

# Real Estate team contributes to 2017 edition of IHL's global guide to Real Estate

Category: Publications, Real Estate

written by Nader, Hayaux & Goebel | enero 15, 2018

Nader Hayaux & Goebel's Real Estate team contributed to the 2017 edition of the [The In-House Lawyer](#)'s global guide to Real Estate, edited by Jonathan Solomon of Clifford Chance.

This country-specific Q&A provides an overview to real estate laws and regulations that may occur in Mexico.

It will cover the most pertinent issues including ownership structures, restrictions, transfers, taxes and environmental contamination.

This Q&A is part of the global guide to Real Estate. For a full list of jurisdictional Q&As visit <http://www.inhouselawyer.co.uk/index.php/practice-areas/real-estate>.

The Mexico Chapter can be downloaded [here](#).

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## Landmark Fibra E Project commended in FT's 2017 Special Report North America Innovative

# Lawyers

Category: Capital Markets, Firm news, Publications, Rankings

written by Nader, Hayaux & Goebel | enero 15, 2018

A landmark project in which Nader, Hayaux & Goebel participated was recently commended in the 2017 Financial Times' Innovative Lawyers rankings in under the category 'Accessing New Markets and Capital'. A team lead by Michell Nader, Gunter Schwandt and Adalberto Valadez assisted investment vehicle CKD IM, as sponsor, in the creation, registration and approval by the the Mexican securities regulator of an innovative Fibra E securities programme, worth 50bn pesos (\$2.6bn), that will allow companies to use tax-efficient structured financing to fund purchases of energy and infrastructure assets.

*"This unprecedented matter will change the nature of the Fibra E market which had been primarily conceived as a monetization vehicle to allow new Fibras E to act as growth vehicles. This will give CKDIM an important advantage in the acquisition of assets in the future and the ability to harness business opportunities quickly and efficiently." -Michell Nader, Partner-*

For more information please consult the [report by the Financial Times](#). Additional coverage on the transaction is available on [Latin Lawyer](#).

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## Diego Sánchez promoted to partner

Category: Firm news

written by Nader, Hayaux & Goebel | enero 15, 2018

Nader, Hayaux & Goebel is delighted to announce the promotion of Diego Sánchez to the partnership. Diego is a member of our capital markets practice.

Sánchez was part of the team that helped Mexican construction company APP Coatzacoalcos Villahermosa securitise collection rights from a toll road it is building, issuing notes worth US\$102 million last month. This was thought to be the first financing of a transport-related public private partnership (PPP) services agreement through a bonds issuance rather than a bank loan.

Sánchez joined the firm as an associate in 2012. He has international experience, having spent time as a foreign associate at Milbank, Tweed, Hadley & McCloy LLP's New York office in 2015.

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# “El libre mercado no depende del TLCAN”

Category: Publications

written by Nader, Hayaux & Goebel | enero 15, 2018

*This article was published by Yves Hayaux-du-Tilly on [HuffPost](#)*

*No puede existir libertad política sin que exista libertad económica; una mente libre y un libre mercado son corolarios de estas. (Ayn Rand)*

Hoy en día se discute y se especula sobre las consecuencias del fin del Tratado de Libre Comercio de América del Norte (TLCAN). Existe mucho temor, preocupación, miedo por lo que ello pudiese representar. A continuación algunas reflexiones:

## 1. Ni muy muy, ni tan tan

El TLCAN sin duda contribuyó a la transformación del marco legal mexicano para adoptar una economía de libre mercado, gracias a la cual hoy inversionistas extranjeros pueden participar directamente en prácticamente todas las actividades económicas y beneficiarse de la plataforma logística que México ofrece para mejorar su competitividad.

Las leyes mexicanas se reformaron para armonizar el régimen pactado en el TLCAN y cumplir con sus compromisos ante la Organización para la Cooperación y Desarrollo Económica (OCDE) y dar efectividad y cabida a la liberalización convenida por México en el TLCAN y ante la OCDE.

Sin embargo, esto no se debe únicamente a, ni depende exclusivamente del TLCAN.

El TLCAN es uno de los doce tratados de libre comercio que tiene celebrados México e incluye a dos de los cuarenta y seis países cubiertos por la [red de tratados de libre comercio](#).

Además, México tiene acuerdos para la promoción y protección recíproca de las inversiones con 33 países.

En particular, cabe resaltar los compromisos de liberalización a los cuales México se comprometió como condición para su adhesión a la OCDE.

México dio el primer paso hacia una apertura económica cuando [el 24 de agosto de 1986 ingresó al Acuerdo General sobre Aranceles Aduaneros y Comercio \(GATT\)](#), lo que en su momento fue considerado por [el New York Times como algo osado](#). Esto sucedió casi diez años antes de que entrara en vigor el TLCAN y ciertamente fue una condición que permitió que este se negociara, firmara y entrara en vigor.

Lo que se originó bajo dichos tratados, hoy está rebasado y forma parte del marco legal aplicable en México, el cual ya no depende de dichos tratados, ya que ha sido adoptado como ley local.

El TLCAN en su origen fue garante de la apertura económica de México, tal y como lo explica [Luis Rubio](#), sin embargo hoy en día su relevancia se ha diluido considerando los compromisos que tiene México como miembro de la OECD y bajo la amplia red de tratados de libre comercio en vigor que garantizan el libre comercio con México.

Si bien la denuncia del TLCAN tendrá consecuencias negativas, principalmente en la libre circulación de mercancías, en las cadenas de manufactura de la industria automotriz y aeronáutica y por lo tanto, tendrá efectos negativos en la competitividad de ciertos productos manufacturados en México y derivados de la

alta concentración, inversiones, e influencia que tienen los Estados Unidos de América con México, ello no va a hacer que México deje de tener una economía de libre mercado.

La red de tratados de libre comercio que si bien no han sido aprovechados, ni han sido utilizados debidamente, se encuentra y mantendrá en vigor y podrá utilizarse. Si de algo servirá la terminación del TLCAN es que fomentará que esa red de tratados de libre comercio se utilice.

## 2. Apertura económica no es lo mismo que libertad económica

Si bien México se ha convertido en ejemplo mundial de la apertura comercial y libre comercio, estos no son más que uno de los principios que conforman la libertad económica.

Sin un gobierno eficiente que garantice el estado de derecho, el acceso a la justicia para la protección del derecho de propiedad privada —un estado de derecho— no es posible lograr la libertad económica que se requiere para poder desarrollarse y progresar.

Lo anterior se ve reflejado en los resultados del [Indice de Libertad Económica publicados por The Heritage Foundation](#). Por más apertura económica que tengamos, sin un estado de derecho no lograremos la libertad económica que se requiere para que cada uno de nosotros pueda desarrollarse plenamente y progresar.

## 3. ¿Y para cuando el crecimiento del mercado interno?

Es indiscutible la importancia que ha tenido el TLCAN para el desarrollo de un dinámico comercio exterior; sin embargo, ello beneficia solo a unos cuantos.

Llevamos muchos años de que México inició su proceso de apertura económica y de reformas estructurales, tras reformas estructurales.

Ya viene siendo tiempo de que se aprueben e implementen las reformas estructurales que fomenten el crecimiento del mercado interno y ante la desidia de los partidos políticos y gobernantes, vemos con buenos ojos que la sociedad civil sea

la que las imponga e impulse.

Sin garantías al derecho de propiedad privada y sin un estado de derecho, de poco sirve tener libre comercio y TLCAN, ya que ello no permitirá que nuestro mercado interno crezca. Y en la medida en la que no se desarrolle y crezca el mercado interno, no habrá un efecto distributivo entre la población que se refleje en el ingreso de las personas, la disponibilidad de crédito y la confianza en un futuro en el que dependamos de nosotros mismos.

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## **Nader, Hayaux & Goebel is pleased to inform that Mónica Ramos has been named Of Counsel of the firm.**

Category: Banking & Finance, Capital Markets, Firm news, Mergers and Acquisitions, Practices Areas, Securitizations & Structured Finance

written by Nader, Hayaux & Goebel | enero 15, 2018

Nader, Hayaux & Goebel is pleased to inform that Mónica Ramos has been named Of Counsel of the firm. Monica has more than 13 years of experience in the mergers and acquisitions, capital markets, and banking and finance practice areas. She has developed a specialization in debt and equity public and private issuances, CKDs and regulatory affairs.

*According to Hans P. Goebel C., "Monica has consistently shown a great commitment throughout the 10 years that she has devoted to her professional career with this team. Her promotion as Of Counsel is a testament of how she has aided our firm and our clients through her hard work, and clearly positions Nader, Hayaux & Goebel as a firm that values the diversity that female talent bring to the table. We are delighted to continue growing side by side with her."*

Monica graduated from Law at the Instituto Tecnológico Autónomo de México and has a Master's degree in International Business Law (Paris II-Assas).

Some of the recent matters Monica has been involved with include the representation of Axis in the issuance of CKDs under the capital calls mechanism for a total of \$ 6,500 million pesos, as well as in the update of said CKDs; the representation of Prudential (insurance companies) in the acquisition of notes issued by different clients, either in secured or unsecured private placements and the advice to Bayer AG on the carve-out of its subgroup Bayer MaterialScience into Covestro.

This new position of Mónica will further strengthen the Firm's capabilities in capital markets, banking and finance and M&A work.

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## **5th edition of the LexMex Conference took place in London on 5 October 2017.**

Category: Aviation, Banking & Finance, Capital Markets, Energy, Events, Firm news, Infrastructure, PPPs and Government Procurement, Insurance and Reinsurance, Mergers and Acquisitions, Practices Areas, Real Estate, Securitizations & Structured Finance, Tax, Telecoms, Workouts & Insolvency

written by Nader, Hayaux & Goebel | enero 15, 2018

LexMex is a yearly conference, organized by the Mexican Chamber of Commerce in Great Britain ("MexCC"), with The Law Society of England and Wales and as of this year, the Bar Council.

*LexMex gathers leading Mexican lawyers and experts to discuss the most relevant legal developments in Mexico highlighting opportunities for collaboration among Mexican and English and Welsh lawyers.*

The 2017 LexMex Conference was divided in a morning plenary session at The Law Society and in the afternoon breakout sessions.

The Vice President of the Society Simon Davis opened the Conference by welcoming the speakers and attendees, among them, HE Julian Ventura Valero, Ambassador of Mexico to the UK and Judge Mariana Rodríguez Mier y Terán of the Superior Court of Justice of the State of Tamaulipas.

The plenary session included a special presentation by Kerma Partners explaining the development, trends and challenges of the Mexican legal market, followed by panel discussions with updates on capital markets by Nader, Hayaux & Goebel; energy by Norton Rose Fulbright; employment law by Marvan Gonzalez Graf y Gonzalez Larrazolo; environmental law by Haynes & Boone; commercial disputes by Malpica, Iturbe, Buj y Paredes; and tax litigation by Ernst & Young. The panel sessions were moderated by Tim Girven, editor on Latin America at Legal 500; and Simon Davis, Vice president of The Law Society.

The three main bars associations (colegios de abogados) in Mexico: ANADE, Ilustre y Nacional Colegio de Abogados de México and Barra Nacional, Colegio de Abogados were represented at LexMex by Angel Junquera whom had a lively and very interesting discussion with Amanda Pinto QC, Chair of the International Committee of the Bar Council on the implementation of the National Anticorruption System in Mexico.

This year keynote speaker of LexMex was Judge Mariana Rodríguez Mier y Terán, President of the Criminal Collegiate Chamber and Judge of the Fourth Unitary Chamber in Criminal Law of the Supreme Justice Tribunal of the State of Tamaulipas. In a detailed and lively account of her personal experience in implementing the adversarial criminal law system in the State of Tamaulipas, Judge Rodríguez Mier y Terán explained the fundamental and radical changes implied in going from an inquisitorial system to an adversarial system in a civil law and federal country, the importance of such reforms and benefits it entails as well as the tremendous challenges that Mexico in general and each state, including Tamaulipas in particular, are facing to implement this completely new criminal procedure based on the following principles: transparency (publicidad), challenge (contradicción),

concentration (concentración), continuity (continuidad) and immediacy (inmediación) within the framework of the Human Rights constitutional reform of June 2011.

Finally, the Chairman of the MexCC, Yves Hayaux du Tilly —a Mexican lawyer himself— gave the closing remarks making reference to the connections being created and required to improve the links and collaboration among Mexican and English and Welsh lawyers, laying out four ideas on matters in which Mexico and the UK could further collaborate: improvement of professional standards; organization of the legal profession; advantages and benefits in the administration of justice by having a Ministry of Justice; collaboration and exchanges among Mexican and British lawyers and the judiciaries; and best practices in the practice of the legal profession.

During the afternoon various roundtable were organized as follows: tax roundtable chaired by Clara Ramirez Senior Manager at EY; criminal adversarial system roundtable chaired by Andrew Langdon QC, Chair of the Bar Council; commercial litigation and arbitration roundtable chaired by Frederico Singarajah, Chair of the Bar Council Latin America Interest Group; and finally, employment law roundtable moderated by Pia Sánchez, Senior Associate at Lewis Silkin.

*The LexMex has become a reference on Mexican law in London and year by year has made visible the increasing and reciprocal interest among Mexican and British lawyers and judges in working together and showcasing the many benefits and opportunities that such collaboration can bring to both countries.*

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

Speakers at Lex Mex 2017 Conference: Simon Davis, deputy vice president, The Law Society of England and Wales, Leopoldo Hernández Romano, KermaPartners, Dr. Héctor Herrera Ordoñez, Haynes & Boones GDG- LLP, Yves Hayaux du Tilly - Nader, Hayaux & Goebel, Sean McCoy - Norton Rose Fulbright, Héctor González Graf, Marván, González Graf y González Larrazolo, Tim Girven, editor on Latin America, Legal 500, Angel M. Junquera, Asociación Nacional de Abogados de

Empresa, ANADE Ilustre y Nacional Colegio de Abogados de México. Amanda Pinto, QC, chair of the International Committee of the Bar Council, Carlos Malpica, Malpica, Iturbe, Buj y Paredes , Nora Morales, Ernst & Young, Judge Mariana Rodríguez Mier y Terán, Judge of the State of Tamaulipas, Yves Hayaux du Tilly, Chairman, MexCC.

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# **Gunter Schwandt participates to high-level roundtable organised by Latin Lawyer**

Category: Events

written by Nader, Hayaux & Goebel | enero 15, 2018

Partner Gunter Schwandt was invited to participate in a roundtable discussion organised by the Latin Lawyer. The discussion was centered around the state of the legal market in Mexico and assembled partners from Mexico's top law firms, including Nader, Hayaux & Goebel, Greenberg Traurig, Creel, García-Cuéllar, Aiza Y Enriquez, Jones Day, Ritch, Mueller, Heather & Nicolau, Galicia Abogados, Kuri Breña, Sánchez Ugarte y Aznar, Gonzalez Calvillo, Goodrich, Riquelme y Asociados, J&A Garrigues, Von Wobeser & Sierra, and Hogan Lovells. The debate was hosted by Carlos Aiza of Creel, García-Cuéllar, Aiza Y Enríquez.

To read the full article, please go to [Latin Lawyer's website](#).

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# Gunter Schwandt interviewed by TTR on the state of the M&A market in Mexico (in Spanish)

Category: Mergers and Acquisitions, Publications

written by Nader, Hayaux & Goebel | enero 15, 2018

***As an expert in acquisition finance, from a standpoint of your practice area, could you give as a general view and evaluation of the current M&A market in Mexico?***

The M&A market in Mexico has seen positive growth during the last few months due to a number of factors. The political environment that currently exists throughout the world has brought uncertainty but also several opportunities in certain sectors, such as telecomm, energy and infrastructure. The foregoing has been supported by the structural reform package that was enacted at the beginning of the current administration. Notwithstanding the foregoing, the renegotiation of the North American Free Trade Agreement that is scheduled to occur in the next months, as well as the electoral process for the presidential election that will occur mid next year, could bring a slowdown, although it is expected that foreign investment to the country will continue during such period.

***With respect to Mexican companies, what are the most common forms of financing for acquisitions? What advantages do companies obtain by seeking external financing?***

Acquisitions are typically funded through a mix of own capital and external financing, including syndicated loans. Similarly, issuances through the capital markets are also usual in these types of transactions, be it initially or as a mechanism to take out the financing that was originally contracted.

*Acquisitions are typically funded through a mix of own capital and external financing, including syndicated loans.*

***Another practice area of your expertise is the issuance of CKDs (development capital certificates). What is the cause for this type of security's recent popularity? In what aspects is it interesting and attractive for issuers? And for investors?***

The legal framework for development capital certificates has existed in Mexico for approximately eight years and was created mainly to allow Mexican pension funds (AFOREs) to invest in private equity-like structures for the funding of a wide variety of projects. Currently there exist more than 60 CKD issuances in the Mexican market. The regulations have evolved and have been improved throughout the years, which has allowed these funds to be structured more efficiently, granting general partners more flexibility in general terms. This instrument has become interesting for issuers since it allows them to access the capital markets for purposes of funding and carrying out a business plan and to raise capital. It has also become interesting for investors given that they generally offer attractive returns and the ability to list a security that has been approved and is supervised by the securities regulators.

***You are also a specialist in real estate financing, according to data from TTR, year to date the number of real estate transactions has significantly passed the number in 2016. What do you think may have stimulated growth of activity in this sector?***

The number and amount of the transactions in the real estate industry has been growing during the last months due to several factors. Some of them include more sophistication of the participants and a more mature market, as well as the use of tax efficient structures, such as FIBRAs (Fideicomisos de Inversión en Bienes Raíces), the Mexican equivalent of a U.S. REIT.

***With respect to the development of the M&A market during the year, how do you forecast the close of the current year? To what extent and how do you believe banks and other financing entities will influence the outcome of the year 2017?***

It is forecasted that M&A activity will continue its current course during the second semestre of 2017. Notwithstanding the foregoing and as previously mentioned, it is possible that a number of factors (NAFTA renegotiation, the presidential electoral

process that will end mid-2018, among others), will affect or alter the plans and calendar that international investors may have to invest in Mexico.

*This article was first published on the [blog of TTR](#).*

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# The In-House Lawyer's comparative guide to Insurance & Insurance

Category: Insurance and Reinsurance, Publications

written by Nader, Hayaux & Goebel | enero 15, 2018

Head of Nader, Hayaux & Goebel's [Insurance and Reinsurance practice](#), [Yves Hayaux-du-Tilly](#), contributed the Mexican chapter in The In-House Lawyer's comparative guide to Insurance & Insurance. This country-specific Q&A gives a pragmatic overview of the law and practice of insurance & reinsurance law in the Mexico.

It addresses topics such as contract regulation, licensing, penalties, policyholder protection, alternative dispute resolution as well as personal insight and opinion as to the future of the insurance market over the next five years.

This Q&A is part of the global guide to Insurance & Reinsurance. For a full list of jurisdictional Insurance & Reinsurance Q&As visit the website of [The In-house Lawyer](#).

The chapter can also be downloaded as PDF [here](#).

**1. How is the writing of insurance contracts regulated in the jurisdiction?**

Mexican insurance contracts are governed by the Insurance Contract Law (“LCS”). The LCS applies to all insurance contracts, except for maritime insurance governed by the Navigation and Maritime Commerce Law (“LNCM”) published in the Official Gazette of the Federation (Diario Oficial de la Federación) (“DOF”) on 1 June 2006. The insurance contract is formed through the consent of the parties. According 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 may not 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.

## **2. Are types of insurers regulated differently (i.e. life companies, reinsurers)?**

Insurance companies are regulated by the Insurance and Surety Companies Law (“LISF”). Reinsurance companies are insurance companies whose operations are limited to take or cede risks in reinsurance. Article 25 of the LISF classifies the following insurance operations and lines of business, each of which is subject to specific regulations:

- I. Life operations. These are insurance contracts that cover risks affecting the insured’s existence.
- II. Accidents and health operations. These consist of:
  - 1. Personal accidents. Insurance contracts that cover injuries or disabilities affecting the insured’s personal integrity or health;
  - 2. Medical expenses. Insurance contracts that cover medical, hospital and other expenses considered necessary for the recovery of the insured’s health;
  - 3. Health. Insurance contracts that cover services to prevent and restore the insured’s health.
- III. Property and casualty operations. These include the following lines of business:
  - 1. Civil liability and professional risks. Insurance contracts that

cover indemnity payments that an insured must pay in favour of third parties, as a consequence of losses caused by specific situations;

- 2. Maritime and transportation. Insurance contracts that cover indemnity payments for damages and losses suffered on cargo, vessels and other maritime assets;
- 3. Fire. Insurance contracts that cover damages and losses caused by fire, explosion, fulmination or related accidents;
- 4. Agriculture and animal. Insurance contracts that cover damages and losses suffered by the insured due to the partial or total loss of expected profits from land or by death, loss or damages of animals;
- 5. Automobiles. Insurance contracts that cover damages and losses caused as a consequence of the use of automobiles;
- 6. Credit insurance. Insurance contracts that cover the insured's losses suffered by total or partial insolvency of commercial loan debtors;
- 7. Mortgage insurance. Insurance contracts that cover damages caused by breach of a mortgage loan debtor;
- 8. Financial guaranty insurance. Insurance contracts that cover damages caused by breach of issuers of securities;
- 9. Miscellaneous. Insurance contracts that cover damages and losses suffered by individuals or in property, caused by any other risk not contemplated in other lines of business;
- 10. Earthquake and other catastrophic risks. Insurance contracts that cover damages and losses caused to individuals or property as a consequence of a non-predictable event.

### **3. Are insurance brokers and other types of market intermediary subject to regulation?**

Intermediation in insurance contracts is reserved exclusively to insurance brokers as set forth in Article 91 of the LISF. An insurance broker requires the prior authorisation of the National Insurance and Bonding Commission ("CNSF") to intermediate. For purpose thereof, an application must be filed with the CNSF.

The CNSF may grant an authorisation to intermediate to either individuals with an employment relationship with the insurance company or individuals that are independent from the insurance company and act through an agency agreement, or to legal entities (insurance brokers), which must be incorporated as limited liability stock companies pursuant to the Regulation of Insurance and Surety Brokers. The authorisation granted by the CNSF to act as an individual insurance broker is valid for three years and may be renewed. Insurance brokers incorporated as entities are authorised to act as such for an indefinite period of time.

Reinsurance intermediaries are the only entities authorised to provide reinsurance intermediation services as set forth in article 106 of the LISF. To incorporate and operate a reinsurance intermediary, the prior authorisation of the CNSF is required and for purposes thereof, an application must be filed with the CNSF. The application must comply with the requirements set forth in the Rules on the Authorisation and Operation of Reinsurance Intermediaries. The reinsurance intermediary must be incorporated as a limited liability stock company and have its corporate domicile in Mexico.

Under Mexican law, insurance claims adjusters require the prior authorisation of the CNSF to perform activities related to the adjustment of insurance claims. The requirements for such authorisation are those set forth in article 111 of the LISF.

#### **4. Is authorisation or a licence required and if so, how long does it take on average to obtain such permission?**

Pursuant to the LISF, to incorporate and operate an insurance company in Mexico, an authorization shall be filed with the CNSF. The application must comply with the requirements set out in Article 41 of the LISF. The CNSF has discretionary authority to grant the authorization or to deny it. As a general rule, the process to obtain the license to incorporate a new insurance company takes between nine and twelve months from the date of the filing of a complete application; and an additional four months to initiate operations after the respective incorporation. Under the LISF, Mexican reinsurance companies and foreign reinsurance companies must be registered with the General Foreign Reinsurance Registry to

take Reinsurance and Rebonding in the Country (“RGRE”) to cede or take risks in reinsurance from and with Mexican insurance companies. In order to register with the RGRE.

**5. Are there restrictions over who owns or controls insurers (including restrictions on foreign ownership)?**

There are currently no restrictions to foreign investment in insurance companies. In all cases, the CNSF must approve ownership and control of insurance companies incorporated in Mexico. The respective application must include the following information:

- 1. Nationality.
- 2. Amount of shares they will acquire and source of the assets to acquire such shares.
- 3. Economic reports or financial statements for the last three years.
- 4. Evidence of good credit reputation and financial capability.

The CNSF must approve any purchase of more than 5% of the shares of an insurance company. The respective application must include the information set forth above. For purchases of 20% or more, the application should also include, inter alia, the information set forth above and in additional, information on the candidates to be appointed as directors, officers and manager of the insurance company.

**6. Is it possible to insure risks without a licence or authorisation? (i.e. on a non-admitted basis)?**

As a general rule, Article 20 of the LISF provides that only those entities duly licensed by the Mexican federal government through the CNSF to operate as insurance companies may undertake active insurance operations within Mexican territory. If a non-licensed insurance company operates in Mexico on a non-admitted basis and carries out active insurance operations in Mexico, it shall be deemed to be breaching Mexican law and the transaction shall be null and void. Furthermore, such conduct would constitute criminal liability on the part of (i) the non-admitted foreign insurer; (ii) the insurance intermediaries (broker or agent); and (iii) the officers, managers, directors, representatives and agents of the entities referred to in (i) and

(ii).

## **7. What penalty is available for those who operate without appropriate permission?**

The CNSF has authority to suspend the operations or intervene companies or establishments that carry out insurance activities without a license. According to article 495, those breaching articles 20 and 23 of the LISF and practicing active insurance operations without a license or acting as intermediaries in insurance operations performed without a license, may be subject to up to 15 years of imprisonment and a fine of up to 20,000 and those offering directly or as intermediaries insurance without a license may be subject to up to 10 years of imprisonment and a fine of up to 10,000. Such conduct constitute criminal liability on the part of (i) the non-admitted foreign insurer; (ii) the insurance intermediaries (broker or agent); and (iii) the officers, managers, directors, representatives and agents of the entities referred to in (i) and (ii). In the case of those conducting Insurance Mediation Activities without a license may be subject to a fine of up to approximately US\$ 7,080.

## **8. How rigorous is the supervisory and enforcement environment**

Insurance and reinsurance operations in Mexico are regulated by both the Ministry of the Treasury and Public Credit (“SHCP”) and the CNSF. The SHCP has authority to interpret, implement and execute the LISF for administrative purposes. The CNSF has authority to grant and revoke authorisations to incorporate and operate insurance companies in Mexico, register reinsurance companies with the RGRE to take reinsurance from Mexican insurance companies.

The CNSF is also responsible for supervising the operation of insurance and reinsurance companies and has authority to supervise, inspect and issue regulations applicable to the operations of Mexican insurance and reinsurance companies. All the applicable regulations issued by the CNSF are compiled in a single circular (“Circular”). The CNSF is rigorous in the supervision and enforcement of regulations applicable to the operation of Mexican insurance companies. There are no significant precedents of enforcement actions against entities or individuals conducting non-admitted insurance operations on a cross-border basis or in certain

activities that are deemed insurance operations such as prepaid health services.

## **9. How is the solvency of insurers (and reinsurers where relevant) supervised?**

The new LISF sets forth a new solvency regime different from the scheme established in the former LGISMS. The new regime incorporates a similar mechanism to that under Pillar I of Solvency II (quantitative requirements), which in general terms may be considered as a 'tailored suit', allowing each insurance company to design an internal actuarial model to calculate its solvency capital required and implement internal controls to detect any change or variation to such requirement. Notwithstanding the selfregulation right granted by the LISF, the implementation of the internal actuarial model is subject to the prior approval of the CNSF.

The LISF also establishes the obligation of insurance companies to develop an internal policy for monitoring its solvency, operations and investments, in accordance with its risk profile. This new system allows each insurance company to select and accept those risks, according to their particular situation. Moreover, the LISF sets forth the obligation of the insurance companies to carry out stress tests on a regular basis to evaluate their capital adequacy. The results of such tests shall be reviewed by the board of directors of each insurance company.

The board of directors together with the company's top tier officers are responsible for approving and implementing the guidelines required for the calculation and adequacy of the capital solvency requirement and implements the necessary measures to maintain such capital adequacy, including the provision of funds in case there is a capital deficiency.

The CNSF has the authority to settle regulations defining the form in which the insurance companies will report and provide evidence of compliance with the solvency capital requirements mentioned above, as well as the procedure to provide the CNSF the information regarding the particular technical characteristics of the internal calculation model adopted by the insurance company.

The LISF adjusted the insurance and bonding legal framework by adopting

surveillance procedures similar to those established in the Securities Market Law and in the Banking Law, redefining the roles of the SHCP and the CNSF. In this regard, the LISF grants specific authority on a 'macro' level to the SHCP with respect to the design and operation of the insurance and bonding system, while the CNSF has the authority on all aspects related to the licensing and authorization procedures to insurance companies, going from their incorporation and operation to the revocation of their license and liquidation. Within this redistribution of capacities, the authority of the CNSF is broadened to grant such entity authority to issue general regulations aiming to regulate the insurance companies, which originally resided within the SHCP.

The new structure intends to standardize the legal framework of insurance and bonding companies to that of other financial entities and regulators, which, in our opinion, creates an imbalance among the traditional authorities given to the SHCP as Ministry of State and regulator of financial activities, and the attributions now granted to the CNSF under the LSIF, which, from being a technical and surveillance authority becomes a much more robust regulator of the insurance and bonding sectors, with new authorities while maintaining its supervisory role.

## **10. What are the minimum capital requirements?**

The following are the minimum paid-in capital requirements for insurance and reinsurance companies in effect until 31 March 2016 determined by the SHCP in 2014 for each line of business:

- Life: 36.68 million pesos;
- Pensions: 15.67 million pesos;
- Accidents and health:
  - Personal accident or medical expenses: 9.17 million pesos; and
  - Health, including medical expenses: 9.17 million pesos;
- Property and casualty: one line: 27.51 million pesos; two lines: 36.68 million pesos; three or more lines: 45.85 million pesos;
- Mortgage insurance: 65.65 million pesos; and Financial guarantee insurance: 178.65 million pesos; and
- Reinsurance: one line: 19.66 million pesos; two lines: 26.22 million pesos;

and three lines: 32.78 million pesos.

## **11. Is there a policyholder protection scheme?**

The National Commission for the Protection and Defence of Users of Financial Services (“CONDUSEF”) is the governmental body created to protect the interests and the rights of the consumers. It is regulated by the Law for the Protection and Defence of Financial Services Users (“Condusef Law”) (1999). Since the protection of the consumers is considered to be a matter of public concern, the rights set forth in the CONDUSEF Law may not be waived.

The main purposes of the CONDUSEF are: the promotion, assistance, protection, and defence of the rights and interests of users of financial services against financial institutions, dispute resolution in an impartial manner, and the promotion of equity in the relationship between consumers and providers of financial services. Claims may be submitted within one year from the date on which the occurrence that gave rise to the claim took place. Upon filing a claim, the statute of limitations is suspended.

Upon a presentation of a claim, CONDUSEF shall issue a notice to the insurance company within five business days following the receipt thereof, attaching to the notice, and a copy of the claim submitted by the user, and copying the claimant on the notice. If the insurance company does not respond or fails to attend the hearing on the day and hour set forth in the notice, CONDUSEF may impose a fine to the insurance company. The insurance company shall deliver a response prior to or at the time of the conciliatory hearing, answering each of the items cited by the insured. Such response must be signed by a legal representative of the insurance company.

The failure to present the response from the insurance company will not cause the suspension or adjournment of the conciliatory hearing, and it will be deemed as concluded, considering the facts claimed by the insured as true, regardless of the penalties that may be imposed to the insurance company. In addition to the protection of users of financial services through the CONDUSEF, the LISF and its regulation require all insurance companies to form a special insurance fund (fondos especiales de seguros) for life, non-life and annuities, respectively, that may be used

in case they need financial support to comply with their obligations with contracting parties, insureds, and beneficiaries under insurance policies.

## **12. How are groups supervised, if at all?**

Group life insurance is defined in the LCS (Article 202) as the insurance in which the insurance company is liable for the death or the length of the life of a specific person based on the belonging to a particular group or company, in exchange of a periodic premium. One of its particularities is that it does not request any medical requirement or exam from the insured to be covered.

In Mexico, group life insurance is regulated by the Rules for the Group Life Insurance and Health and Accident Collective Insurance (“Rules for Group Life Insurance”). The Rules for Group Life Insurance provides the requirements for a “group” to be deemed a “group”, that is, a group of people that belong to a same company or that share a common, lawful, prior and independent interest or bond. The individuals that are part of the insured group may contribute to the payment of the premium subject to the terms established in the policy. The insurance companies that offer group life insurance must have the written consent from each member of the group, prior to their incorporation to the group and extending insurance coverage.

Such contract must consider at least what is the amount insured, or the manner in which such amount shall be determined and whom are the beneficiaries, when it is nonrevocable. The Rules for the Group Life Insurance set forth special requirements for group insurance granted as part of an employment. In the case of life insurance, the insurance company, only on one occasion, shall cover the member of the group who leaves indefinitely the group, without requesting any medical requirement, in any of the life insurance products that the insurance company offers, with the exception of term life insurance and subject to the limitations of age set forth by the insurance company and compliance of the requirements set forth by the Rules for the Group Life Insurance.

## **13. Do senior managers have to meet fit and proper requirements and/or be approved?**

According to Article 58 of the LISF, senior managers must be persons with a good credit record and honorability, and meet the following requirements:

- 1. Be residents in Mexican territory in terms of the provisions of the Federal Tax Code;
- 2. Have served for at least five years in high-level decision-making positions, Performance requires knowledge and experience in financial, legal or administrative matters;
- 3. Not fall under any of the impediments to act as advisers listed in article 56 of the LISF;
- 4. Not perform functions as regulator of insurance companies.

#### **14. Are there restrictions on outsourcing parts of the business?**

Insurance companies may contract with third parties, services necessary for their operation, in accordance with the general provisions issued by the CNSF, with the authorization of the Governing Board. Chapter 12 of the Circular contains a list of those services that may be outsourced, such as support services for the selection and analysis of risks, administrative services related to the acceptance of risk, risk management or actuarial services.

#### **15. How are sales of insurance supervised or controlled?**

Pursuant Article 202 of the LISF, Insurance companies may only offer services within the insurance operations they are licensed, through insurance products that comply with the requirements set forth by the LISF. As a general rule, insurance products must be registered with the CNSF. As a general rule, intermediation must be made through insurance brokers that must be licensed by the CNSF and are subject to the supervision of the CNSF (See 3 above).

#### **16. Are consumer policies subject to restrictions? If so, briefly describe the range of protections offered to consumer policyholders.**

Consumer policies are subject to certain regulatory provisions on sound practices that restrict and limit the activities regarding the offer and commercialization of insurance operations and products by insurance companies. Chapter 4.5 of the Circular contains clauses to be mandatorily included in the general conditions of

certain insurance policies to protect the interests of the policyholders, insureds or beneficiaries. Also, there are recent judicial precedents in Mexico in which Courts have recognised that insurance policies must be construed by applying a contra proferentem rule.

### **17. Are the courts adept at handling complex commercial claims?**

Insurance and reinsurance disputes are regulated by the Code of Commerce. If one of the parties breaches a contract, the non-defaulting party can initiate ordinary commercial proceedings. This judicial process has four basic stages: (i) the filing of the claim by the plaintiff and response from the defendant; (ii) the submission and presentation of evidence of any kind; (iii) the pleadings; and (iv) an award. The parties can appeal any ruling to a higher tribunal, unless the aggregate amount is less than 574,690.47 pesos. Each party pays its own litigation costs and the losing party might be required to indemnify the winning party, including for attorneys' fees, subject to certain established thresholds and the decision of the court. As a general rule, federal courts are prepared to handle complex commercial claims; however, they lack experience in handling insurance and reinsurance cases. In the case of local courts, there is uncertainty on whether a local judge will have the resources and ability to handle complex commercial cases.

### **18. Is alternative dispute resolution well established in the jurisdiction?**

The parties to a reinsurance contract can freely agree the terms and condition by which they will be bound. Insurance claims may be resolved before CONDUSEF, before competent Courts or in arbitration. Other forms, such as mediation or conciliation can be used. CONDUSEF may be appointed by the parties as mediator in disputes whose quantum does not exceed 6 million Mexican investment units (approximately 33.5 million pesos). If the parties don't reach a settlement in the mediation and they agree to submit their dispute to arbitration, the parties may request CONDUSEF to act as arbitrator or appoint a third party as arbitrator.

Reinsurance claims can be resolved in judicial proceedings before competent courts or through arbitration. Other forms, such as mediation or conciliation can be used. The Mexican Insurance and Bonding Law Association (Asociación Mexicana de Derecho de Seguros y Fianzas) (AMEDESEF), in its capacity as the Mexican Chapter

of AIDA (Association Internationale de Droit des Assurances) established the Mexican Chapter of the Insurance and Reinsurance Arbitration Society (ARIAS Mexico), in a joint venture with CAM (Centro de Arbitraje de México), a well-known private institution specialised in the administration of arbitration proceedings. Jointly, they promote arbitration to resolve insurance and reinsurance disputes managed by CAM, with the technical assistance of AMEDESEF.

### **19. What are the primary challenges to new market entrants?**

As it has been explained, Mexico has lifted any limitations to foreign investment and any foreign investor may access the Mexican insurance market. Therefore, there are no legal or regulatory barriers of entry to new market entrants. Notwithstanding the foregoing, new market entrants challenges include a market subject to traditional distribution channels dependent on traditional brokers to place business or in very high costs involved in developing a salesforce; low market penetration and a lack of insurance culture; high operating costs due to excessive regulatory burdens; and a large and diverse country subject to different risk exposure and needs.

### **20. To what extent is the market being challenged by digital innovation?**

Digital innovation is currently being used in preliminary stages within the insurance industry, mostly by facilitating comparing different insurance products and placement of insurance within the population; use of technology to facilitate sales and adjustment of claims is starting to grow; the regulator is taking a cautious approach to the use of technology and we have not seen aggressive approaches by the industry to try and test the market. We certainly hope the use of technology helps improve penetration within an underdeveloped market.

### **21. Over the next five years what type of business do you see taking a market lead?**

The opening of the Mexican energy sector will require enormous insurance capacity for the Mexican market and is a sector that will grow intensively, including in lies such as maritime, civil and environmental liability, mandatory insurance coverage required by Mexican agencies to operate, surety and transportation. We also will see 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, in reps and warranties and tax insurance products, fraud related products and surety. There is tremendous potential and urgency to develop an efficient health insurance sector; however, that will require better regulation and it is unlikely we will see the

changes required in the regulation in the next three years. We expect that life and health insurance will continue growing, and provided that the financial stability is maintained, that life-saving products continue growing among the ever growing middle class population. Automobile insurance will also continue growing fueled by the mandatory automobile liability insurance schemes currently implemented and hopefully, finally, being enforced.

END.

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## **Securities team contributes to Thomson Reuters' 2017 Practical Law Q&A guide to equity capital markets law in Mexico**

Category: Capital Markets, Publications

written by Nader, Hayaux & Goebel | enero 15, 2018

Hans Goebel and Monica Ramos of Nader, Hayaux & Goebel's Securities team contributed to Thomson Reuters' 2017 Practical Law Q&A guide to equity capital markets law in Mexico.

The Q&A gives an overview of legislative restrictions on selling debt securities, market activity and deals, structuring a debt securities issue, main debt capital markets/exchanges, listing debt securities, continuing obligations, advisers and documents, debt prospectus/main offering document, timetables, tax, clearing and settlement, and reform.

A PDF file of the publication can be downloaded here: [Debt capital markets in Mexico regulatory overview](#).