

# NHG participates in 3rd Annual (Re)Insurance LatAm Regulatory Conference

Category: Events, Insurance and Reinsurance

written by Gonzalo Martínez P. | octubre 20, 2018

Very honoured to have our partners Yves Hayaux du Tilly and Luciano Perez as speakers representing Mexico at the 3rd Annual (Re)Insurance LatAm Regulatory Conference organised by The American Insurance Association (AIA), The American Council of Life Insurers (ACLI), Association of Bermuda Insurers and Reinsurers (ABIR), Reinsurance Association of America and hosted by Carlton Fields.

Yves gave a briefing and update on economic and regulatory developments in Mexico and Luciano talked about recent legislative and regulatory developments and related challenges and opportunities impacting retirement security products in Mexico.



# Insurance team participates in XV World Congress of AIDA

Category: Events, Insurance and Reinsurance

written by Nader, Hayaux & Goebel | octubre 20, 2018

Partners Yves Hayaux du Tilly and Luciano Perez participated at the XV World Congress of AIDA 2018 which took place in Brasil from October 11 to 13th.

Yves participated in the session of the Reinsurance Working Party to give a presentation on parametric (re)insurance in LatAm and legal issues and developments on performance guarantees and credit (re)insurance; he also gave a presentation in the session of the Working Party on State Supervision of Insurance, on new criteria of CNSF in Mexico on the obligations of foreign reinsurers when taking reinsurance from Mexican cedents and inherent regulatory risk.

Likewise, Luciano gave a presentation on the legal aspects of environmental insurance policies in Mexico for the Working Party session on Environmental Insurance.

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## Q&A guide to insurance and reinsurance law in Mexico.

Category: Insurance and Reinsurance, Publications

written by Nader, Hayaux & Goebel | octubre 20, 2018

The lead partners of our Insurance and Reinsurance team published an article on the Insurance and Reinsurance sector in Mexico. Yves Hayaux-du-Tilly L and Luciano Pérez participated in Thomson Reuters' Q&A guide to insurance and reinsurance law in Mexico.

The Q&A gives a high level overview of the market trends and regulatory framework in the insurance and reinsurance market; the definitions for a contract of insurance and a contract of reinsurance; the regulation of insurance and reinsurance contracts; the forms of corporate organisation an insurer can take; and the regulation of insurers and reinsurers, including regulation of the transfer of risk. It also covers: operating restrictions for insurance and reinsurance entities; reinsurance monitoring and disclosure requirements; content requirements for policies and implied terms; insurance and reinsurance claims; remedies; insolvency of insurance and reinsurance providers; taxation; dispute resolution; and proposals for reform. Finally, it provides websites and brief details for the main insurance/reinsurance trade organisations in Mexico.

To compare answers across multiple jurisdictions, you can visit Thomson Reuters' [Insurance and Reinsurance Country Q&A tool](#).

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# The Insurance and Reinsurance Law Review

Category: Insurance and Reinsurance, Publications

written by Nader, Hayaux & Goebel | octobre 20, 2018

Yves Hayaux-du-Tilly, head of our Insurance and Reinsurance practice, contributed to the 6th edition of "The Insurance and Reinsurance Law Review", a title published by Law Business Research. Editor of the publication is Peter Rogan of Ince & Co.

The PDF of the Mexican chapter can be downloaded [here](#). More information on the publication can be found on The Law Reviews' [website](#), and the entire book can be downloaded as a [PDF here](#).

For more information on NHG's Insurance and Reinsurance practice, please [visit our practice profile page](#).

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# Insurance team contributes to the 2nd edition of The Legal500 Comparative Guide

Category: Insurance and Reinsurance, Publications

written by Nader, Hayaux & Goebel | octubre 20, 2018

Partners [Yves Hayaux-du-Tilly](#) and [Luciano Pérez](#) contributed to the 2nd edition of The Legal500 Comparative Guide on Insurance & Reinsurance.

This country-specific Q&A gives a pragmatic overview of the law and practice of insurance & reinsurance law in 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.

You can download the PDF version of the article [here](#).

This Q&A is part of the global guide to Insurance & Reinsurance.

<http://nhg.mx/wp-content/uploads/2018/05/Nader-Hayaux-Goebel.mp4>

For a full list of jurisdictional Insurance & Reinsurance Q&As visit <http://www.inhouselawyer.co.uk/index.php/practice-areas/insurance-reinsurance>

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# London calling: reflections on bilateral trade between the UK and Mexico

Category: Banking & Finance, Capital Markets, Energy, Infrastructure, PPPs and Government Procurement, Insurance and Reinsurance, Mergers and Acquisitions, Publications, Uncategorized

written by Nader, Hayaux & Goebel | octubre 20, 2018

In an extensive interview with Christina Mckeon Frutuoso of Latin Lawyer, Nader, Hayaux & Goebel's resident partner in London, Yves Hayaux-du-Tilly Laborde, reflects on how far bilateral relations between the UK and Mexico have come and whether Brexit and the election of Donald Trump in the US will make that relationship stronger.

A transcript of the interview, which was first published on Latin Lawyer's website on 23 April 2018, is rendered below:

## ***Latin Lawyer: Where is UK-Mexican trade currently looking positive?***

Yves Hayaux-du-Tilly: The food and drinks industry is growing on both sides: whiskey is being exported to Mexico - it represents around 8% of exports into Mexico - and tequila imported to the UK. There's a massive consumer market now in Mexico, a country with a huge demographic and an increasing number of young consumers. Mexican restaurants are also growing exponentially in the UK. There's a lot of appetite for these kinds of projects.

Insurance investment has also been positive on both sides. There's currently only two Latin American investors into Lloyd's of London, both of which are Mexican, which is both a recent and important development.

## ***LL: What makes Mexican investors more attractive than other Latin American insurance investors, using Lloyd's as a case study?***

YH: I think the fact that the only two Latin American investors are both Mexican has

to do with the sophistication of Mexican insurance companies; the appetite that Lloyd's and the London market has for Mexican risk; the volume [of risk] is also quite attractive; and the reputation of Mexican insurance companies which is very good.

***LL: Which other sectors have seen strong relations between the two nations?***

YH: Fintech is going to grow in a very important manner. The UK government has been extremely helpful and engaged in sharing best practices with Mexico in relation to the recently passed fintech law, especially concerning the sandbox concept and how the FCA has been dealing with it. Mexican companies [in London] are now looking forward to bringing some of the best practices they have learnt here over to Mexico.

***LL: Where do you see room for improvement in UK-Mexico trade?***

YH: We have all heard about UK Expert Finance (UKEF)'s £5 million pound facility [pledged to help UK businesses looking to export to Mexico] which is very important, but not enough has been done to employ that £5 million in actual loans to British companies. There's only really been one project so far, the Metrobus project, funded by Santander, which will see the export of British double decker buses to Mexico City. But considering the sum available, I think there is more to be done.

***LL: In what industries can we expect this UKEF money to be invested?***

YH: I think a lot will go into energy, as was discussed at UK Mexico day last month, and the UK is already leading investments into Mexico's oil and gas sector. The number of British companies that have been successful in their bids exceeds any other nationality in general terms. You have the big companies like BP and Shell, but other lesser-known companies like Capricorn and Premier Oil are finding great ground to develop with the opening of Mexico's oil and gas industry.

***LL: Where has investment been disappointing between the two nations?***

YH: What's been most disappointing is the number of infrastructure projects in Mexico in general terms. There has only really been the one major project - the Mexico City airport - which of course has been very successful: a number of British

companies have been involved in the project, including [British design and engineering firm] Foster and Partners, as well as others involved in the construction, supervision and engineering side of things.

A lot was said [by the Mexican administration] about doubling the capacity of ports and more social infrastructure at federal level but really, we haven't see this materialise. I wanted to see more major projects aside from hospitals or highways. There is the train project between Mexico City and Toluca currently underway, but there are question marks over the benefits of such a project. There was also the high-speed train to Guadalajara project, which was cancelled.

***LL: A number of UK law firms have opened up offices in Latin America recently [Kennedys, Clyde & Co LLP and DAC Beachcroft]. Do you think we can expect to see more opening in Mexico?***

YH: I don't really think many other firms are interested in opening up an office in Mexico. Most English firms we work with have not contemplated this and are quite happy working with Mexican independent firms. The only thing that might bring about this change would be a tremendous increase in capital markets and energy work. But for now, everyone seems happy to continue working on a cross-border basis and relying on local counsel for the Mexican components. Of course, there are firms like Hogan Lovells and Norton Rose Fulbright [expanding in Mexico] that have decided not to work like that, but it's debatable whose approach is best.

***LL: Going forward, how can the UK and Mexico make bilateral relations stronger?***

YH: The only way we are going to be able to make this bilateral relationship work is through more engagement on a personal level from key stakeholders. This is something Nader Hayaux has previously considered, back in 2010 when we opened in London. We were in the midst of the financial crisis, coming from the boom of the 2000s when the problem at the time for lawyers was getting the work done, there was so much of it. That all then changed once the stock markets crashed. At the time, we were concerned over relying so much on the US, and we wanted to have more sources of work and relationships. Part of our decision to open in London was that we needed to divest our interest, and we saw that no Mexican firm was doing

enough to develop relationships with European law firms and clients. By opening an office here, we were thinking long-term.

***LL: Tell us about the role of the Mexican Chamber of Commerce, which you founded in 2011.***

YH: When we [Nader Hayaux] opened our office in London, we also set our sights on helping to form a Mexican Chamber of Commerce to create a platform to permit private sector organisations and governments to collaborate with a mutual aim to grow trade and investment between UK and Mexico. Trade between the two countries is £3.6 billion, but more needs to be done. We hear a lot of rhetoric about the importance of Mexico for the UK, but the city of London is not pulling its weight in terms of allowing New York dominance over Mexican financial services. The UK would benefit from being more present, for example in areas like asset management, but I'm still waiting to see how long it will take London to put up a fight against New York to get more Mexican business. So far, New York dominates completely - there are currently only two UK banks and only one UK insurance company, Bupa, in Mexico.

***LL: Why do you think London, until now at least, has been hesitant to put up this fight?***

YH: My theory is that the UK has been very comfortable with Europe, and their presence in Southeast Asia, in former colonies, is stronger than in Latin America. There probably is this perception that the US dominates and controls Latin America, and the UK has a natural tendency to leave Latin America to the US. But Brexit and the Trump administration have pulled all of this into question. Today, nothing is to be taken for granted.

***LL: How has Brexit and the Trump administration affected legal practice around the world?***

You've probably heard Einstein's definition of stupidity - doing the same thing and expecting different results. But times have changed, and I think Einstein fell short - nowadays, it seems stupidity is doing the same thing and expecting the same results! If countries continue dealing with Trump's US as they have dealt with the US in the

past, their expectations are going to fall short. This attitude applies to the legal industry also - lawyers can't expect to practise law in the same way they did even five years ago. The Trump administration and Brexit have caused Mexico, the US and the UK to rethink their relationships. As a result, the UK government has singled out and made clear the relevance and importance it now places on its relationship with Mexico in a post-Brexit era.

***LL: So Nader Hayaux feels prepared to face the challenges that come in a post-Brexit era?***

Nowadays, law firms have Trump and Brexit as sources of potential work and relationships; when we opened in London in 2010, the financial crisis was our backdrop amid concerns that we were relying on the US so much. I think we are in the right place at the right time, as a result of the long-term project we set out on when we opened here in London. But opportunities are like red buses - you might be waiting for a while, and then suddenly five come at once. What's important though, is to be standing in the bus stop, in order to see them coming.

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## **“Mexico Day” held in London celebrates UK-Mexico bilateral relationships and investment links**

Category: Awards, Banking & Finance, Energy, Events, Firm news, Infrastructure, PPPs and Government Procurement, Insurance and Reinsurance

written by Nader, Hayaux & Goebel | octobre 20, 2018

Nader, Hayaux & Goebel's London office participates in the “Mexico Day”, hosted by the UK Mexican Embassy, the government institution [ProMexico](#) and the [Mexican Chamber of Commerce for Great Britain](#).

The event, held in London on 21 March 2018, celebrated its third edition. The Mexico Day had opening remarks by Ambassador Julian Ventura and the Department of International Trade's Minister for Investment, Graham Stuart who highlighted the broadening and deepening of trade and investment links, as well as some of the main initiatives carried out by both governments to strengthen the bilateral relationship.

Successive panels and keynotes by senior government officials and business leaders showcased opportunities in key sectors, including energy, infrastructure, insurance and technology in financial services. ProMéxico, Mexico's trade and investment promotion agency, offered an overview of the country's main structural strengths, including its macroeconomic stability and the ongoing implementation of various structural reforms; Mexico's Development Bank CEO highlighted the strengths of the economy in the context of the complex global situation; the President Commissioner of the National Hydrocarbons Commission presented the progress achieved in the bidding rounds on hydrocarbons, and engaged in an interactive dialogue with some of the key players in the British energy industry, including British Petroleum, Ernst and Young and the firm Norton Rose Fulbright.

Furthermore, "Mexico Projects Hub", a digital platform with information on tenders for infrastructure projects was presented by a representative of Mexico's Infrastructure Bank, Banobras, which will foster deeper bilateral synergies, taking advantage of financing tools such as the credits granted by the UK Export Finance. The segment dedicated to the new Special Economic Zones in Mexico, emphasized opportunities for British firms and their importance as drivers of regional growth and development.

The seminar also included a presentation of the recently enacted Law to Regulate Financial Technology Institutions in Mexico ("Fintech Law"), generating an interesting dialogue between experts from both countries on opportunities and potential of the respective FinTech ecosystems. The Mexican Association of Insurance Institutions identified recent developments in the Mexican insurance industry and its growing complementarity with the Lloyd's market in London.

In the closing session, the President of the MexCC and NHG partner, [Yves Hayaux](#)

[du Tilly](#), underlined the importance of collaboration between governments and the private sector. That evening, the traditional Gala Dinner and Award of the MexCC took place. British and Mexican companies Bishopsgate Dental and Gringa Dairy were awarded for their entrepreneurial leadership and British Petroleum and Mexichem received awards for their extraordinary contribution to the strengthening of the bilateral economic relationship.

The event was covered by [The Latin Lawyer](#). The Mexican Chamber of Commerce issues a [press release](#) on the Mexico Day. A transcript of the speech by Graham Stuart of the UK Government can be consulted [here](#).

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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 | octubre 20, 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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# The In-House Lawyer's comparative guide to Insurance & Insurance

Category: Insurance and Reinsurance, Publications

written by Nader, Hayaux & Goebel | octubre 20, 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 addition, 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 Marker 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 lines 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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## **Partner Luciano Perez participated in “Perspectiva”**

Category: Events, Firm news, Insurance and Reinsurance, Practices Areas  
written by Nader, Hayaux & Goebel | octubre 20, 2018

Partner Luciano Perez participated in “Perspectiva”, the talk show of the Judicial Channel, where he shared his views on the topic of “Legal Protection of the Insured”.

The full video is available on the [Vimeo channel of Perspectiva](#).