

THE INSURANCE AND
REINSURANCE
LAW REVIEW

ELEVENTH EDITION

Editor
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MEXICO

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I INTRODUCTION

After two years marked by the tragic consequences of the covid-19 pandemic, 2022 has seen a slow progressive return to the new post-pandemic normality.

With the exception of transactions in the health industry, and three new insurance licences being granted, we have not seen significant M&A activity nor expansion in the insurance industry in Mexico. Notwithstanding the foregoing, a couple of international players are exploring entering the Mexican market, and there continues to be an appetite for joint ventures between financial and insurance groups to develop bancassurance products.

Most of the insurance claims arising from covid-19 have been paid by direct insurance companies, with the exception of those providing all risk insurance cover.

The large gaps exposed by the pandemic in health and medical expenses insurance coverage have prompted certain groups to expand primary care coverage, and health insurance companies have been expanding their offering of primary care coverage.

The electronic platforms implemented by the government to process applications have been widely adopted and adjusted to process applications, and they continue to be in use. The pandemic proved challenging and has resulted in delays and a backlog in the processing of applications by the regulator.

The current state of affairs has continued, encouraging the changes required to face the profound challenges that would otherwise be faced by the country's insurance industry, such as improving insurance penetration.

The Mexican market continues to rely heavily on reinsurance and 'fronting' arrangements to cope with the complexity of new risks and the increase in additional lines of business that are capital-intensive or require added capacity, such as catastrophe insurance. There are no indications that this scenario will change.

As we have indicated in previous editions, the market reliance on reinsurance through fronting arrangements creates challenges in the adjustment and settlement of certain claims, as there are naturally disagreements between the reinsurance market and insureds because of inconsistencies in the placing of the underlying insurance and the terms of the reinsurance arrangements. These disagreements arise not only because of errors in the translation of reinsurance arrangements into direct insurance, but also because of differences between the law applicable to the direct insurance and the practices of the reinsurance market. There have been abusive practices by certain reinsurers, markets and their advisers and these have created

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additional tensions and concerns in the Mexican market. There is also raised awareness among the cedents of the enormous risks they face in permitting these fronting arrangements, which may seem profitable but bear high risks.

We have seen an increase in partnerships from foreign reinsurers with local companies to offer insurance programmes through fronting schemes and the use of fronting companies to distribute insurance products to the Mexican market. These same schemes have also been developed and used to offer parametric insurance products to the Mexican market.

We also perceive a change in the appetite of Lloyd's to Latin American risk, including Mexico, with refocusing in other jurisdictions.

The foregoing, combined with a hardening of the reinsurance market, has resulted in exponential and irrational increases in premiums in financial lines, and also in increases in claims and disputes with reinsurers that have taken a much more aggressive stance with their Mexican cedents.

II REGULATION

i The insurance regulator

Insurance and reinsurance operations in Mexico are regulated by both the Ministry of the Treasury and Public Credit (SHCP) and the National Insurance and Surety Commission (CNSF). The SHCP has authority to interpret, implement and execute the provisions of the Insurance and Bonding Companies Law (LISF) for administrative purposes. The CNSF has authority to grant and revoke authorisations to incorporate and operate insurance companies in Mexico, and to register reinsurance companies with the General Registry of Foreign Reinsurance Companies to take Reinsurance and Rebonding from Mexico (the Reinsurance Registry) 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, investigate 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 regulatory circular (the Circular).

ii Position of non-admitted insurers

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.²

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 transactions affected shall be null and void. Furthermore, this conduct would constitute criminal liability on the part of: (1) the non-admitted foreign insurer; (2) the insurance intermediaries (broker or agent); and (3) the officers, managers, directors, representatives and agents of the entities referred to at (1) and (2).

² Article 20, Paragraph 2 of the LISF defines active insurance operations as those in which, upon the occurrence of a future and uncertain event agreed upon by the parties, one party agrees to directly or indirectly indemnify or pay an amount of money to the other party, in exchange for a premium.

iii Position of brokers

As a general rule, insurance companies may only pay brokerage fees to insurance brokers duly authorised as such by the CNSF. Individual agents and entities require a licence to act as insurance brokers. To obtain the licence to act as an agent or broker, the individual or entity must file an application with the CNSF, which must comply with the requirements set out in the Regulation of Insurance and Surety Brokers (the Brokers Regulation). The legal provisions applicable to insurance brokers are contained in Chapter 32 of the Circular.

Reinsurance intermediaries are entities licensed to provide reinsurance intermediation services.³ To incorporate and operate a reinsurance intermediary, the prior authorisation of the CNSF is required and to obtain the authorisation, an application must be filed with the CNSF. The application must comply with the requirements set out in the Rules on the Authorisation and Operation of Reinsurance Intermediaries (the Intermediaries Rules). Reinsurance intermediaries must be incorporated as limited liability stock companies and have their corporate domicile in Mexican territory. The legal provisions applicable to reinsurance intermediaries are contained in Chapters 9, 32 and 35 of the Circular.

iv Requirements for authorisation

Pursuant to the LISF, to incorporate and operate an insurance company in Mexico, an application must 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 or deny the authorisation. These authorisations are regulated in Chapter 2 of the Circular.

An insurance company must start operations within three months of receiving the relevant authorisation from the CNSF. Before starting its operations, the CNSF must carry out an inspection visit and confirm that the insurance company has the infrastructure, procedures and systems required to operate according to Article 47 of the LISF.

Under the LISF, Mexican insurance and reinsurance companies and foreign reinsurance companies registered with the Reinsurance Registry may cede or take risks in reinsurance to and from Mexican insurance companies. Pursuant to the Circular, foreign reinsurance companies may not take reinsurance in Mexico when they intend, or when they effectively carry out, on a majority or exclusive basis, reinsurance operations with Mexican insurance companies with whom they have financial or business ties. Although it is not clearly explained in the LISF, the 'majority or exclusive' operations referred to in this provision refer to the global reinsurance activities undertaken by foreign reinsurance companies and not only their reinsurance activities in Mexico. The reason for this provision is to prevent the proliferation of captive reinsurance companies.

Insurance companies authorised in Mexico are allowed to carry out reinsurance operations in the same lines of business for which they have a licence to take insurance. However, a licence to operate exclusively reinsurance business can also be obtained. There are currently only two Mexican insurance companies authorised to exclusively operate reinsurance: Reaseguradora Patria and Der Neue Horizont Re.

The registration of foreign reinsurance companies with the Reinsurance Registry is governed by the LISF and the Circular. To register with the Reinsurance Registry, foreign reinsurance companies must file an application with the CNSF in the terms set out in

3 Article 106, LISF.

Article 107 of the LISF and Chapter 34.1 of the Circular. The CNSF may grant or deny this registration on a discretionary basis. The registration of foreign reinsurance companies is valid until 31 December of the year of registration and must be renewed every year.

v Regulation of individuals employed by insurers

Title 3, Chapter 1, Section II of the LISF and Chapter 3.7 of the Circular provide basic requirements of experience, expertise and knowledge in finance, law, administration or insurance for the eligibility of directors, officers and statutory examiners within an insurance company, and they state which individuals are proscribed from appointment to these roles. Insurance companies must give notice to the CNSF of any such appointment and provide sufficient evidence to the CNSF that the individual complies with the requirements under the LISF to serve in the relevant capacity. The insurance company must maintain a file for each individual with supporting documentation and evidence of the individual's qualifications and representations and must confirm to the CNSF annually that its directors and officers comply with the requirements to serve in their respective positions as set out in the LISF and the Circular.

vi The distribution of products

Pursuant to the LISF and Chapter 4 of the Circular, standard-form contracts, collective and group contracts and surety insurance must be registered with the CNSF.

Insurance products' registration must comply with the following documentation requirements (contractual documentation):

- a* general conditions and model contracts, containing the general and particular conditions under which the insurance product will be commercialised;
- b* a technical note, containing the technical and financial hypothesis for the calculation of the premium and the ongoing risk reserve;
- c* a legal opinion, certifying that the insurance product complies with all applicable legal provisions; and
- d* a 'congruency opinion' that certifies that both the technical note and the legal opinion are consistent.

Insurance companies may use, sell and distribute insurance products immediately upon their registration. The CNSF may at any time suspend the registration of an insurance product if, in its opinion, the insurance product does not comply with applicable laws and regulations.

The LISF requires that standard-form insurance contracts are filed with the National Commission for the Defence and Protection of Financial Services Consumers (Condusef), for their registration with the Standard-Form Contracts Registry.

vii Compulsory insurance

The main difference between compulsory insurance and other insurance products, other than the fact that the former is required by law, is that compulsory insurance contracts must continue in full force and effect until their termination and may not be terminated, even when the corresponding premium is not paid when due or within the cure period set out in the LISF. Compulsory insurance premiums may not be paid in instalments.

Compulsory insurance includes social security (e.g., life, health and disability), which is mandatory for employers with respect to their employees; professional liability insurance to practise certain professions; and automobile insurance to circulate on roads and highways under federal jurisdiction and in some Mexican states.

viii Taxation of premiums

Insurance companies are subject to income tax and value added tax. Income tax is levied at 30 per cent on insurance companies' accrued income less authorised deductions. The Income Tax Law provides special rules for deductions applicable to insurance companies.

Value added tax is levied at 16 per cent on all insurance services paid for by customers, except for agricultural insurance, mortgage and financial guarantee insurance and life insurance.

Mexican reinsurance companies receive the same tax treatment as insurance companies. Income tax is applicable to foreign reinsurance companies when they receive premiums from a Mexican resident or from a foreign resident with a permanent establishment in Mexico. The income tax is calculated by applying a 2 per cent withholding rate on the gross amount paid to reinsurers with no deductions.

The person paying the premium to the reinsurers must withhold and pay the income tax at the applicable rate. Depending on the jurisdiction in which the reinsurance company is incorporated, there might be a double taxation treaty that applies to the payment of premiums to foreign reinsurance companies and that supersedes the general provisions referred to herein.

Insurance and reinsurance brokers are subject to the same taxes and to the same rates as insurance companies but are not subject to special deductions applicable to insurance companies.

ix Other notable regulated aspects of the industry

Insurance companies must maintain a minimum paid-in capital stock. That minimum paid-in capital stock is regulated in Chapter 6 of the Circular.

The following are the (approximate) minimum paid-in capital requirements for each line of business applicable for 2023, until new capital requirements are issued by the CNSE, which should be before June 2023:

- a* life: 52.13 million Mexican pesos;
- b* pensions: 214.1 million Mexican pesos;
- c* accidents and health:
 - personal accident or medical expenses: 13.03 million Mexican pesos; and
 - health, including personal accident or medical expenses: 13.03 million Mexican pesos; and
- d* property and casualty:
 - one line: 39.097 million Mexican pesos;
 - two lines: 52.13 million Mexican pesos;
 - three or more lines: 65.2 million Mexican pesos;
 - mortgage insurance: 93.3 million Mexican pesos; and
 - financial guarantee insurance: 253.87 million Mexican pesos.

Insurance companies authorised exclusively for reinsurance operations are required to maintain 50 per cent of the applicable minimum paid-in amount, as listed above.

III INSURANCE AND REINSURANCE LAW

i Sources of law

Mexican insurance and reinsurance companies are governed by the LISF. The LISF was published in the Official Gazette of the Federation (DOF) on 4 April 2013 and entered into effect on 5 April 2015, repealing the General Insurance and Mutual Companies Law, which had been in effect since 1935.

The Insurance Contract Law (LCS), enacted by Decrees dated 29 December 1934 and 1 January 1935, also published in the DOF on 31 August 1935, is applicable to all insurance contracts subject to Mexican law, except for maritime insurance, which is governed by the Navigation and Maritime Commerce Law published in the DOF on 1 June 2006.

Reinsurance contracts are governed by the applicable law expressly agreed by the parties in the contract. Generally, the parties agree on Mexican law as the law governing the reinsurance contract.

ii Making the contract

Article 1 of the LCS defines insurance contracts as agreements in which an insurance company agrees to indemnify or pay for damage, or to pay an amount of money on the occurrence of a risk covered under the terms of the contract, in exchange for the payment of a premium.

The reinsurance contract is not a regulated contract, which generates many disputes in practice. A reinsurance contract is defined in Article 2, Section XXV of the LISF as a contract in which an insurance company assumes, totally or partially, a risk that is covered by another insurance company or the liability exceeding the amount insured by the direct insurer.

Article 25 of the LISF provides a general classification of insurance contracts as follows:

- a* life;
- b* accidents and health, including:
 - personal accidents;
 - medical expenses; and
 - health; and
- c* property and casualty, including:
 - civil liability and professional;
 - maritime and transportation;
 - fire;
 - agriculture and livestock;
 - automobiles (motor insurance);
 - credit insurance;
 - surety insurance;
 - mortgage insurance;
 - financial guarantee insurance;
 - earthquake and other catastrophic risk;
 - miscellaneous; and
 - risks declared by the SHCP as specialty risks.

Essential elements of an insurance contract

Under the LCS, insurance policies must contain:

- a* the name and address of the contracting parties and the signature of the insurance company;
- b* a description of the insured asset or person;
- c* a description of the risks insured;
- d* the effective date of coverage and its duration;
- e* the amount insured;
- f* the insurance fees or premium; and
- g* any other clauses required by law or agreed by the parties.

It is common to find the following clauses in insurance policies:

- a* coverage limits and exclusions;
- b* form and terms under which the premium must be paid;
- c* the insured's right to be informed about commissions paid to intermediaries;
- d* the insured's right to revise the policy if its terms differ from the agreed terms;
- e* competence of Condusef and choice of jurisdiction clause; and
- f* special clauses required for specific lines of business.

Utmost good faith, disclosure and representations

The duty of utmost good faith is an implied principle applicable to all insurance contracts. This duty demands diligent and honest conduct from both parties, including the duty of the insured to disclose to the insurer any fact that may help the underwriter to evaluate the risks and determine the premium.

iii Interpreting the contract

General rules of interpretation

To the extent that the terms and conditions of the agreement are clear and there is no question about the intent of the parties, the insurance policy must be interpreted in accordance with its terms:

- a* if the terms of the insurance policy seem contrary to the evident intent of the parties, the intent of the parties shall prevail over the terms of the insurance policy;
- b* if the insurance policy is generic in its terms, its interpretation must be limited to the purposes of the insurance policy;
- c* if the insurance policy permits various interpretations, it must be interpreted in the most convenient manner for the insurance policy to be effective;
- d* the terms and conditions of an insurance policy, including those terms that are not clear, must be interpreted in a manner that is consistent with the interpretation of the insurance policy as a whole;
- e* the terms of an insurance policy that may have different meanings must be interpreted in a manner consistent with the nature and purposes of the insurance policy;
- f* ambiguities of the insurance policy may be interpreted taking into consideration the customs of the country; and

- g if it is impossible to construe the insurance policy using the rules set out above, the insurance policy must be construed in favour of the interpretation that provides reciprocity of interests between the parties.

Incorporation of terms

Compliance with the LCS is mandatory, therefore any agreement contrary to the LCS is null and void, unless otherwise permitted under the LCS. Taking this into account, it is implied that insurance contracts are subject to the provisions of the LCS.

Reinsurance contracts are not subject to the LCS and must be construed based on the general provisions of Mexican commercial law.

iv Intermediaries and the role of the broker

Conduct rules

Pursuant to Article 106 of the LISF, only reinsurance intermediaries are authorised to provide reinsurance intermediation services. Authorisation from the CNSF is required to incorporate and operate a reinsurance intermediary. To obtain this authorisation, an application must be filed with the CNSF. The Intermediaries Rules set out the requirements and information that the application for authorisation must contain. A reinsurance intermediary must be incorporated as a limited liability company with a residence in Mexico.

Agencies and contracting

As a general rule, intermediation of insurance products may only be carried out by insurance brokers certified and licensed by the CNSF. Insurance companies may only pay commission arising from the sale of insurance policies to insurance brokers.

How brokers operate in practice

To carry out brokerage services in Mexico, insurance brokers must be authorised by the CNSF. To this end, an application must be filed with the CNSF. The requirements and information that the application must contain are set out in the Brokers Regulation, as well as in Chapter 32 of the Circular. The application and documentation for the authorisation must be submitted through the Appointments and Individual's Registration System, which is an electronic tool used to speed up the procedures before the Commission.

The authorisation may be granted to individuals acting as employees of an insurance company or independent individuals operating with a service agreement with an insurance company; and to limited liability companies incorporated under Mexican law.

The authorisation to act as an insurance broker is granted for three years for individuals (renewable at the request of the insurance broker) and, in the case of legal entities, the CNSF can grant the authorisation for an indefinite period.

Article 12 of the Brokers Regulation lists entities and individuals that cannot participate, directly or indirectly, in the capital stock of an insurance broker legal entity; these include Mexican insurance companies and financial entities subject to approval by the corresponding Mexican authority; foreign governments or authorities; and foreign financial entities.

v Claims

A claim is triggered on the occurrence of a peril covered by the policy. Insurable interest is required to make a valid claim and demand payment under a policy.

The statute of limitations of claims is two years after the date of the occurrence of the loss, except for life insurance, where it is five years.⁴ The statute of limitations can be interrupted for the following reasons:

- a* on appointment of experts as a result of a loss;
- b* if a claim is filed with the specialised unit of the corresponding insurance company or Condusef;
- c* by initiating an action or proceeding before competent courts, on service of process to the insurance company; or
- d* by the express acknowledgment of the rights of the insured or its beneficiaries by the insurance company.

Good faith and claims

The LCS establishes the obligation of the insured (1) to give timely notice of the occurrence of the casualty; (2) regarding property and casualty insurance, to prevent or reduce the damage; and (3) not to modify the status of the assets. If, when acting in good faith, the insured omits to give timely notice of the occurrence of the casualty or to carry out reasonable actions to prevent or reduce the damage, or modifies the status of the insured asset, the insurance company may reduce the indemnity in proportion to the damage that could have been mitigated or avoided by the insured. If the insured were to act fraudulently, the insurance company would be released from its obligations under the policy.

The consequences of bad faith may:

- a* trigger the right to terminate the insurance contract;
- b* allow the parties to recover premiums paid or request payment of damages and loss of profit; and
- c* release the parties from their obligations under the insurance contract.

Set-off and funding

The parties can set off mutual debts and credit as long as both are due and payable.

Reinstatement

The LCS does not regulate reinstatement, but it may be included in the insurance contract. It is a common practice in the market to reinstate coverage when the insured pays the outstanding premiums, provided the risk has not changed. However, Mexican courts have recently resolved and set a mandatory precedent to lower courts that insurance contracts are automatically terminated when payment of the insurance premium is made outside the grace period, even if the payment is accepted by the insurer (as further explained in Section VI.ii). This judicial decision will require insurance companies to adjust their policies and ensure that the reinstatement clauses they use comply with Mexican law; otherwise, they may be considered invalid.

If any risk takes place prior to reinstatement of the insurance contract, the insured is not entitled to obtain any compensation, as he or she was not covered by the insurance.

⁴ Article 81, LCS.

Dispute resolution clauses

Clauses regarding choice of forum, jurisdiction and applicable law are valid and enforceable in Mexico in insurance and reinsurance contracts. Furthermore, the parties in insurance and reinsurance contracts can convene to solve potential disputes through an arbitration. Mexico is a contracting state of the Hague Convention on Choice of Court Agreements (2005) and of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention 1958).

IV DISPUTE RESOLUTION

i Jurisdiction, choice of law and arbitration clauses

The parties in a reinsurance contract are free to agree the terms and conditions of the contract as long as they do not breach any mandatory legal provision or go against public policy. Arbitration clauses are enforceable in insurance and reinsurance agreements. The terms and conditions of an insurance contract are subject to and shall comply with the LCS, which is mandatory. As a general rule, agreements contravening the LCS shall be null and void.

ii Litigation

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: filing of the claim by the plaintiff and response from the defendant; submission and presentation of evidence of any kind; pleadings; and award.

The parties can appeal any ruling to a higher tribunal, unless the aggregate amount is less than 816,439.97 Mexican pesos.

Each party pays its own litigation costs and the losing party may be required to indemnify the winning party, including for attorneys' fees, subject to certain established thresholds and the decision of the court.

On 26 January 2020, the thresholds to have access to an oral commercial litigations process were lifted; therefore, all commercial litigations may now be subject to the oral process implemented in the reform of 2011 to the Commercial Code. In our experience, the foregoing has resulted in expeditious proceedings and a significant reduction in the time required to resolve judicial claims, and also in an increase of settlements reached by insurance companies with their insureds.

iii Arbitration

The insured and the insured's beneficiaries can file claims with the insurance company, Condusef and the Mexican courts.

Claims filed with Condusef or before a competent court interrupt the statute of limitations.

Condusef can act as a mediator in disputes resulting from an insurance contract if the amount in dispute is less than 6 million Mexican investment units (approximately 45.8 million Mexican pesos). Condusef can also act as an arbitrator if the dispute is not solved in a mediation process; however, the parties can choose a third party as an arbitrator.

The foregoing does not affect the right of the parties to bring a legal action before Mexican courts.

Mexico is a contracting state of the New York Convention. Agreements to submit disputes arising from reinsurance policies to arbitration are valid, and the resulting arbitral awards can be enforced by Mexican courts.

The Mexican chapter of the International Insurance Law Association, the Mexican Insurance and Bonding Law Association (AMEDESEF), together with the Arbitration Centre of Mexico (CAM), created the Mexican chapter of the Insurance and Reinsurance Arbitration Society (ARIAS Mexico). ARIAS Mexico, managed by the CAM with the technical assistance of AMEDESEF, promotes arbitration to resolve insurance and reinsurance disputes.

Reinsurance claims can be resolved in judicial proceedings through arbitration or through other alternative dispute resolution mechanisms, such as mediation and conciliation.

iv Alternative dispute resolution

Although Article 17 of the Mexican Constitution refers to means of alternative dispute resolution, there is no federal legislation regarding alternative dispute resolution processes. However, several Mexican states have enacted specific laws on this matter.

The most popular alternative dispute resolution procedures are arbitration and mediation (see Sections IV.iii and IV.v).

v Mediation

There is an important increase in mediation as an alternative mechanism for settling international reinsurance disputes and claims involving Mexican cedents and the London market. Mediation has proven to be an efficient alternative.

V YEAR IN REVIEW

i The insurance sector

In the last quarter of 2022, pursuant to data presented by the CNSF, the Mexican insurance market declined 2.6 per cent, due to a 3 per cent contraction, amounting to a direct premium of 673 billion Mexican pesos. For reference, the direct premium of 2021 was 673 billion Mexican pesos.

Due to the pandemic, life and health insurance markets grew in 2021 despite an increase in the cost of premiums partly because of the inflation in private healthcare services. Nonetheless, life insurance showed a decrease of 3.7 per cent, and the proportion of the Mexican population insured is still very small; according to AMIS' figures, only around 15 per cent of Mexicans in a formal job have a life insurance.

The automobile insurance market was one of the lines of business affected by the pandemic in 2021, however, by the end of 2022 it showed an increase in premium of 3.4 per cent.

According to the CNSF, as of May 2023 the Mexican insurance sector comprises 101 insurance companies licensed to operate in Mexico (of which 56 are subsidiaries of foreign insurance companies) and 241 foreign reinsurance companies registered with the Reinsurance Registry, including Lloyd's of London. Nine atomic pools (nuclear insurance pools) were also registered with the Reinsurance Registry to take reinsurance in Mexico. Direct premiums in the insurance and surety sectors decreased by 2.6 per cent by the end of the last quarter of 2022. Of the total amount of premiums by the end of December 2022, 97 per cent came from direct insurance and only 3 per cent came from reinsurance.

The penetration of insurance with respect to Mexico's gross domestic product is 2.3 per cent. In 2020, AMIS and the CNSF announced that they will work together on a strategy to increase penetration to 2.8 per cent by 2022, but no further information has been released on the progress of this strategy.

In the context of the 30th annual convention of AMIS, the CNSF, the SHCP and AMIS entered into a memorandum of understanding with the purpose of promoting gender equality, diversity and inclusion in the insurance sector.

For the fourth consecutive time, Mapfre won the public tender to placement of the two-year property and casualty (P&C) policy for Pemex, which represents a total premium of US\$563 million.

ii Lloyd's

Probitas 1492 (syndicate 1492), Newline Group (syndicate 1218) and Liberty Mutual Re (syndicate 4472) Specialty Services are the only three Lloyd's syndicates with physical presence in Mexico. The lack of appetite of Lloyd's for Latin-American risk continues shifting to other regions and products and in its strategy. It is still unclear how this will affect the business flow and capacity that was traditionally provided to the Mexican market by Lloyd's.

Two Mexican groups, Grupo Nacional Provincial and Reaseguradora Patria currently have investments in Lloyd's.

iii Regulators

The CNSF has been operating efficiently due to the tools and procedures that were implemented as a result of the pandemic that are now fully in place, and the market has become accustomed to them.

Ricardo Ernesto Ochoa Rodríguez continues to serve as president of the CNSF.

The temporary scheme established on 3 August 2020 by the CNSF regarding the procedure for the calculation of terms based on the level of contingency of the covid-19 pandemic (determined by the federal government) is still in place.

Carlos Noriega, who served as head of the Insurance, Pensions and Social Security Unit in the Ministry of Finance since March 2020, resigned from the position on 1 January 2021, being replaced by José Alfredo Tijerina and subsequently by Héctor Santana Suárez, who currently holds the position.

VI OUTLOOK AND CONCLUSIONS

i Regulatory

Despite the low penetration of insurance, no relevant actions have been implemented to this end by the regulators or the market.

With regard to catastrophic risk, the General Law for Comprehensive Disaster Risk Management and Civil Protection, expected to be approved in 2021, has not yet been approved by the Senate. Currently, the federal government has a catastrophic insurance for up to 5 billion Mexican pesos with a franchise of 275 million Mexican pesos. It also has a CAT-Bond for US\$485 million for earthquakes and hurricanes valid until March 2024. However, these instruments are not sufficient to cover the funds of the natural disaster fund FONDEN. After the cancellation of the natural disaster fund FONDEN back in September 2020, the lack of sufficient resources and a reliable mechanism to cover catastrophic risks should be a matter of concern.

There has been an increase in demand for political risk coverage, given the growing perception of the potential for damage to investors and companies as a result of political decisions by the current government, mainly in the infrastructure, energy and mining sectors.

While the regulators are aware of insurtech's potential to provide access to the benefits of insurance products for vulnerable groups, the present regulatory regime has unfortunately become a hurdle rather than an incentive for the development of products and projects in this area. Coping with compliance and regulatory challenges, including a strict anti-money laundering (AML) regime, data protection and privacy regulations, makes it difficult for start-ups to flourish in this highly regulated industry. Notwithstanding this, new risks continue to require innovative products, presenting new challenges to the regulators. Although the country's industry is solid and well-capitalised, it nonetheless continues to disappoint in terms of penetration, inclusion and innovation.

We have seen a growth in funds' appetite for working with insurance companies and benefiting from them as institutional investors. The insurance industry has not fully embraced its potential as a key institutional investor, with the exception of a few insurance companies actively investing in private equity, venture capital and other securities, such as development trusts and real estate trusts. There is interest in seeing regulators enhance and provide incentives to insurance companies and we still expect to see changes in insurance companies' investment programmes, in line with the current government's interest in financing long-term infrastructure projects.

ii Case law

We continue to see a growth in insurance and reinsurance-related disputes and related litigation, resulting in the development of court precedents on insurance and reinsurance related matters. The courts are very active in developing the concept of moral damages (similar to that of punitive damages); the concept now forms part of most claims, with important consequences for the insurance industry.

The *contra proferentem* principle in insurance continues to be applied, affecting insurance claims that are being argued before the courts.

The Mexican Supreme Court (SCJN) ruled in favour of the possibility to claim on constitutional grounds through an *amparo* lawsuit if an insurance company refuses to give coverage on medical expenses to people with Down's syndrome or other disabilities based on that disability. This was a relevant precedent to protect human rights.

On 17 February 2021, the First Chamber of the SCJN issued a judicial precedent pursuant to which it determined that if a premium is not paid within the grace period of 30 days from the perfection of the contract or as agreed by the parties, the insurance contract terminates automatically, even if the insurer received the premium.

The rationale of 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. Additionally, according to the LCS, 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 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 the same shall be agreed with the insurer to formalise a new insurance contract.

Moreover, the SCJN issued a second precedent stating 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 instalment (in the case where it is paid in instalments) within the grace period of 30 calendar days, the effects of the insurance contract will cease automatically at the end of the last day of such term.

iii Reinsurance claims

As previously identified, one of the main sources of disputes in reinsurance stems from fronting arrangements widely used in Mexico in the context of a legal framework where the insurance company maintains its liability to the insured despite the fact that, technically, it is simply fronting the risk. This particular state of affairs – where reinsurers’ lack of understanding of Mexican law and the lack of diligence in policy underwriting to ensure wording considers the effects of Mexican law with regard to English wording of reinsurance placements used in fronting arrangements – has consistently raised discrepancies between insurance and reinsurance policies and Mexican law, and is the origin of a number of disputes between the London and Mexican markets.

These inconsistencies are further exacerbated by abusive practices in the handling of claims by the reinsurance market, prejudicing the insurance companies that placed the business through fronting arrangements.

We have seen some interesting developments in the Mexican AML regime aligned with international standards and these may contribute to harmonising local placements with limitations of liability under international reinsurance programmes.

There is opportunity in Mexico to use effectively and promote alternative dispute resolution mechanisms specialised for insurance and reinsurance claims, including mediation and arbitration and the use of ARIAS Mexico. The inclusion of arbitration clauses in insurance and reinsurance agreements provides for the resolution of conflicts arising in reinsurance contracts through arbitration and also serves to prevent certain situations arising in global insurance programmes. However, the reinsurance market is still generally reluctant to include mediation and arbitration clauses in reinsurance policies.

In November 2019, the Principles of Reinsurance Contract Law (PRICL) were published by the Project Group (a joint venture set up by several universities and professors, primary insurance company representatives, reinsurance companies and reinsurance brokers and special advisers) in cooperation with the International Institute for the Unification of Private Law (known as UNIDROIT). The PRICL set specific reinsurance rules applicable to contract law, with a view to providing help in areas where reinsurance practitioners felt the need to improve legal certainty. The PRICL have been drafted as soft law, which means they will work as optional guidelines on reinsurance contract law when chosen by the parties, and for these principles to have binding effect, the contracting parties should choose to adopt them voluntarily. However, there is also the possibility that the PRICL 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 covid-19 pandemic has also raised conflicting views regarding life reinsurance coverage, with arbitration proceedings under way to resolve disputes between Mexican cedents and foreign reinsurers in relation to coverage during the pandemic.

Disputes between cedents and reinsurers regarding reinsurance coverage of losses caused by the pandemic are still continuing, mainly concerning life insurance. Most of such cases are subject to arbitration, therefore the awards will be confidential.

iv Distribution

There have been no changes and the distribution channels in Mexico continue to be strictly regulated and extremely limited, resulting in a lack of penetration of insurance within small and medium-sized companies, which contributed around 52 per cent of the national gross domestic product during 2019.

Bancassurance is one of the most important areas of growth within the industry. With very few exceptions, most banking groups operating in Mexico have transferred their insurance business and operations to insurance groups and entered into exclusive distribution arrangements.

Although there has been an increase in distribution through online platforms, the traditional distribution through brokers covers 59 per cent of the premiums.

v Consolidation

We have seen an active insurance market with various M&A transactions and joint ventures. We expect to see further consolidation or growth, or a combination of these, among the current market participants in Mexico in both insurance companies and intermediaries. In particular, we expect health insurance to be a key driver of growth in the insurance industry in the years to come.

We have also seen a number of joint ventures between the main insurers and insurtech start-ups and technology companies for boosting their capability to provide new digital client-focused products.

vi Product development

The interest in parametric insurance products for catastrophic risks keeps growing, and there is extensive activity regarding developing and placing parametric insurance products in the insurance and reinsurance market in Mexico. We also expect to see an increase in the distribution of parametric insurance products for individuals.

The healthcare insurance business has been one of the main areas to see a growth trend in the past year, with new participants entering the market and the introduction of innovative products. The fact that Mexico has a vast population without medical insurance and which is unable or unwilling to purchase traditional healthcare insurance means the country is an attractive prospect for investors and for launching new products. New products in the area of telemedicine and those with a preventive approach have been successfully placed in the market, and we see continuing interest from various participants in growing their stake in the healthcare insurance business.

Cyber insurance continues growing as the risk of hacking and the concern of companies for data protection increases.

Since January 2019 all vehicles circulating in federal roads and motorways must have a liability insurance; however, the federal government has not been able to enforce compulsory motor insurance. According to the financial products ombudsman CONDUSEF, seven out of 10 drivers are not insured.

There has been an increase in the premiums for providing professional liability coverage that does not reflect conditions in the Mexican market. This adjustment is, in fact, a result of international market conditions, and it is evident from this that there is a lack of good underwriting practices for products of this kind being placed in Mexico.

In 2021, Mexico was the second largest target for fintech investments in Latin America as insurtech start-ups keep penetrating the market. According to Asociación Insurtech México (AIM), in 2021 there were 43 insurtech companies already operating in Mexico. Most of the insurtech business is in life and health, and auto and mobility lines, and around half of them are focused on marketing and distribution according to the Radar InsurTech Report 2021.