

# Cambios y disposiciones PLD / Informes a la CNBV

Category: Banking & Finance, Capital Markets, Legal Alerts

written by Nader, Hayaux & Goebel | May 25, 2020

El 20 de mayo de 2020, la Secretaría de Hacienda y Crédito Público, publicó en el Diario Oficial de la Federación una Resolución por medio de la cual ordena en un solo instrumento las disposiciones que establecen la forma y requisitos de los informes que deben presentarse ante la Comisión Nacional Bancaria y de Valores relativos a: (i) la integración y cambios de sus Comités de Comunicación y Control, y (ii) la designación o revocación del Oficial de Cumplimiento, entre otros.

A través de esta Resolución, se abrogaron las siguientes Resoluciones:

“Resolución por la que se expide la información y se dan a conocer los medios electrónicos para comunicar la integración y cambios del Comité de Comunicación y Control, se informe del funcionario designado como oficial del cumplimiento, se remita información de la identidad de la persona o grupo de personas que ejercen el control de la sociedad, así como por el que se informe de la transmisión de acciones por más del 2 por ciento del capital social pagado, según corresponda, contemplados en las disposiciones de carácter general que se indican”, publicada el 7 de febrero de 2013; y “Resolución por la que se expide el formato oficial y se dan a conocer el medio electrónico para comunicar la información de la persona designada como representante o, en su caso, oficial de cumplimiento, contemplado en las disposiciones de carácter general a que se refiere el artículo 226 Bis. de la Ley de Mercado de Valores, aplicables a los asesores de inversión”, publicada el 26 de julio de 2016.

La nueva Resolución no genera nuevas cargas regulatorias, y tiene como objetivo facilitar el acceso a la normatividad a las personas obligadas en presentar esta información.

**La Resolución entró en vigor el 21 de mayo de 2020.**

**En caso de requerir más información en relación con temas de Prevención**

**de Lavado de Dinero** y su regulación, comuníquese 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 o [Ángel Escalante](mailto:aescalante@nhg.com.mx) +52 (55) 4170 3088 aescalante@nhg.com.mx

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# Mexico Fundraising Chapter in The Private Equity Review

Category: Capital Markets, Energy, Partners, Project Finance, Publications, Telecoms  
written by Nader, Hayaux & Goebel | May 25, 2020

**The Law Reviews: 9th Edition - By Partners Hans P Goebel, Héctor Arangua, Adalberto Valadez and Associate Miguel A González**

Over the past 19 years, Mexico's private equity (PE) industry has raised over US\$58 billion in capital commitments to PE investments, according to the Mexican Private Equity Association (AMEXCAP). Mexico's strong industrial and manufacturing sectors, along with recent reforms to policies and regulations, have had a positive impact on the PE industry, resulting in double-digit annual growth for the industry. Real estate and venture capital (VC) also had double-digit increases in the same period, of 16 per cent and 12 per cent, respectively. Currently, the number of active fund managers is over 180, with fund managers, or general partners (GPs), active across a range of sectors, and representing a sevenfold growth since the beginnings of the industry in the early 2000s.

In recent years, the Mexican government has been an important participant in and supporter of the PE industry, investing in more than 72 funds<sup>7</sup> through institutional investors such as NAFIN (the national development bank), the Capitalization and Investment Fund for the Rural Sector, Bancomext and Banobras, and through investment vehicle Corporación Mexicana de Inversiones de Capital, SA de CV, or Fund of Funds, which has invested more than US\$885 million in more than 84 funds and co-invested in 17 deals.<sup>8</sup> In addition, the National Institute of Entrepreneurship

helped the Mexican VC industry and seed capital ecosystem by investing or co-investing in 41 funds from 2013 to 2016. For 2016, the VC support grew to 100 million Mexican pesos, targeting one fund with an approach to the Asia-Pacific alliance countries, which is now finishing its fundraising period. Finally, domestic pension funds (AFOREs) have played a determinant role in the growth of the PE industry, having allocated more than US\$20.4 billion through 106 capital development certificates (CKDs) and investment project certificates (CERPIs) since 2008. This amount may increase by a further US\$5 billion, given the CKDs that are in the pipeline. Mexico is seen as one of the most favourable emerging markets to invest in, and is considered top in Latin America

according to various limited partner (LP) surveys, such as those conducted by the Association for Private Capital Investment in Latin America in 2014 and 2015, and by the Emerging Markets Private Equity Association in 2015, 2016 and 2017.<sup>9</sup>

Mexico returned to the World Economic Forum's (WEF) list of the top 10 countries to invest in globally, by rising four positions to number nine, sitting alongside the United States, China, Germany, India, the United Kingdom, Brazil, France, Australia and Japan. The Mexican economy is being reshaped, and in spite of an adverse economic environment, allows dynamism of its international trade, and the structure of its debts minimises the impact of external factors making it a healthy option for investing. The WEF ranks Mexico in 46th place, out of 140 countries, in the 2018 edition of the competitiveness index, which shows that the country has microeconomic and macroeconomic institutions with strong foundations. Mexico is placed as the second-largest economy in Latin America (with an estimated GDP of US\$1.222 trillion) and it is considered to have economic stability that has allowed to remain stable despite various difficulties. The Mexican economy has grown at an average annual rate of 2.5 percent for the past 10 years, mainly because of the implementation of new regulations to improve development, sensible monetary and fiscal policies, ordered management of public finances led by the Bank of Mexico, and a gradual improvement in the country's external environment, despite a zero per cent growth being estimated for 2019. The World Bank suggests Mexico might be the world's seventh-largest economy by 2050 - a positive outlook that will only serve to attract direct foreign investment.

The PE industry and the VC sector in Mexico continue to grow and mature. The

internationalisation of both funding sources and investment by domestic GPs suggests that Mexico is playing an increasingly influential role in financial and economic growth at both the regional and global levels. Within VC alone, Mexico has witnessed the number of GPs triple in the past seven years. The policies being implemented in Mexico, particularly the opening-up to competition of the energy and telecommunications sectors, and labour market reforms, have been welcome steps to attract investment and raise employment and, potentially, growth.<sup>13</sup> This is evidenced by the extent to which infrastructure and energy funds have also increased significantly, reaching 30 funds in 2016 – a clear effect of the energy reform allowing private investments in the energy sector, including oil and gas, electric power generation and renewable energy. As at October 2017, an estimated US\$25 billion in cash reserves were available for investment by PE funds investing in Mexico.<sup>14</sup>

Likewise, accumulated capital commitments from 2018 to September 2019 increased by 1.7 per cent. These capital commitments were mainly concentrated on seed and early stage VC funds.<sup>15</sup> As at September 2019, three new Mexican funds had been formed, bringing the number of funds operating in Mexico to 126, of which 60 per cent are now investing or managing their investments, while almost one-third are still at the fundraising stage.<sup>16</sup>

In general, information about PE funds is not publicly available during the fundraising stage unless the funds are public funds raised in the securities market, such as CKDs, CERPIs or Mexican real estate trusts (FIBRAs).

The Mexican fundraising market has been in an upward trend since 2014. In the past, the most attractive sector has been real estate, but recently the VC sector has clearly been rising. Mexican PE funds are active, growing and covering a large spectrum of industries (business and financial services, consumer goods, healthcare, technology, oil and gas, etc.). VC funds mainly invest in consumer services, fintech and technology; real estate funds mainly target the industrial (mostly automotive, aerospace and pharmaceutical), commercial, tourism and housing sectors; and the infrastructure and energy funds are currently concentrated in the oil and gas sector. In March 2018, the Law Regulating Financial Technology Institutions (the Fintech Law) was enacted, providing for regulation of,

among other things, electronic payments, cryptocurrency transactions and crowdfunding mechanisms. According to Fintech Radar Mexico, conducted by Finnovista in May 2019, Mexico is very close to reaching the 400 fintech start-up mark, and, in 2019, it regained leadership as the largest fintech ecosystem in Latin America, in part because of a strong presence of entrepreneurship and e-commerce.<sup>17</sup> The Mexican fintech industry has shown an annual growth rate of 29 per cent, with the creation of 98 new start-ups, with the dominating sectors being loans, payments and remittances.<sup>18</sup> Reports from recent years have highlighted the high growth rates of fintech in Latin America, such as LAVCA's 2017 Trend Watch: Latin American Venture Capital, which concluded that the fintech sector represents 25 per cent of the venture investments in information technology in the region. According to a survey conducted by Finnovista in collaboration with Endeavor, Mexican fintech companies have a monthly gross transaction value of 39 billion Mexican pesos, with an average of 8.7 million Mexican pesos being billed per fintech start-up per year. These results emphasise the importance and the possibilities of fundraising and VC investment in the development of the fintech ecosystem in Mexico. As the fintech industry represents a massive potential growth area in Mexico, the government has passed legislation that seeks to ensure financial stability and provide a defence against money laundering and corruption.

## **OUTLOOK**

The private equity industry in Mexico has been re-energised in recent years by government reforms and policies, a stable macroeconomic situation, stable population growth rate, an increase in real income and an active entrepreneurial ecosystem. Mexico has successfully completed USMCA (which is expected to supersede NAFTA) negotiations with the United States and Canada and has gone through a smooth, peaceful and democratic power transition following the presidential election that took place in July 2018, providing certainty to investors. However, Mexico's intention of being prepared for any scenario is clear from its aim to increase trade with Argentina and the Pacific Alliance (Colombia, Peru and Chile), as well as with the European Union and Asian countries, and from the government's continued efforts over the past few years in the infrastructure and energy sectors.

While the forecasts are moderately strong, we expect contract and investment opportunities to be abundant as government policies support a shift towards a larger

role for private investment in the Mexican infrastructure industry and in the still-booming energy industries. Opportunities will also be presented by the continuing rise of the fintech industry. The outlook for the Mexican PE industry is, therefore, positive, with local funds becoming more global and deploying capital, and investments by foreign funds increasing throughout the energy sector. If conditions remain the same and the growth rate remains at the levels we have been seeing, the PE industry should, according to AMEXCAP, reach US\$80 billion by the end of 2020. We predict that the regime governing publicly issued PE funds will continue to be improved, and that the regulations regarding investment restrictions applicable to Mexican pension funds will necessarily evolve towards alignment with the types of regimes seen in other, more evolved countries, allowing the pension funds to conduct private transactions and investments in funds or projects directly (rather than only through publicly issued securities such as CKDs, FIBRAs, FIBRA Es and CERPIs).

[To read the full article, click here](#)

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

Category: Insurance and Reinsurance, Partners, Publications  
written by Nader, Hayaux & Goebel | May 25, 2020

**The Legal 500, Mexico: Insurance & Reinsurance - by Partners Yves Hayaux du Tilly and Luciano Pérez**

Mexican insurance contracts are governed by the Insurance Contract Law (“LCS”) published in the Official Gazette of the Federation (Diario Oficial de la Federación (“DOF”)) on 31 August 1935. The LCS applies to all insurance contracts, except for

maritime insurance governed by the Navigation and Maritime Commerce Law published in the DOF on 1 June 2006.

The insurance contract is formed by the consent of the parties. Pursuant to Article 21.1 of the LCS the insurance contract comes into effect when the insured receives a confirmation that the insurance company accepted his request for insurance coverage, regardless of whether any written evidence, such as an insurance policy or certificate, is issued. The effectiveness of an insurance contract cannot be subject to the condition that the respective insurance policy or any other document evidencing its acceptance is issued nor to the condition that the respective premium is paid.

Other topics of analysis that we break down in the article are

- Insurance and co-insurance regulations depending on the jurisdiction
- License approval times
- Owner controls (including foreign ownership)
- Insurance or reinsurance risks in your jurisdiction without a license or authorization
- Sanctions depending on the jurisdiction
- Supervision of the solvency of insurers and reinsurers
- Minimum capital requirements
- Policyholder protection plans in your jurisdiction
- Compliance with suitability requirements and/or approvals
- Restrictions on outsourcing business-related services
- Restrictions on the types of assets insurers or reinsurers can invest in
- Supervision and control of insurance sales
- Distance or online selling regulations
- Rules pertaining to distance selling or online sales
- Consumer policy restrictions
- Responsible for handling complex commercial claims
- Legal transfer mechanism available for sales or transfers of books
- Main challenges for new market entrants and what role does the digital innovation plays
- Existing regulations for insurers when using customer data

The companies that will take the market leadership in the coming years.

There is tremendous gap and hence, potential as well as an urgency to develop an efficient health insurance market and we are seeing important developments from key players towards developing such health insurance market. Despite the challenges posed by a complex and burdensome regulatory landscape and lack of a level playing field due to a lack of proper supervision from the regulator of certain players offering insurance products without an insurance license, based on the new projects being developed in Mexico, we expect that health insurance will be a key driver of growth in the Mexican insurance industry in the years to come. Provided that the financial stability is maintained, we also expect life-saving products continue growing among the middle class population. We are seeing growth in cyber insurance related products, including insurance to protect new risks such as privacy and data protection.

We will continue seeing growth in financial lines, D&O insurance, professional liability, reps, warranties and tax insurance products, as well as products oriented in preventing fraud as well as surety products. Insurance for natural catastrophes will keep developing with a major trend for a healthy development of parametric products using new technologies to measure risks coupled with the development of parametric indexes.

Automobile insurance will also continue growing fueled by a mandatory automobile liability insurance schemes that is still not fully nor duly enforced with a potential of growing at least threefold if it were to be implemented. Despite the numerous reforms to the financial laws, the opening of the market to foreign investment and the easiness of doing business in Mexico, the large gap in insurance coverage has not receded and Mexico continues to be an underinsured market continuing to make it as attractive as ever. There is expectation that new technologies and insurtech will help reduce the gaps in underinsurance and contribute to improve financial inclusion among the Mexican population. The current administration is looking to maintain the regulatory and financial strength of the Mexican insurance industry, while also improving the penetration with a particular aim in building resilience and improving financial inclusion.

[To read the complete article, please click here](#)

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# The Public-Private Partnership in the Mexican market

Category: Infrastructure, PPPs and Government Procurement, Publications  
written by Nader, Hayaux & Goebel | May 25, 2020

**Law Review - 6th Edition - Mexico - by Partner Alejandro Rojas**

A brief description of the situation in Mexico regarding the law review of PPP projects, the process to submit an application, the considerations to be taken into account and which contacts should be considered for your process to succeed. It also includes a historical analysis of the industry in Mexico and the opportunities that the current government has to boost investment and growth.

## **Mexico's overview**

The development of PPPs in Mexico began in 2004 under the scheme known as projects for the provision of services (PPS), although the enactment of the Law on Public-Private Partnerships (the PPP Law) and its Regulations occurred until 2012. In Mexico, however, different types of public-private investment schemes have been used since the early 1990s to implement infrastructure projects, such as concessions, financed public works and investment projects with deferred expenditure registration. These schemes served as direct precedents of PPPs as understood at the time of writing.

PPPs constitute a long-term contractual relationship between the public and private sectors for the provision of services to the public sector or the end user, in which the private developer provides, partially or totally, the infrastructure required for such services and, generally, the public entity pays a monetary consideration to the

private developer. PPPs have been used for government policy reasons to increase social welfare, offer more and better infrastructure and foster investment in the country.

Since the enactment of the PPP Law in 2012, there have been more than a 100 public biddings for the implementation of projects through the PPP model focused on the following sectors: health, transportation, telecommunications, social and hydraulic infrastructure. Also, the energy and environmental sectors have shown an increasing participation in PPPs.

To ensure transparency and access to information, the federal government created two websites known as CompraNet and Mexico Projects Hub. CompraNet is a digital platform that provides public information on projects, bidding processes, procurements, leases, public works and other related services; while Mexico Projects Hub contains updated detailed information of the most relevant energy and infrastructure projects that require private investment. The Hub is part of the Mexican government's initiative to create an investor-relations office to link investment projects with domestic and foreign potential investors, encouraging long-term financing for infrastructure.

In the following years, the PPP agenda in Mexico may increase, particularly in the transportation and telecommunications sectors, since the new administration for 2018 to 2024 has shown particular interest in developing railways, highways, airports, as well as an extensive telecommunications network project to provide internet access and digital services across the country.

## **PPP PROJECTS ARE AN OPPORTUNITY FOR INVESTMENT IN THE COMING YEARS**

Mexico represents an opportunity for the promotion of PPP projects since they have been a fundamental mechanism in developing economies to increase the offer of infrastructure and public services, involving public and private funding with the participation of the private sector in the development of projects where the private sector has better knowledge and experience. As of 2016, 41 new federal PPP projects have been structured and developed in Mexico; of those 41 projects, 18 are in the structuring and pre-investment phase; six in the bidding phase; and 17 in the

development and operation phase. These projects are focused on the transportation, health, telecommunications, social and hydraulic infrastructure.

When President Andres Manuel Lopez Obrador took office in 2018, he announced an ambitious agenda in infrastructure, mainly focused on the south and south-east regions of the country, which are the most marginalised in terms of public services. This agenda included the development of new railways, highways, ports and refineries. At first, Mr Lopez Obrador proved to be reluctant and sceptical about PPP projects, however, at the end of 2019 he announced the National Infrastructure Plan, whereby the federal government plans to invest approximately 43 billion pesos in over 1,700 infrastructure projects from 2020 to 2024, mainly in roads and transportation, energy, tourism, water and sanitation; many such projects are structured under a PPP scheme. Besides, to prevent a reduction in foreign investment, it is essential that the federal government turns to PPPs as a viable option for structuring and developing new infrastructure projects that are much-needed in the country, gaining investors' confidence and promoting the participation of the private sector in Mexico's economic growth. The signing of the new United States-Mexico-Canada Agreement certainly reflects the trust and confidence in the country for the upcoming future. Entering its second year, federal government may use this leverage created by the new T-MEC to boost the projects recently announced.

The development of PPP projects by states and municipalities has increased in recent years. In 2020, the State of Nuevo Leon intends to bid and award the first waste to energy project in Mexico. The estimated amount of investment will be US\$500 million and it will be developed in the city of Monterrey, partly financed by the federal government through Banobras. Also, early in 2020, Fonadin will bid and award an MRO agreement under a PPP scheme for four federal roads and two international bridges on the states of Nuevo Leon and Tamaulipas, on a project known as the 'Northeast Package'. The fact that local PPP projects have increased over the years is certainly a good sign for the sector itself, since it helps ease the burden on the federal budget.

For the upcoming year of this new administration, PPPs will become fundamental for the accomplishment of the goals established in the federal budget for 2020. If a safe

environment for national and foreign investment is assured, PPPs can expect to grow in the following years, with some expected changes to provide more transparent and objective mechanisms in public biddings, as well as to properly manage public funds in the implementation of PPPs.

[To read the complete article, please click here.](#)

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# Trends and Developments in Corporate M&A 2020 in Mexico

Category: Mergers and Acquisitions, Publications

written by Nader, Hayaux & Goebel | May 25, 2020

Our partners [Julián Garza](#) and [Michell Nader](#), from Nader, Hayaux y Goebel, share their knowledge about the latest trends in the Mexican market for Corporate and M&A 2020, published in the last Chambers and Partners publication.

Change is the only constant - in everything, including the corporate and financial world. What has changed now is that we seem to be in an environment of permanent chaos.

The main factor that creates such a continuous state of convulsion is the complex “interconnectivity” that is now part of our lives, including our businesses. A new disruptive factor has recently emerged - COVID-19. At the present time, it is impossible to assess what its impact will be on the world economy, the financial markets, the labour sector and commercial and corporate activities. However, because of our interconnection as individuals, as countries, as elements of an economic chain that expands across the whole planet, it will certainly impact us all on a significant scale. Looked at from a purely business point of view, such impact will not only negatively affect certain economic sectors, but will also create numerous opportunities in the corporate and M&A sectors.

To read the full article click [here](#):

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# TECH TALKS - Challenges for financial regulation and Fintech

Category: Banking & Finance, Events, Firm news

written by Nader, Hayaux & Goebel | May 25, 2020

On 10 March 2020, partner [Luciano Pérez](#) participated in C3NTRO Telecom's "TECHTALK" on the developments, challenges and solutions facing the Fintech industry in Mexico.

The entire recording of the event can be viewed here: [c3ntro zoom recording](#)

Nader, Hayaux & Goebel has a strong reputation as one of the leading firms in Mexico that attracts a consistent stream of major, complex, multi-jurisdictional and sophisticated Fintech mandates.

The firm stands out in the market for the diversity of its client roster and for the pioneering and innovative quality of its Fintech matters, which represent the evolution of banking and finance.

This is due to its market-leading ability to advise upon regulatory implications, cross-border transactions, payments systems and cryptocurrency issues, all of which require a high level of lawyering and a pioneering attitude in often uncertain and developing regulatory terrain.

***"[...]a first-rate Fintech practice with a diverse client base, encompassing***

*international heavyweights and pioneering startups such as neo-banks, payment platforms and crypto-trading solutions”.*

**Chambers & Partners | FinTech 2020 (Band 1)**

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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 Nader, Hayaux & Goebel | May 25, 2020

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 Nader, Hayaux & Goebel | May 25, 2020

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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# **Cyber Risk: The Pandemic Effects on the Insurance Sector**

Category: Events, Firm news, Insurance and Reinsurance

written by Nader, Hayaux & Goebel | May 25, 2020

Together with other Cyber and Insurance Experts, partner Yves Hayaux-du-Tilly will discuss the impact of the pandemic in the insurance sector, the implications on the market, businesses and technology.



Cyber Risk webinar

**More information and registration is available [here](#).**

**Log in details will be sent separately closer to the date.**

## Agenda

15hs Welcome

15.05 hs **Carlos Estebenet**, Bullo Abogados

The Argentine Perspective of Covid 19 and Insurance

15.25 hs **Yves Hayaux-du-Tilly**, Nader, Hayaux & Goebel

The Mexican Perspective on the impact of COVID 19 in the Insurance Market, Cyber Risk and Insurtech

15.50 hs **Daniel Seoane**, Beccar Varela

The Argentine Perspective on Insurtech and Cyber Risk

16.10 hs **Anu Khurmi**, Templar Executives

TBC

16.30 hs **Toby Clowes**, Price Forbes

- London market status and evolution
- Claims trends
- Buying patterns

16.50 hs **Q&A and general discussion**

17.15 hs End of Event

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*Please note all proceeds from this event will be donated to organizations fighting #COVID19. We ask participants to let us know of an organization they are supporting and want us to consider.*

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# **Insurance update: CNSF dividend recommendations**

Category: Insurance and Reinsurance, Legal Alerts  
written by Nader, Hayaux & Goebel | May 25, 2020

Yesterday, 31 March 2020, the Insurance and Bonding National Commission ("**CNSF**") issued a statement recommending insurance and bonding companies to refrain from paying any dividend to its shareholders and from enacting any mechanism or action that involves the transfer of patrimonial benefits to its shareholders, including the agreement to make any payment corresponding to the years 2019 and 2020, or any share buyback or any other mechanism to compensate their shareholders, as measures to maintain the solvency and capital requirements of insurance and bonding companies, as a response to the extraordinary situation caused by the COVID-19 Pandemic.

The CNSF furthermore required that any insurance and bonding company or financial group that decides not to follow the recommendations from the CNSF, must inform through its Chief Executive Officer to the CNSF, within ten business days, the reasons for its decision, on the understanding that the decision and reasoning of any such insurance and bonding company and financial group will be made public by the CNSF.

Each insurance and bonding company may or may not decide to adopt the recommendation from the CNSF, provided that the CNSF has no legal grounds to enforce its recommendations or impose fines for not adopting its recommendations, and any attempt to do so will be invalid. The foregoing must take into account the reputational damage, if any, that such decision and the reasoning thereof may have if same are made public by the CNSF.

The recommendations from the CNSF follows the trend imposed by regulators to banks and insurance companies in many jurisdictions to limit the distribution of dividends and other benefits to the shareholders, in fear of extraordinary solvency requirements that may arise from the COVID-19 Pandemic.

Should you have any questions regarding the CNSF recommendations or require to discuss the alternatives your company or financial group has in connection with these, please contact your regular contact at Nader, Hayaux & Goebel or either of the following partners [Yves Hayaux du Tilly L.](#) (+52 (55) 4170 3078; [yhayaux@nhg.com.mx](mailto:yhayaux@nhg.com.mx)) and [Luciano Pérez G.](#) (+52 (55) 4170 3035

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