

# Mexico Private Equity Comparative Guide - Legal 500 2022

Category: Practices Areas, Private Equity, Publications  
written by Nader, Hayaux & Goebel | febrero 3, 2022

Don't miss the Mexico's Private Equity 2022 Q&A, published by Legal 500 with an overview of the laws and regulations applicable in the market.

With the contribution of partner [Hans Goebel](#), [Héctor Arangua](#), [Adalberto Valadez](#) and associate [Miguel Ángel González](#).

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

Category: Firm news, Insurance and Reinsurance  
written by Nader, Hayaux & Goebel | febrero 3, 2022

On February 17, 2021, the First Chamber of the Mexican Supreme Court of Justice (“**SCJN**”) issued a judicial precedent pursuant to which it determined that notwithstanding the insurance premium is paid, in case this is done after the 30-day grace period, the insurance contract terminates, even if the insurer received the premium.

The rationale of the First Chamber of the SCJN is based on the assumption that the insurance contract is bilateral, onerous and aleatory, and is perfected at the moment

in which the contracting party becomes aware of the acceptance of the offer made by the insurer, and additionally, according to the Insurance Contract Law (the "**Law**"), from the due date for payment of the premium, the contracting party has a grace period of 30 calendar days to pay the premium.

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

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

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

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

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

Furthermore, on February 24, 2021, the First Chamber of the SCJN issued another judicial precedent resulting from contradicting rulings between two Collegiate Courts of the same circuit but from different specialties, which establishes that pursuant to article 41 of the Law the insurance contract is invalidated when payment of the insurance premium is made outside the grace period of 30 calendar days, even when the insurer does not immediately refuse such payment.

In this case, the rationale of the First Chamber of the SCJN, consistent with the judicial precedent described above, is based on the premise that the first paragraph of article 40 of the Law establishes that if the contracting party does not pay the premium or the corresponding installment, in case it is paid in installments, within

the grace period of 30 calendar days, the effects of the insurance contract will cease automatically at 12 o'clock on the last day of such term.

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

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

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

### **NHG's Preliminary Observations**

- It is a common practice for insurers to receive late premium payments and, in general terms, if the loss occurs after the insurer receives the late payment of the premium, the insurer fulfills its obligations under the insurance contract.
- The judicial precedents release the insurers from any liability under insurance contracts in which premiums have not been paid within the grace period set forth in article 40 of the Law, and require that the insurers accept a new offer from the insured, in order for a new insurance contract to become effective.
- If an insured pays, after the grace period the premium corresponding to the insurance contract, the insured will be required to obtain an express acceptance from the insurer in which the insurer confirms the acceptance of the risk; otherwise, the insurance contract will be deemed invalid and will not produce any legal effect.
- We recommend to carefully analyze the rehabilitation clauses currently used in insurance contracts to confirm whether these clauses constitute, on their own, an express consent from the insurers to accept the risk in case of

untimely payment of the premium or, if applicable, adjust them to comply with the judicial precedents.

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

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

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

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

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

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

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

El pago extemporáneo de la prima solamente se puede considerar como un depósito

a ser aplicado a la prima si el nuevo contrato de seguro se perfecciona, de no perfeccionarse, ésta se deberá reembolsar al asegurado al tratarse de un pago de lo indebido.

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

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

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

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

Por lo tanto, admitir que la eventual aceptación del pago extemporáneo rehabilita los efectos del contrato de seguro, constituye un convenio que pretende privar de sus efectos al primer párrafo del artículo 40 de la Ley y, en consecuencia, es nulo, de conformidad con lo dispuesto en el artículo 41 de la Ley.

### **Observaciones Preliminares de NHG**

- En la práctica, es común que las aseguradoras reciban la prima de forma extemporánea y por lo general, si el siniestro ocurre después de que la aseguradora recibe el pago de la prima, ésta cumple con sus obligaciones

bajo el contrato de seguro.

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

Para mayor información sobre el pago extemporáneo de la prima, nos ponemos a sus órdenes con sus contactos habituales en Nader, Hayaux & Goebel, o con [Luciano Pérez Gómez](mailto:lperez@nhg.com.mx) +52 (55) 4170 3027 [lperez@nhg.com.mx](mailto:lperez@nhg.com.mx)

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

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## **Nader, Hayaux & Goebel contribute to the Bank Finance section of Latin Lawyer Reference**

Category: Banking & Finance, Publications

written by Nader, Hayaux & Goebel | febrero 3, 2022

[Michell Nader](#) and [Julián Garza](#) contributed to the [2018 Latin Lawyer Reference on Bank Finance](#). This interactive Q&A Guide provides answers to key legal and regulatory questions in Latin America on Banking. The interactive format allows for quick-and-easy comparisons across jurisdictions. You can find the chapter on Mexico [here](#).

For more info on our Banking & Finance capabilities, please click [here](#).

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

Category: Mergers and Acquisitions, Publications

written by Nader, Hayaux & Goebel | febrero 3, 2022

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

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

***With respect to Mexican companies, what are the most common forms of***

***financing for acquisitions? What advantages do companies obtain by seeking external financing?***

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

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

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

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

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

The number and amount of the transactions in the real estate industry has been growing during the last months due to several factors. Some of them include more

sophistication of the participants and a more mature market, as well as the use of tax efficient structures, such as FIBRAs (Fideicomisos de Inversión en Bienes Raíces), the Mexican equivalent of a U.S. REIT.

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

It is forecasted that M&A activity will continue its current course during the second semestre of 2017. Notwithstanding the foregoing and as previously mentioned, it is possible that a number of factors (NAFTA renegotiation, the presidential electoral process that will end mid-2018, among others), will affect or alter the plans and calendar that international investors may have to invest in Mexico.

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

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## **Partner Luciano Perez participated in “Perspectiva”**

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written by Nader, Hayaux & Goebel | febrero 3, 2022

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](#).

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# **Partner Luciano Perez spoke at AMEDESEF conference on Obligations of insurers under the national anti-corruption system**

Category: Uncategorized

written by Nader, Hayaux & Goebel | febrero 3, 2022

Partner Luciano Perez spoke at AMEDESEF conference “Consequences and Obligations derived from the new National Anti-Corruption System for Insurance and Bonding Institutions”. The topic was “Obligations of insurers under the national anti-corruption system and its impact”. Go to <https://lnkd.in/eQS2rg3> for the complete post.