

Non-Residential Real Estate Market

Category: Antitrust, Legal Alerts

written by Nader, Hayaux & Goebel | octubre 22, 2020

Alerta de Competencia Económica - Mercado Inmobiliario No Residencial

Investigación de prácticas monopólicas absolutas en el mercado de arrendamiento de espacios inmobiliarios no residenciales en México.

El 22 de octubre de 2020, la Comisión Federal de Competencia Económica (Comisión) informó, a través del Diario Oficial de la Federación, el inicio de una investigación por la **posible comisión de prácticas monopólicas absolutas en el mercado de arrendamiento de espacios inmobiliarios no residenciales en México.**

Las multas pueden ser de hasta el 10% de los ingresos de las empresas y hasta 10 años de prisión a las personas involucradas, entre otras sanciones.

Resulta importante destacar que en marzo de este año, la Comisión previno a la Asociación de Desarrolladores Inmobiliarios, A.C.: (i) para que evitara posibles conductas monopólicas entre competidores del mercado de desarrolladores inmobiliarios; y (ii) la exhortó a fomentar que sus afiliados tomen sus decisiones de manera estrictamente individual y conforme a sus propias estrategias de negocios, cuando otorguen descuentos a sus locatarios.

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

Antitrust Alert - Non-Residential Real Estate Market

Cartel investigation in the market of non-residential real estate leasing in Mexico.

On October 22, 2020, the Mexican Antitrust Commission (Commission) reported in the Official Gazette, the initiation of an investigation regarding a **potential cartel**

in the market of non-residential real estate leasing in Mexico.

Fines can be up to 10% of the companies' income and up to 10 years imprisonment for the individuals involved, among other penalties.

Please note that in March 2020, the Commission admonished the Association of Real Estate Developers (Asociación de Desarrolladores Inmobiliarios, A.C.): (i) to avoid anticompetitive conducts among competitors in the real estate developers market; and (ii) to encourage its members to make decisions individually and according to their own business strategies when applying discounts to their lessees.

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

En caso de requerir más información sobre la alerta de Competencia Económica - Mercado Inmobiliario No Residencial, comuníquese con sus contactos habituales en Nader, Hayaux y Goebel, o con [Alejandro Mendiola D.](mailto:amendiola@nhg.com.mx) +52 (55) 4170 3024 **amendiola@nhg.com.mx**.

If you require further information on the Antitrust alert - Non-Residential Real Estate Market, please contact your usual contacts in Nader, Hayaux & Goebel, or [Alejandro Mendiola D.](mailto:amendiola@nhg.com.mx) +52 (55) 4170 3024 **amendiola@nhg.com.mx**.

Nuevas reglas de inversión de las Afores en el mercado mexicano

Category: Capital Markets, Legal Alerts

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El 7 de septiembre, la Comisión Nacional del Sistema de Ahorro para el Retiro publicó modificaciones y adiciones a las disposiciones de carácter general en

materia financiera de los sistemas de ahorro para el retiro, conocida como Circular Única Financiera.

El objetivo es regular de forma más clara los criterios que deben cumplir ciertos valores en los que invierten las Afores, incluyendo FIBRAs, FIBRA-Es, CKDs, CERPIs y SPACs, entre otros.

[Consulta el resumen de modificaciones a la CUF aquí.](#)

Cambios y disposiciones PLD / Informes a la CNBV

Category: Banking & Finance, Capital Markets, Legal Alerts
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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

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 | octubre 22, 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), [Ana Paula Telleria R.](#) (atelleria@nhg.com.mx), [Jorge Bojalil O.](#) (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

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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.

For more information regarding the above, please contact [Michell Nader S.](mailto:mnader@nhg.com.mx) (mnader@nhg.com.mx); [Ana Paula Telleria R.](mailto:atelleria@nhg.com.mx) (atelleria@nhg.com.mx); [Jorge Bojalil O.](mailto:jbojalil@nhg.com.mx) (jbojalil@nhg.com.mx) or your usual contacts at Nader, Hayaux & Goebel.

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Insurance update: CNSF dividend recommendations

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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.](mailto:yhayaux@nhg.com.mx) (+52 (55) 4170 3078; yhayaux@nhg.com.mx) and [Luciano Pérez G.](mailto:lperez@nhg.com.mx) (+52 (55) 4170 3035 lperez@nhg.com.mx).

AML Reporting Forms

Category: Banking & Finance, Legal Alerts

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The Ministry of Finance published a resolution issued pursuant to the Law of Financial Technology Institutions providing the forms to be used for reporting to the Finance Ministry the appointment of the Compliance Officer, the composition of the Communication and Control Committee, and to report relevant, unusual and internal transactions for Mexican e-wallet and crowdfund institutions.

Fintech institutions must deliver the reports through the electronic system operated by the National Banking and Securities Commission (STIV); the reports related to the first two quarters of 2020 are to be filed within the first ten business days of July.

Thereafter, reports must be delivered within three business days of a transaction being characterized as reportable. For additional information regarding the foregoing, please feel free to get in touch with your usual contacts at Nader, Hayaux & Goebel.

Banxico Issues Regulations on API's

Category: Banking & Finance, Legal Alerts

written by Nader, Hayaux & Goebel | octubre 22, 2020

Mexico's Central Bank published today Regulation 2/2020 under the Law of Financial Technology Institutions with respect to the development of API's by credit bureaus and clearing houses. Such entities should obtain prior authorization of the Central Bank to set up an API by May, 2021.

Application for authorization must include, among others, evidence that the relevant API meets the interoperability standards (set forth in the Regulation), a draft interconnection agreement, and a work plan encompassing technical, legal, corporate governance and operative measures that should be implemented with respect to the API.

Similarly, financial entities and specialized third parties should obtain prior authorization of the Central Bank to access information through the APIs. Sharing of transactional information of users will be subject to an additional authorization by the Central Bank. Rules to obtain such authorization will be forth coming.

For further information with respect to this regulation, please reach out to your regular contacts at Nader, Hayaux & Goebel or contact [Adrián López G.](#), [Luciano Pérez G.](#), or [Gunter Schwandt G.](#)

COP 26 Private Finance Agenda launched

Category: Banking & Finance, Energy, Legal Alerts, Project Finance, Tax
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On February 27, 2020, the 'COP26 Private Finance Agenda' was launched in London (the "**Agenda**").

The Agenda aims to assist the private sector in its transition to a net zero carbon economy.

The objective is to achieve that every professional financial decision takes climate change into account. The Agenda will focus on creating the right framework for reporting, risk management and returns to help finance a whole economy transition. The foregoing will require that every company, bank, insurer and investor will need to adjust their business models for a low carbon world.

The COP 26 - co-hosted by the UK and Italy - will also seek to support developing countries to deliver a prosperous, zero carbon future for all.

For more information on the Agenda, please find the link to the corresponding page <https://www.bankofengland.co.uk/events/2020/february/cop26-private-finance-agenda-launch>.

We will be following up on the work and development of the Agenda in a timely manner, and we remain at your service in case you have any comments regarding the above and to provide you with the advice you require regarding the implementation of the Agenda and the evaluation of its impact on your operations.

For further information with respect to the COP26 Private Finance Agenda or in respect to the application of the Sustainable Development Goals (SDO) in your business, please reach out to your regular contacts at Nader, Hayaux & Goebel or Yves Hayaux-du-Tilly L. +52 (55) 4170 3003 yhayaux@nhg.com.mx.

Insurance Newsletter: Release of the Principles of Reinsurance Contract Law

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written by Nader, Hayaux & Goebel | octubre 22, 2020

We inform our clients and friends that on November 28, 2019, the Principles of Reinsurance Contract Law (the “**Principles**”) were published by the Project Group (joint venture set between several Universities and professors, primary insurance companies’ representatives, reinsurance companies and reinsurance brokers and special advisors) in cooperation with the International Institute for the Unification of Private Law (“**UNIDROIT**”).

The Principles set specific reinsurance rules applicable to contract law, aiming to help such areas where reinsurance practitioners felt the urgency of improving legal certainty. Principle’s basis were made upon incorporating: (i) uniform rules on general contract law, (ii) uniform system and (iii) a set of standardized terms, which are set up to minimize the interpretation problems of reinsurance contracts.

The Principles only deal with reinsurance specific rules of contract law, considering that issues regarding general contract law are already included in the Principles of International Commercial Contract of 2016 (“**PICC**”).

The Principles have been drafted as “soft-law”, which means they will work as an optional guide of reinsurance contract law when it is chosen by the parties, and for these principles to have binding effect, the contracting parties should voluntarily choose to do so. However, there is also the possibility that the Principles may be applied by courts or arbitral tribunals, as the case may be, even in cases where the parties have not chosen to apply them.

The Principles are structured as follows: **(i)** Chapter 1 contains general provisions governing structural issues and the connection between the Principles and the PICC; **(ii)** Chapter 2 deals with the duties of the contracting parties, which are set upon good faith of the individuals; **(iii)** Chapter 3 supplement Chapter 2, insofar as it provides remedies in case one of the parties does not comply with its obligations under the reinsurance contract; **(iv)** Chapter 4 addresses the issue of loss allocation; and **(v)** Chapter 5 regulates loss aggregation.

The Principles represent a major step in the standardization of international reinsurance contracts.

For further information with respect to the matters set forth above and Insurance Law, please reach out to your regular contacts at Nader, Hayaux & Goebel or any of Yves Hayaux-du-Tilly L. +52 (55) 4170 3003 yhayaux@nhg.com.mx and Luciano Pérez G. +52 (55) 4170 3027 lperez@nhg.com.mx.