

NHG was recognized with five awards at the Legal 500 Mexico Awards, 2023

Category: Awards, Firm news, Rankings

written by Nader, Hayaux & Goebel | mayo 15, 2023

NHG was recognized with five awards at the Legal 500 Mexico Awards, including “Firm of the Year” in Capital Markets and Insurance. In addition, three of our lawyers were recognized for their individual achievements. Michell Nader was named Senior Partner of the Year, Vanessa Franyutti was named Lawyer of the Year in Projects and Infrastructure and Miguel Ángel González was honored as Rising star of the Year in Corporate and M&A (high-end). These accolades are a testament to our unwavering commitment to providing unparalleled client service and maintaining exceptional standards across our various practice areas.



[Winners](#)

NHG joined the IDB's Sustainable Week 2022

Category: ESG,Events,Firm news,Sustainable Transition/ESG

written by Nader, Hayaux & Goebel | mayo 15, 2023

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

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

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

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

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

Category: Awards,ESG,Firm news,Sustainable Transition/ESG,Uncategorized
written by Nader, Hayaux & Goebel | mayo 15, 2023

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

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

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

NHG Net-zero Transition award

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

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

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

www.chapterzero.mx

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

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

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

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

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

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

Description of initiative

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

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

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

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

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

Date completed

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

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

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

Why it is innovative or impactful:

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

incorporating ESG standards in their business operations.

Achievements:

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

NHG appoints three Of Counsels

Category: Firm news, Of Counsel

written by Nader, Hayaux & Goebel | mayo 15, 2023

Nader, Hayaux & Goebel is pleased to announce that [Federico Vergara, José Manuel](#)

[Zavala](#) and [Gabriel González](#) have become Of Counsels of the Firm.

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

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

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

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

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

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

Category: Firm news, Insurance and Reinsurance

written by Nader, Hayaux & Goebel | mayo 15, 2023

On February 17, 2021, the First Chamber of the Mexican Supreme Court of Justice

(“**SCJN**”) issued a judicial precedent pursuant to which it determined that notwithstanding the insurance premium is paid, in case this is done after the 30-day grace period, the insurance contract terminates, even if the insurer received the premium.

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

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

Even if the contracting party pays the premium after said term and the insurer accepts the late payment, the effects of the insurance contract may not be rehabilitated.

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

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

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

Furthermore, on February 24, 2021, the First Chamber of the SCJN issued another judicial precedent resulting from contradicting rulings between two Collegiate Courts of the same circuit but from different specialties, which establishes that pursuant to article 41 of the Law the insurance contract is invalidated when

payment of the insurance premium is made outside the grace period of 30 calendar days, even when the insurer does not immediately refuse such payment.

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

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

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

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

NHG's Preliminary Observations

- It is a common practice for insurers to receive late premium payments and, in general terms, if the loss occurs after the insurer receives the late payment of the premium, the insurer fulfills its obligations under the insurance contract.
- The judicial precedents release the insurers from any liability under insurance contracts in which premiums have not been paid within the grace period set forth in article 40 of the Law, and require that the insurers accept a new offer from the insured, in order for a new insurance contract to become effective.
- If an insured pays, after the grace period the premium corresponding to the

insurance contract, the insured will be required to obtain an express acceptance from the insurer in which the insurer confirms the acceptance of the risk; otherwise, the insurance contract will be deemed invalid and will not produce any legal effect.

- We recommend to carefully analyze the rehabilitation clauses currently used in insurance contracts to confirm whether these clauses constitute, on their own, an express consent from the insurers to accept the risk in case of untimely payment of the premium or, if applicable, adjust them to comply with the judicial precedents.

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

El 17 de febrero de 2021, la Primera Sala de la Suprema Corte de Justicia de la Nación (la “**SCJN**”) emitió una tesis jurisprudencial conforme a la cual determinó que el pago de la prima de seguro fuera del plazo genérico de 30 días produce la terminación del contrato de seguro, no obstante que la aseguradora haya aceptado el pago extemporáneo.

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

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

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

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

exista un nuevo contrato de seguro.

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

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

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

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

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

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

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

conformidad con lo dispuesto en el artículo 41 de la Ley.

Observaciones Preliminares de NHG

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

Para mayor información sobre el pago extemporáneo de la prima, nos ponemos a sus órdenes con sus contactos habituales en Nader, Hayaux & Goebel, o con

[Luciano Pérez Gómez](mailto:lperez@nhg.com.mx) +52 (55) 4170 3027 lperez@nhg.com.mx

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

NHG appoints new Partner

Category: Firm news, Tax

written by Nader, Hayaux & Goebel | mayo 15, 2023

Nader, Hayaux & Goebel is pleased to announce that Ana Paula Pardo has joined the Firm as Partner effective July 12, 2021.

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

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

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

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

Adalberto enthuses that *“Ana Paula and her team are a very welcome addition to our team that will allow us to provide a much more comprehensive tax service to our clients, by increasing our capabilities to provide tax consulting and tax controversy*

services related to the day-to-day operations of our clients, in addition to the transactional services for which our practice is recognized”.

Ana Paula, the newest addition to NHG’s team of successful women partners, joins our tax practice together with two associates, Luis Roberto Moreno and Miguel Ángel Aspe. With these additions to our tax team, we are consolidating a stronger team of tax professionals while continuing to reinforce our commitment to offer the best quality service to our clients.

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

El Reglamento General de Protección de Datos (GDPR) de la Unión Europea y sus implicaciones en México

Category: Data Protection, Firm news

written by Nader, Hayaux & Goebel | mayo 15, 2023

Los avances tecnológicos exponenciales vistos en las últimas décadas, en particular el uso de big data y servicios digitales, potencializado por la nueva dinámica impuesta por la emergencia sanitaria derivada de la pandemia, han puesto mucha presión en la regulación de protección de datos personales, lo que ha hecho que las autoridades a nivel global se cuestionen si se requiere un régimen de protección más estricto.

En esta tendencia, el 25 de mayo de 2016, la Unión Europea emitió el Reglamento

General de Protección de Datos (“GDPR” por sus siglas en inglés). El GDPR abrogó la Directiva de protección de datos (Directiva 95/46 /CE) de 1995 de la Unión Europea (la “UE”) (la “Directiva de la UE”), con el objetivo de reforzar la regulación en materia de protección de datos personales.

El GDPR es obligatorio para: (i) entidades establecidas en la UE, y (ii) entidades que encontrándose fuera de la UE, ofrezcan y dirijan sus productos o servicios a ciudadanos de la UE.

México, basándose en los principios de la Directiva de la UE, publicó el 5 de julio de 2010, la Ley Federal de Protección de Datos Personales en Posesión de los Particulares, y posteriormente, su regulación secundaria (la “Ley de Datos”).

La Ley de Datos no ha sido homologada al GDPR; sin embargo, las personas y sociedades mexicanas podrían estar obligadas a cumplir con el GDPR en caso de que (i) ofrezcan y entreguen productos o servicios de manera habitual a habitantes de la UE, o (ii) utilicen herramientas que les permitan rastrear cookies o direcciones IP de personas que visiten su sitio web desde países de la UE.

En caso de incumplimiento, las personas o entidades mexicanas, o sus filiales en la UE, podrían estar sujetas a sanciones bajo el GDPR. Las multas pueden ser de hasta €20 millones o 4% del volumen de facturación anual. Durante los tres años de vigencia del GDPR, la Comisión Europea ha impuesto 680 multas, que suponen más de 287 millones de euros.(1)

La Ley de Datos y el GDPR comparten principios sustancialmente iguales:

1. La obligación de obtener el previo consentimiento del titular para el tratamiento de sus datos personales;
2. La obligación de contar con un aviso de privacidad, y ponerlo a disposición del titular previo al tratamiento de sus datos;
3. La facultad del titular para ejercer sus derechos de Acceso, Rectificación, Cancelación y Oposición (los “Derechos ARCO”);
4. Los conceptos de (i) responsable, quien es la persona que decide sobre el tratamiento de los datos personales del titular, y (ii) el encargado, quien es la persona que trata los datos personales del titular por cuenta del

responsable; y

5. La obligación de designar a un delegado de protección de datos (DPO), quien será el encargado de supervisar el cumplimiento de la regulación.

Algunas de las obligaciones que incorporó el GDPR, que no están previstas aún en la regulación mexicana, son:

1. El derecho a la portabilidad, el cual faculta al titular a obtener una copia de sus datos personales tratados por el responsable;
2. Introduce el principio de protección de datos desde el diseño (Privacy by Design);
3. Establece obligaciones expresas respecto del consentimiento de un niño menor a 16 años; y
4. Obligaciones y requisitos nuevos en caso de que el responsable utilice tecnologías novedosas en el tratamiento de datos.

Como sugerencia, las Entidades mexicanas que puedan obtener y tratar datos de residentes de la UE o las subsidiarias mexicanas de empresas internacionales, deben analizar el impacto del GDPR en sus operaciones en México, y considerar fortalecer su régimen de protección de datos personales, para cumplir con los estándares internacionales, incluyendo el GDPR, para evitar contingencias y multas.

The General Data Protection Regulation (GDPR) of the European Union and its implications in Mexico

The exponential technological advances in recent decades, in particular the use of big data and digital services, enhanced by the new dynamics imposed by the health emergency derived from the pandemic, have stressed the current regulation on personal data protection, which has led authorities worldwide to question whether a stricter protection regime is required.

At the head of the trend, the European Union adopted on May 25, 2016, the General Data Protection Regulation (“GDPR”). The GDPR repealed the 1995 European Union (the “EU”) Data Protection Directive (Directive 95/46 /EC) (the “EU Directive”), with the purpose to provide more strict regulation regarding the protection of personal data.

The GDPR is mandatory for: (i) entities established within the EU, and (ii) entities resident outside the EU, which offer their products or services to EU citizens.

Mexico, following the principles of the EU Directive, published on July 5, 2010, the Federal Law for the Protection of Personal Data in Possession of Individuals, and subsequently, the secondary regulation (the “Data Law”).

The Data Law has not been homologated to the GDPR; however, Mexican individuals and companies may be required to comply with the GDPR if (i) they offer and deliver products or services on a regular basis to EU residents, or (ii) they use tools that allow them to track cookies or IP addresses of people visiting their website from EU countries.

In case of breach, Mexican individuals or entities, or their affiliates located in the EU, may be subject to penalties under the GDPR. Fines can be up to €20 million or 4% of the annual revenue. During the three years in which the GDPR has been in force, the European Commission has imposed 680 fines, amounting to more than €287 million.

The Data Law and the GDPR share substantially the same principles:

1. The obligation to obtain the prior consent of the owner for the processing of his/her personal data;
2. The obligation to have a privacy notice and to deliver it to the owner prior to the processing of his/her data;
3. The terms in which the owner may exercise his/her rights of Access, Rectification, Cancellation and Opposition (the “ARCO Rights”);
4. The incorporation of the concepts of (i) the data controller (Responsible), who is the person that decides on the processing of the personal data of the owner, and (ii) the data processor, who is the person that process the data on behalf of the data controller; and
5. The obligation to appoint a Data Protection Officer who will be in charge of supervising compliance with the regulation.

Some of the new obligations incorporated by the GDPR, which are not included yet in the Mexican regulation, are:

1. The portability right, which entitles the owner to obtain a copy of his/her personal data processed by the Controller;
2. Introduces the principle of data protection by design (Privacy by Design);
3. Incorporates express obligations regarding the consent of minors under 16 years of age; and
4. New obligations and requirements if the data controller implements new technologies in the processing of the data.

As a suggestion, Mexican companies that might obtain and treat data from EU residents or Mexican subsidiaries of international companies, must evaluate the impact of the GDPR in their operations, and consider strengthening their personal data protection regime to comply with international standards, including the GDPR, to avoid any contingencies or fines.

(1) GDPR Enforcement Tracker al 2021;
<https://www.enforcementtracker.com/?insights>

Para mayor información sobre el GDPR y el régimen de protección de datos personales en México, nos ponemos a sus órdenes con sus contactos habituales en Nader, Hayaux & Goebel.

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NHG announces the launch of its

“Sustainable Transition/ESG” working group

Category: ESG, Firm news, Practices Areas, Sustainable Transition/ESG

written by Nader, Hayaux & Goebel | mayo 15, 2023

Nader, Hayaux & Goebel (NHG) is pleased to announce the launch of its “Sustainable Transition/ESG” working group advising its clients on their transition to a sustainable and regenerative economy and in the adoption and integration of environmental, social and corporate governance (ESG) criteria in their operations and investment decisions; becoming the first Mexican law firm to offer this comprehensive services.

NHG has a highly specialised and committed working group providing comprehensive advise to its clients to operate under sustainable development principles that contribute to the creation and management of socially inclusive, economically fair and environmentally responsible businesses.

We are living unprecedented times in the history of humanity, facing new systemic global risks arising, among others, from the climate emergency with the challenge to make strategic decisions to move towards business models that go beyond merely achieving the economic profits required to make them sustainable, but that achieve this while taking into account their social and environmental impact, and articulate a clear purpose to make this world a better place for us all.

Business decisions have a significant impact on climate change, increasing the risks and opportunities for companies that address properly not only the physical risks arising from the climate emergency, but also other risks such as the legal, regulatory and systemic changes arising from the climate emergency we are currently facing.

ESG principles refer to environmental, social and corporate governance matters and how these are integrated into the company to promote its social, economic and financial development, without harming anyone.

The path for each company to adequately address organisational changes needed to

contribute to an efficient transition towards a regenerative economy is complex and requires specialised legal advice in those areas in which NHG enjoys an unrivalled reputation in the Mexican market.

With presence in Mexico City and London, NHG offers flexibility, innovation and leadership to develop a legal and regulatory strategy to create innovative products that promote green and sustainable finance, and to adopt and apply ESG standards in their investment, develop economic models under principles of a circular and regenerative economy, and implement climate governance principles in boards of directors.

“Today, any company has the opportunity to modify its business structures and move towards new sustainable and regenerative models by applying, among others, ESG principles. Those that manage to transition and implement their new business strategies will be able to resiliently face the risks inherent to the climate emergency while maintaining a good financial performance and expanding their impact for the benefit of the entire community, without harming anyone,” said [Ana Paula Telleria](#), Partner at NHG.

NHG is ideally positioned to accompany its clients in their transition process, assessing risks, identifying opportunities and adapting their operations to the legal and regulatory framework under ESG principles, aligned with Sustainable Development Goals (SDGs) because it has expertise in all the areas of practice required to achieve the foregoing, with committed partners and lawyers with proven experience, able to innovate and find creative and simple solutions to the most complex problems.

“We are aware of the urgent need to reduce our carbon footprint, directly and indirectly, and we are committed to providing our clients with our combined experience, talent, vision and passion to address the risks inherent to this climate emergency, make those changes required in order that their businesses operate sustainably and accompany them in their transition to a regenerative economy,” said [Yves Hayaux du Tilly](#), Partner at NHG.

To ensure the efficiency of our services, we collaborate with Mexican and international experts designing and implementing legal instruments and actions

within the Mexican legal framework. In addition, we have developed strong relationships with academic institutions, government agencies and research centres specialised in the field, with whom we work, analysing each case individually and providing efficient short and long term solutions.

Modificaciones a la Circular Única de Emisoras aplicables a FIBRAs

Category: Capital Markets, Firm news

written by Nader, Hayaux & Goebel | mayo 15, 2023

El 10 de diciembre de 2020 la Comisión Nacional Bancaria y de Valores publicó modificaciones a las disposiciones de carácter general aplicables a las emisoras de valores y a otros participantes del mercado de valores, conocidas como la Circular Única de Emisoras (“**CUE**”) (las “**Modificaciones**”). Las Modificaciones entraron en vigor el 11 de diciembre de 2020.

Las Modificaciones son aplicables a FIBRAs y tienen como principal objetivo flexibilizar el marco jurídico de las FIBRAs cuando contraten financiamientos con cargo al patrimonio del fideicomiso. A continuación presentamos los puntos más relevantes:

- Será facultad de la asamblea de tenedores establecer las reglas para la contratación de financiamientos con cargo al patrimonio de las FIBRAs. Las reglas aprobadas por la asamblea de tenedores deberán establecer el límite máximo de apalancamiento y el índice de cobertura de servicio de la deuda que deberán observar las FIBRAs, que deberán calcularse conforme al Anexo AA de la CUE. [\[1\]](#)
- En caso de que las FIBRAs incumplan con los límites aprobados por la

asamblea de tenedores, el administrador deberá preparar un informe de la situación y un plan correctivo para presentarlos a la asamblea. Asimismo, las FIBRAs no podrán contratar financiamientos con cargo a su patrimonio, salvo que se trate de operaciones de refinanciamiento hasta en tanto no se ajusten a los límites aprobados. Previo a su presentación a la asamblea, el plan correctivo deberá ser aprobado: **(i)** tratándose del límite máximo de apalancamiento, por el comité técnico; y **(ii)** tratándose del índice de cobertura de servicio de la deuda, por los miembros independientes del comité técnico.

Puede consultar la publicación en el DOF [aquí](#).

[1] Previo a la entrada en vigor de las Modificaciones, las FIBRAs debían observar lo siguiente: **(i)** los financiamientos contratados por las FIBRAs con cargo a su patrimonio no debían exceder del 50% del valor contable de sus activos conforme a las cifras del trimestre inmediato anterior; y **(ii)** las FIBRAs debían observar un índice de cobertura de servicio de la deuda mayor a 1.0, conforme a las cifras del trimestre inmediato anterior.

En caso de requerir más información en relación con lo anterior, comuníquese con sus contactos habituales en Nader, Hayaux & Goebel, o con [Gunter Schwandt](#) +52 (55) 4170 3052 gschwandt@nhg.com.mx,

SHCP- Modificaciones a las reglas generales a las que se refiere la

LFPIORPI

Category: Compliance, Firm news

written by Nader, Hayaux & Goebel | mayo 15, 2023

SHCP - Acuerdo por el que se modifican las Reglas de carácter general a que se refiere la Ley Federal para la Prevención e Identificación de Operaciones con Recursos de Procedencia Ilícita

El 30 de noviembre de 2020 se publicó en el Diario Oficial de la Federación (“**DOF**”) el “Acuerdo por el que se modifican las Reglas de carácter general a que se refiere la Ley Federal para la Prevención e Identificación de Operaciones con Recursos de Procedencia Ilícita” (“**Acuerdo**”).

El Acuerdo fue emitido en términos de la Nota Interpretativa de la Recomendación 15 “Nuevas tecnologías” del Grupo de Acción Financiera Internacional (“**GAFI**”), para regular el registro y monitoreo de los proveedores de servicios de activos virtuales a fin de gestionar y mitigar los riesgos en materia de prevención de Lavado de Dinero y Financiamiento del Terrorismo (“**LD/FD**”), aplicables a las instituciones de tecnología financiera.

Adicionalmente, se establece que las personas físicas que realizan actividades vulnerables o en su caso, las personas responsables del cumplimiento que hayan aceptado su designación, podrán obtener una certificación otorgada y regulada por la Unidad de Inteligencia Financiera (“**UIF**”) con vigencia de 5 años.

El Acuerdo entró en vigor el día de su publicación.

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