

Creation of the Mexican Federal Agency of Civil Aviation

Category: Legal Alerts

written by Nader, Hayaux & Goebel | octubre 23, 2019

On October 16, 2019, a decree was published in the Federal Official Gazette (Diario Oficial de la Federación) creating the Federal Agency of Civil Aviation (Agencia Federal de Aviación Civil, by its acronym in Spanish “AFAC”), an independent governmental agency (órgano desconcentrado) of the Ministry of Communications and Transportation (Secretaría de Comunicaciones y Transportes, by its acronym in Spanish “SCT”).

According to the decree, the AFAC was created primarily to increase supervision and ensure greater compliance with safety measures and activities provided for in the different aviation laws, regulations, international treaties and other aviation directives. The foregoing, in order to address the recommendations made by the Federal Aviation Administration of the United States of America (FAA), as a result of the audit carried out during the period 2006-2012 as part of the International Aviation Safety Assessment Program (IASA); the FAA recommended the creation of a regulatory entity for the aviation industry with technical and supervisory authority, as well as with administrative autonomy. Therefore, unlike the General Bureau of Civil Aviation (by its acronym in Spanish “DGAC”) which was an administrative unit with no autonomy within the SCT, the AFAC is an independent governmental agency (órgano desconcentrado) with technical, operational and administrative autonomy.

With the exception of the authority to grant concessions in connection with civil aviation and airport matters, which has been reserved exclusively to the head of the SCT, the AFAC will assume all of the functions of the DGAC, including the ones related to the Mexican Aviation Registry.

AFAC’s new attributions in connection with airport matters include **(i)** submitting applications for the granting of concessions for airport administration, operation, development and construction to the head of the SCT, and **(ii)** coordinating studies and evaluations, as well as the purchase or, as the case may be, necessary

expropriations of real property for the construction of airports. We assume the AFAC will play a more prominent role in the plans of the Federal Government in airport matters.

The Agency will have a general director to be appointed and removed freely by the President, at the proposal of the head of the SCT.

The creation of the AFAC became effective on the day following the decree's publication; within the following 180 days, the head of the SCT shall **(i)** propose to the President the corresponding amendments to the Internal Regulations of the SCT, and **(ii)** issue the AFAC Organization Manual to regulate its functions and purpose.

We understand that, given the greater autonomy of the AFAC, the intention is to make the decision making process more efficient and thus improve the response time and technical capabilities *vis-à-vis* the aviation industry.

For further information with respect to the Federal Agency of Civil Aviation, please get in touch with your regular contacts at Nader, Hayaux & Goebel.

Update: Amendments to the Pension Funds Systems Law

Category: Legal Alerts

written by Nader, Hayaux & Goebel | octubre 23, 2019

On September 30, 2019, the Mexican Senate (*Cámara de Senadores*) approved the legislative proposal introduced by the Federal Executive Branch of the Mexican Government, (the "**Proposal**"), which was approved by the House of Representatives (*Cámara de Diputados*) on April 30, 2019, to amend various provisions of the Pension Funds Systems Law (*Ley de los Sistemas de Ahorro para el Retiro*) (the "**SAR Law**"). The Senate in turn reverted its comments to the House of Representatives. If the Proposal is approved by the House of Representatives, the

President must promulgate the Proposal and order its publication in the Official Gazette.

The following are the main amendments to the SAR Law proposed by the Mexican Congress:

New operating model for Afores

The Retirement Fund Administrators (*Administradoras de Fondos para el Retiro*) (“**Afores**”) will operate through Specialized Retirement Fund Investment Funds (the “**Fiefores**”) which will replace the Specialized Retirement Fund Investment Companies (“**Siefores**”). Furthermore, the Proposal contemplates that the Pension Funds System Commission (*Comisión Nacional del Sistema de Ahorro para el Retiro*) (“**Consar**”), with the prior opinion of the Ministry of Finance (*Secretaría de Hacienda y Crédito Público*) (“**SHCP**”), the Securities and Banking Commission (*Comisión Nacional Bancaria y de Valores*) (“**CNBV**”), and the Mexican Central Bank (*Banco de México*) (“**Banxico**”), shall determine the investment regime, the levels of liquidity and market risk for the Fiefores. However, if the opinion of SHCP, CNBV and/or Banxico is not favorable, Consar may approve the investment regime as long as it justifies its decision in its quarterly report before the Mexican Congress.

Siefores will have a 12 month period from the date the publication date of the amendment to request approval from Consar to convert the Siefores into Fiefores, including the amendment to their bylaws to comply with the corporate governance provisions applicable to Fiefores pursuant to the revised SAR Law. If the application is not timely submitted or the authorization of Consar is not obtained within such 12 month period, the respective Siefore will enter into a state of dissolution and liquidation.

New investment opportunities

Fiefores will have access to greater investment opportunities than Siefores had, including the possibility of investing directly in securities registered in the National Securities Registry not offered through a public offering, as long as the Afore obtains its prior board approval with the affirmative vote of all of its members, in accordance with general provisions to be issued by Consar.

Fiefores will be able to **(1)** receive money deposits used as collateral in repo

transactions, secured lending and derivative financial instruments, **(2)** carry out securities lending transactions and repurchase agreements, including over securities issued by companies, as well as credits or loans only in their capacity as creditors, **(3)** receive cash deposits as long as they are used as collateral in repurchase transactions, securities lending and derivative financial instruments, **(4)** acquire international securities authorized by Consar, **(5)** carry out loan, credit and repurchase transactions to satisfy the liquidity levels established by Consar, **(6)** carry out short transactions with securities used as collateral under pledge agreements, and **(7)** grant guarantees corresponding to repo agreements, loans, credits and derivative transactions, in accordance with the provisions issued to such effect by Banxico.

It is not yet possible to define the scope in the changes to the investment regime or if it will represent a more flexible investment regime. This scope will be defined in the secondary regulation issued by Consar.

Performance Fee

Fees charged by Afores will have an additional component that will be calculated on the basis of the investment returns received by pension holders through their investments in the Fiefores. Consar will publish a specific calculation methodology for such new component. Such performance component may serve to align the interests of investment managers, pension holders and Afores.

Withdrawal of voluntary deposits

Pension holders will be allowed to withdraw their voluntary deposits from their retirement funds at any time.

Consar, SHCP and Banxico must issue secondary regulation in this regard. As soon as the secondary regulations are published, we will follow up on this release. Additionally, in a period not exceeding six months from the date of the amendment, the Federal Executive Branch must summon the assembly of a National Working Group for the Diagnosis and Proposal of the Amendment of the Pension Systems. Such Group will be composed of and function in accordance with the guidelines dictated by SHCP, incorporating experts in financial, social security, legal or pension matters, representatives of workforce, employees, and a representative of each

Parliamentary Group in the House of Representatives and Senators of the Mexican Congress. The Working Group must submit a report to the head of the Federal Executive Branch and to the Mexican Congress.

For further information with respect to the Proposal and applicable regulation, please get in touch with your regular contacts at Nader, Hayaux & Goebel.

Antitrust Attorney-Client Privilege Regulations

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The Mexican Federal Antitrust Commission (“Commission”) published new regulations regarding attorney-client privilege (“Regulations”) that became effective on September 30th, 2019.

The Regulations are aimed at establishing a process whereby information resulting from legal advice rendered to clients is qualified as protected with attorney-client privilege and therefore not be considered as evidence.

While the process to analyze the protection request is in progress, the Commission shall take the necessary steps to isolate and preserve the information confidential until the corresponding Committee determines whether or not the request to protect the information is granted.

In the event the information is considered by the Committee as protected by attorney-client privilege, then the exclusion process described in the Regulations must be implemented. Otherwise, in the event the Committee considers the attorney-client privilege is not applicable, it will inform the corresponding unit within the Commission so it can dispose of or use such information.

These new Regulations entail a significant challenge to duly protect legal advice provided to clients under attorney-client privilege.

For further information with respect to the regulations, please get in touch with your regular contacts at Nader, Hayaux & Goebel.

Proposed Tax Amendments in the 2020 Budget Bill

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On September 8, 2019, the Executive delivered to the Mexican Congress the Budget Bill for 2020, which includes the proposed “Decree by which various provisions of the Income Tax Law, Value Added Tax Law, Law on Special Tax on Production and Services and the Fiscal Code are amended, added and repealed” (the “2020 Tax Amendments”). Below we highlight the most relevant proposed tax modifications that will be discussed by Congress in the following days.

Income Tax

- Updating of the concept of permanent establishment, in accordance with recommendations set forth in action 7 of the BEPS Project.
- Revision of the provisions addressing hybrid mechanisms, in accordance with recommendations set forth in action 2 of the BEPS Project.
- Modification of various provisions of the Law referring to the Preferential Tax Regimes, differentiating the income obtained through tax transparent foreign entities and vehicles, from the income related to preferential tax regimes obtained through controlled foreign entities.
- Introduction of a general rule addressing income realized by tax transparent

foreign entities and vehicles.

- Establishment of a new limitation on the deduction of interest setting a cap equal to 30% of the Adjusted Tax Profit, as well as modification of the thin capitalization rules.
- Incorporation of the provision that was previously included in the Federal Revenue Act, allowing the reduction of the employee profit sharing upon calculating advanced monthly payments.
- Addition of a new set of rules dealing with income generated by Mexican resident individuals from the sale of goods or the provision of services through the Internet, technological platforms, and similar computer applications.
- Elimination of private REITs (FIBRAS), which will trigger the payment of the tax generated by the transfer of the assets to the trust as regulated under transitory provisions.

Value Added Tax Law

- Taxing digital services provided by non-residents with no PE in Mexico, as well as digital intermediation services between third parties provided by non-residents with no PE and by Mexican residents.
- Withholding of tax payable to labor outsourcing service providers.
- Rules dealing with activities not subject to VAT and their impact on credits.
- Repeal of the possibility to offset VAT favorable balances against other taxes due.

Excise Tax on Production and Services

- Repeal of the possibility to offset favorable excise tax balances against other taxes due.

Federal Fiscal Code

- Establishment of a general anti-abuse rule (GAAR) aimed at transactions that are deemed to lack a business purpose and resulting in a tax benefit.
- Amendment of the rules governing the offset of favorable tax balances, now

excluding the possibility of being applied with respect to taxes withheld from third parties.

- Introduction of the obligation for tax advisors to disclose reportable transactions, as well as the possibility of performing tax audits to review the compliance therewith and assessing penalties for non-compliance.
- Addition of various provisions aimed at challenging companies that issue, market and use tax invoices from non-existent operations.

For further information with respect to the Proposed Tax Amendments, please get in touch with your regular contacts at Nader, Hayaux & Goebel.

Business Plan of Petróleos Mexicanos

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On July 16 of 2019, the director of Petroleos Mexicanos (“PEMEX”), Octavio Romero, announced the Business Plan of PEMEX and its Productive Subsidiaries for 2019-2023 (the “Business Plan”). In this regard:

1. Principal milestones for 2023.
2. PEMEX’s current situation
3. Tax Reduction
4. Private Sector
5. Principal Projects 2019-2023
6. Expert opinions

To read the full newsletter, please download the PDF [here](#).

For further information with respect to the business plan, please get in touch with

your regular contacts at Nader, Hayaux & Goebel.

Regulations on Websites, Publicity and Terms and Conditions offered by Financial Technology Institutions

Category: Banking & Finance, Legal Alerts, Uncategorized

written by Nader, Hayaux & Goebel | octubre 23, 2019

The Federal Commission for the Defense of the Financial Consumer (Comisión Nacional para la Defensa de los Usuarios de Servicios Financieros) published today regulations applicable to Financial Technology Institutions. Such regulations provide certain requirements for the websites and publicity of Mexican Fintech institutions, as well as a number of mandatory terms and conditions for the products offered by such institutions. The regulations also include a catalogue of forbidden commercial practices. The regulations are applicable to both crowdfunds and e-wallet companies and will become effective on January 6, 2020.

For further information with respect to Fintech related, please contact your regular contacts at Nader, Hayaux & Goebel or any of Gunter A. Schwandt G. +52 (55) 4170 3052 gschwandt@nhg.com.mx, Luciano Pérez G. +52 (55) 4170 3035 lperez@nhg.com.mx, Adrián López González G. +52 (55) 4170 3058 alopez@nhg.com.mx and Diego Sánchez V. +52 (55) 4170 3091 dsanchez@nhg.com.mx

Minimum Paid-In Capital of Insurance and Surety Companies

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On June 24, 2019, the National Insurance and Bonding Commission (Comisión Nacional de Seguros y Fianzas) published in the Official Gazette of the Federation (Diario Oficial de la Federación) the Circular 10/19 (Circular Modificatoria 10/19) amending Annex 6.1.2. of the Sole Insurance and Bonding Circular (Circular Única de Seguros y Fianzas) and the minimum paid-in capital stock that insurance and surety companies must maintain for each authorized operation or line of business. Pursuant to Circular 10/19, the minimum paid-in capital stock is updated as follows on the [PDF attached here](#).

For further information, please get in touch with your regular contacts at Nader, Hayaux & Goebel.

New provisions issued under the Law to Regulate Financial Technology Institutions

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We inform our clients and friends that Banco de México, the Ministry of Finance and the National Commission of the Retirement Savings System have published rules in the Official Federal Gazette in connection with transactions with virtual assets by Mexican financial entities, implementation of innovative models to offer financial services and transactions denominated in foreign currency by Mexican crowdfunds.

To read the full newsletter, please download the PDF [here](#).

For further information with respect to the new provisions, please get in touch with

your regular contacts at Nader, Hayaux & Goebel.

Amendments to the Pension Funds Systems Law

Category: Banking & Finance, Legal Alerts

written by Nader, Hayaux & Goebel | octubre 23, 2019

On January 16, 2019, the federal executive branch of the Mexican Government introduced a legislative proposal (the “Proposal”) to the House of Representatives (*Cámara de Diputados*) of the Mexican Congress to amend various provisions of the Pension Funds Systems Law (*Ley de los Sistemas de Ahorro para el Retiro*). The following are the main amendments introduced by the Proposal:

- A. New operating model for Afores.
- B. New investment opportunities.
- C. Performance Fee.
- D. Withdrawal of voluntary deposits.

To read the full newsletter, please download the PDF [here](#).

For further information with respect to the Proposal, please get in touch with your regular contacts at Nader, Hayaux & Goebel.

Plan to promote the financial sector in Mexico

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On January 8, 2019, Mexico’s Central Bank (Banco de México), together with the Ministry of Finance and Public Credit (Secretaría de Hacienda y Crédito Público),

presented the Plan to Promote the Financial Sector in Mexico (the “Plan”). The following are among the main initiatives of the Plan:

Tax incentives for Initial Public Offerings and interest payments to non-resident holders of corporate bonds

Strengthen the investment regime of the Mexican Pension Funds (Sociedades Administradoras de Fondos para el Retiro) (Afores) and voluntary savings

Changes to the regulation of repo agreements and securities lending

Greater flexibility for financial intermediaries in their repo and securities lending operations

To read the full newsletter, please download the PDF [here](#).

For further information with respect to the plan, please get in touch with your regular contacts at Nader, Hayaux & Goebel.