamente las cláusulas de rehabilitación que

actualmente son utilizadas en los contratos de seguro para confirmar si las mismas constituyen por si mismas un consentimiento expreso de las aseguradoras para aceptar el riesgo en caso de pago extemporáneo de la prima o en su caso ajustarlas para cumplir con las tesis jurisprudenciales.

Para mayor información sobre el pago extemporáneo de la prima, nos ponemos a sus órdenes con sus contactos habituales en Nader, Hayaux & Goebel, o con [Luciano Pérez Gómez](mailto:lperez@nhg.com.mx) +52 (55) 4170 3027 lperez@nhg.com.mx

For more information on the untimely payment of the premium, please contact your regular contacts at Nader, Hayaux & Goebel, or [Luciano Pérez Gómez](mailto:lperez@nhg.com.mx) +52 (55) 4170 3027 lperez@nhg.com.mx

Innovación en Productos de Seguros - Revista Industrial México

Category: Insurance and Reinsurance, Publications

written by Gonzalo Martínez P. | October 7, 2021

Con la contribución de Luciano Pérez, socio de Nader, Hayaux & Goebel.

[Industria Legal, Mx, Vol. 1, Jul. 2021](#)

NHG appoints new Partner

Category: Firm news, Tax

written by Nader, Hayaux & Goebel | October 7, 2021

Nader, Hayaux & Goebel is pleased to announce that Ana Paula Pardo has joined the

Firm as Partner effective July 12, 2021.

Ana Paula will be part of the Tax Practice of the Firm, working mainly on domestic and international tax matters. Her practice includes the representation of individuals and corporations in matters related to commercial transactions, tax planning, estate planning, business ventures, long-term business arrangements, investments, mergers and acquisitions, spin-offs, divestitures, non-taxable reorganisations and transfer pricing consulting, among others.

Ana Paula has extensive experience in international transactions, including the representation of multinational and domestic groups in their operations, assisting them during the course of tax audits, and representing them in tax-related litigation. Her expertise in corporate law and negotiation skills allow Ana Paula to very effectively assist her clients in their operations.

“Our Firm has grown and positioned itself as one of the best Mexican Firms. We are at a strategic moment where we want to ensure the Firm’s leadership in the tax area, as we have in the rest of our practices. The addition of Ana Paula and her team gives us the opportunity to strengthen our capabilities, reinforce our client service and nurture our roster of recognized partners in the Firm.” Hans Goebel, Chairman of Nader, Hayaux & Goebel.

With more than 19 years of experience, she will be joining the tax team headed by our partner Adalberto Valadez in order to broaden the scope of services offered to our clients. The combined services offering raises the bar for the practice that is not only recognized in Mexico, but also abroad.

Adalberto enthuses that *“Ana Paula and her team are a very welcome addition to our team that will allow us to provide a much more comprehensive tax service to our clients, by increasing our capabilities to provide tax consulting and tax controversy services related to the day-to-day operations of our clients, in addition to the transactional services for which our practice is recognized”*.

Ana Paula, the newest addition to NHG’s team of successful women partners, joins our tax practice together with two associates, Luis Roberto Moreno and Miguel Ángel Aspe. With these additions to our tax team, we are consolidating a stronger

team of tax professionals while continuing to reinforce our commitment to offer the best quality service to our clients.

Ana Paula obtained her law degree from Universidad Panamericana in 2002, and a postgraduate degree from the University of Salamanca in 2004. She has an LLM from the University of Florida - Fredric G Levin College of Law, where she obtained a certificate of academic excellence in 2007.

Cartels Chambers Global Practice Guide: Mexico Chapter 2021

Category: Antitrust, Compliance, Publications

written by Nader, Hayaux & Goebel | October 7, 2021

Learn more about how Mexican competition authorities investigate cartels and the sanctions they can impose in the latest edition of Chambers & Partners' Global Practice Guide on Cartels (2020), written by our Partner [Alejandro Mendiola](#) and Associate [Daniella Ramirez Aguilar](#).

A comprehensive analysis of the evolving legal and procedural framework for cartel enforcement, sanctions remedies, and private civil litigation involving alleged cartels, as well as additional comments on the impact of the COVID-19 pandemic. A guide to understand *"What to expect from a cartel investigation"*.

You can read the full [Mexico's Cartels Chambers Global Practice Guide](#)

LexGTDT Telecoms & Media 2021 - Mexico

Category: Data Protection, Publications, Telecoms

written by Nader, Hayaux & Goebel | October 7, 2021

Partner [Julián Garza](#) and associate [Paulina Bracamontes](#) contributed to the development of [Mexico's Telecoms & Media 2021 LexGTDT](#) guide.

Take a look to the Mexico's Telecoms & Media guide, a comparison on regulatory framework, restrictions and licensing requirements; spectrum use considerations; platform regulation; next-generation access (NGA) networks; data protection and cybersecurity issues; big data; local storage requirements; foreign programmes and local content requirements; advertising; must-carry obligations; regulation of new media content; digital switchover; media plurality; regulatory agencies, competition law, and appeals; and recent trends.

[Download the full Telecoms and Media 2021 guide here](#)

Lexology GTDT - Public M&A 2021 - Mexico

Category: Mergers and Acquisitions, Publications

written by Gonzalo Martínez P. | October 7, 2021

Partners [Julián Garza](#) and [Luciano Pérez](#) contributed to the Getting the Deal Through Public M&A 2021 guide, with an overview enabling side-by-side comparison of local insights into Mexico's public or private M&A issues, including types of business combination; principal laws and regulations; cross-border and sector-

specific considerations; governing laws; filing and disclosure requirements; duties of directors and controlling shareholders; shareholder approval and appraisal rights; hostile transactions; break-up fees and frustration of additional bidders; government influence; conditional offers; financing; minority squeeze-outs; waiting and notification periods; tax; labour and employee benefits; restructuring, bankruptcy or receivership; anti-bribery, anti-corruption and sanctions issues; and recent trends.

Download the full guide here: [Public M&A PDF 2021](#)

Chambers Acquisition Finance Practice Guide 2021: Mexico Chapter

Category: Banking & Finance, Publications, Securitizations & Structured Finance, Structured Finance, Tax, Uncategorized, Workouts & Insolvency
written by Nader, Hayaux & Goebel | October 7, 2021

Take a look at our contribution to the Mexican Chapter of the Acquisition Finance 2021 Global Practice Guide of @Chambers. 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](#).

Download the full guide here [MEXICO_Acquisition Finance 2021](#)

Insurance & Reinsurance (The Law Review 2021)

Category: Insurance and Reinsurance, Publications
written by Nader, Hayaux & Goebel | October 7, 2021

We are delighted to announce that the 9th edition of *The Insurance and Reinsurance Law Review Guide* was recently published. With the contribution of our [Partner Yves Hayaux-du-Tilly](#).

An overview to insurance & reinsurance laws and regulations that may occur in Mexico.

[Click here to download the complete guide.](#)

NHG Antitrust Alert: Electricity Market

Category: Antitrust, Legal Alerts

written by Nader, Hayaux & Goebel | October 7, 2021

Antitrust Alert - Power Generation, Commercialization and Supply of Electricity Market

On May 6th, 2021, the Mexican Antitrust Commission (Commission) reported in the Official Gazette the commencement of an investigation regarding potential vertical restraints in the market of power generation, commercialization, supply of electricity and associated products, as well as services and activities related to this market in Mexico.

The Commission has stated that in order to support the recovery of the Mexican economy due to COVID-19, one of the sectors they will focus on is energy, which is consistent with the recently filed constitutional controversy against the Decree that reforms the Electricity Industry Law, which has generated uncertainty as to how the wholesale electricity market will operate.

The investigation will take from 30 to 120 business days (with four possible extensions of the 120-day period).

Fines can be up to 8% of each company's income.

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

Mercado de generación, comercialización y suministro de energía eléctrica

El 6 de mayo de 2021, la Comisión Federal de Competencia Económica (Comisión) informó, a través de un aviso en el Diario Oficial de la Federación del inicio de una investigación por la posible comisión de prácticas monopólicas relativas en el mercado de generación, comercialización al mayoreo y suministro de energía

eléctrica y productos asociados, además de servicios y actividades relacionadas con estos mercados en México.

La Comisión ha manifestado que con la finalidad de contribuir a la reactivación de la economía mexicana derivado de la emergencia sanitaria, uno de los mercados en el que se enfocaría sería el energético, lo cual es consistente con la controversia constitucional recientemente interpuesta en contra del Decreto que reforma diversas disposiciones de la Ley de la Industria Eléctrica, que ha generado incertidumbre en la manera en que el mercado eléctrico mayorista operará.

La investigación tomará un plazo de 30 a 120 días hábiles (con cuatro posibles extensiones del periodo de 120 días).

Las multas pueden ser de hasta el 8% de los ingresos de cada empresa.

Cualquier persona física o moral puede presentar información o documentos ante la Comisión, por lo que si requiere información o asesoría respecto a esta investigación, contacte a nuestro equipo de competencia económica.

For more information, please contact:

[Partner Alejandro Mendiola](#)