
THE
INSURANCE AND
REINSURANCE
LAW REVIEW

FOURTH EDITION

EDITOR
PETER ROGAN

LAW BUSINESS RESEARCH

THE INSURANCE AND REINSURANCE LAW REVIEW

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THE
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LAW REVIEW

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EDITOR'S PREFACE

It is hard to overstate the importance of insurance in personal and commercial life. It is the key means by which individuals and businesses are able to reduce the financial impact of a risk occurring. Reinsurance is equally significant; it protects insurers against very large claims and helps to obtain an international spread of risk. Insurance and reinsurance play an important role in the world economy. It is an increasingly global industry, with the emerging markets of Brazil, Russia, India and China developing apace.

Given the expanding reach of the industry, there is a need for a source of reference that analyses recent developments in the key jurisdictions on a comparative basis. This volume, to which leading insurance and reinsurance practitioners around the world have made valuable contributions, seeks to fulfil that need. I would like to thank all of the contributors for their work in compiling this volume.

Looking back on the past year, market estimates suggest that the insured losses flowing from the explosion at the Port of Tianjin in China may well exceed US\$3 billion. The losses will arise on a wide variety of policies ranging from cargo, property and ports and terminals insurance through to product liability and business interruption. Those policies will be subject to a range of governing laws. It is likely that there will be complex issues to consider in relation to each of these types of coverage, both at the direct insurance and reinsurance levels. The US winter storm of January 2016 is predicted to be a multi-billion dollar loss event. In the UK, December 2015 was the wettest on record. Denial of access to homes and businesses was significant, and the insurance market is braced for the ensuing losses.

Events such as these test not only insurers and reinsurers but also the rigour of the law. Insurance and reinsurance disputes provide a never-ending array of complex legal issues and new points for the courts and arbitral tribunals to consider. I hope that you find this fourth edition of *The Insurance and Reinsurance Law Review* of use in seeking to understand them and I would like once again to thank all the contributors.

Peter Rogan

Ince & Co

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April 2016

Chapter 22

MEXICO

*Yves Hayaux-du-Tilly*¹

I INTRODUCTION

The new Insurance and Surety Companies Law (LISF), published on 4 April 2013, became effective on 5 April 2015. The quantitative elements of Solvency II, such as those related to the calculation of solvency capital and the implementation of the provisions related to balancing the economy, became effective as of 1 January 2016. The additional period extended to the industry to implement the quantitative elements of Solvency II allowed the market to assimilate the new LISF and its regulations and resolve various issues related to the new regime in time for the full implementation of the Solvency II standards. There are still concerns and uncertainty over the implementation of the quantitative aspects of Solvency II, and we have seen an important increase in regulatory enquiries from clients concerning the manner in which the new LISF and its regulations must be construed and applied, and on the negative and unforeseen effects entailed by the new LISF and its regulations, and ways to address these. As with any new law and regulation, ongoing consultations and discussions with the regulators are raising and resolving issues on a case-by-case basis. This chapter reflects the new legal framework under the LISF and its regulations, which became effective on 5 April 2015.

The National Insurance and Bonding Commission (CNSF) has been overwhelmed by the work involved in the entry into effect of the LISF and its regulations; there are added challenges arising from budget cuts to the federal administration, coupled with the CNSF not having sufficient resources to cope with its new responsibilities under the LISF. This is creating delays in the time the CNSF takes to resolve ongoing issues.

¹ Yves Hayaux-du-Tilly is a partner at Nader, Hayaux & Goebel. The author is grateful to Juan Pablo Sainz of Nader, Hayaux & Goebel's insurance and reinsurance practice for his assistance in preparing this chapter.

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 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, and to register reinsurance companies with the General Foreign Reinsurance Registry for taking Reinsurance and Rebonding in the Country (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, 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).

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 transaction shall be null and void. Furthermore, such 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 in (1) and (2).

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. There is a licence to act as an individual agent and another for entities to act as insurance brokers. To obtain the licence to act as an agent or broker, the individual or entity concerned must submit an application with the CNSF, which must comply with the requirements set out in the Regulation of Insurance and Surety Brokers (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 (Article 106, LISF). 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 (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 Chapter 9, 32 and 35 of the Circular.

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.

iv Requirements for authorisation

Pursuant to the LISF, to incorporate and operate an insurance company in Mexico, an authorisation 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 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. New provisions have been incorporated to the Circular preventing foreign reinsurance companies from taking 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 of exclusive operations referred to in this provision relate 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 incorporated and authorised to operate in Mexico may carry out reinsurance operations in the same lines of business for which they are licensed without the need for further authorisation.

Insurance companies may be authorised to operate exclusively in the reinsurance line of business. There are currently only three Mexican insurance companies authorised to exclusively operate reinsurance: Reaseguradora Patria, Istmo Re Mexico 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 forth in 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 on which the registration is given 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 also prescribe which individuals may not be appointed as such. Insurance companies must give notice to the CNSF on any such appointment and provide sufficient evidence to the CNSF that he or she 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 their qualifications and representations and annually confirm to the CNSF that its directors and officers comply with the requirements set forth in the LISF and the Circular to serve in their respective positions.

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 (contractual documentation): (1) general conditions and model contracts, containing the general and particular conditions under which the insurance product will be commercialised; (2) a technical note, containing the technical and financial hypothesis for the calculation of the premium and the ongoing risk reserve; (3) a legal opinion, certifying that the insurance product complies with all applicable legal provisions; and (4) 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

Under Mexican law the main difference between compulsory insurance and other insurance products, other than the fact of the insurance coverage being required by law, is that compulsory insurance contracts shall 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 forth under the LISF. Compulsory insurance premiums may not be paid in instalments.

Compulsory insurance in Mexico includes, among others, 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.

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 guaranty insurance, and life insurance.

Mexican reinsurance companies receive the same tax treatment as insurance companies. Foreign reinsurance companies are subject to income tax in Mexico when the premiums are paid by a Mexican resident or a foreign resident with a permanent establishment in Mexico. The income tax is calculated by applying a withholding rate of 2 per cent on the gross amount paid to reinsurers without any 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 brokers and reinsurance intermediaries are subject to the same taxes and rates as insurance companies. Insurance brokers and reinsurance intermediaries are not subject to a special tax regime or to the special deductions outlined for insurance companies in the Income Tax Law.

ix Other notable regulated aspects of the industry

Pursuant to Mexican law, 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 minimum paid-in capital requirements applicable for 2016, expressed in Mexican pesos, for each line of business (approximate numbers):

- a* life: 36.68 million pesos;
- b* pensions: 150.67 million pesos;
- c* accidents and health:
 - personal accident or medical expenses: 9.17 million pesos; and
 - health, including personal accident or medical expenses: 9.17 million pesos;
- d* 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
- e* re-bonding:
 - one line (in one or more of the sublines): 19.66 million pesos;
 - two lines (in one or more of the sublines): 26.22 million pesos; and
 - three or more lines (in one or more of the sublines): 32.78 million pesos.

Insurance companies authorised to operate exclusively in the reinsurance line of business are required to maintain only 50 per cent of the relevant minimum paid-in requirement set forth 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.

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 to subject reinsurance contracts to Mexican law.

ii Making the contract

Article 1 of the LCS defines insurance contracts as agreements in which an insurance company agrees to provide indemnification for damages 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.

Article 2, Section XXV of the LISF defines reinsurance as the contracts in which terms an insurance company assumes totally or partially a risk that is covered by another insurance company, or the excess liability above the amount insured by the direct insurer.

The reinsurance contract is not a regulated contract. This generates many disputes in practice. The reinsurance contract is defined in Article 2, Section XXVI of the LISF, as the 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 27 of the LISF provides a general classification of insurance contracts as follows:

- a* Life operations. These are insurance contracts that cover risks affecting the insured's existence.
- b* Accidents and health operations. These consist of:
 - personal accidents – insurance contracts that cover injuries or disabilities affecting the insured's personal integrity or health;
 - medical expenses – insurance contracts that cover medical, hospital and other expenses considered necessary for the recovery of the insured's health; and
 - health – insurance contracts that cover services to prevent and restore the insured's health.
- c* Property and casualty operations. These consist of:
 - 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;
 - maritime and transportation – insurance contracts that cover indemnity payments for damages and losses suffered on cargo, vessels and other maritime assets;
 - fire – insurance contracts that cover damages and losses caused by fire, explosion, fulmination or related accidents;
 - agriculture and animal – insurance contracts that cover damage and losses suffered by the insured because of the partial or total loss of expected profits from land or by death, loss or damages of animals;
 - automobiles (motor insurance) – insurance contracts that cover damages and losses caused as a consequence of the use of automobiles;
 - credit insurance – insurance contracts that cover the insured's losses suffered by total or partial insolvency of commercial loan debtors;
 - surety insurance – insurance contracts that cover the risk of breach of contractual obligations by the insured, excluding obligations related to contracts of financial nature. Any payment made by the insurer will be reimbursed by the insured, therefore the insurance company may require any recovery guaranty deemed necessary;
 - mortgage insurance – insurance contracts that cover damages caused by breach of a mortgage loan debtor;
 - financial guarantee insurance – insurance contracts that cover damages caused by breach of issuers of securities;

- 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; and
- 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.

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.

The most common clauses in insurance policies are the following:

- a* limitations and exclusions of coverage;
- b* form and terms of payment of the premium;
- c* the insured's right to request revisions to the insurance policy if the content of the policy differs from the agreed terms;
- d* the insured's right to receive information on commissions paid by the insurance company to intermediaries;
- e* submission of the parties to the competence of Condusef and choice of jurisdiction; and
- f* the special clauses required by regulations for specific lines of business.

Utmost good faith, disclosure and representations

The duty of utmost good faith is implied in each insurance policy entered into in Mexico. This duty has been construed to require diligent conduct, including the prospective insured's duty to inform and disclose any fact to the insurer that will help it to evaluate the insured's risks and to determine the premium.

iii Interpreting the contract

General rules of interpretation

To the extent the terms and conditions of the agreement are clear and there is no question as to what the intent of the parties was, 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

The provisions contained in the LCS are mandatory. Therefore, unless otherwise permitted under the LCS, any agreement contrary to the LCS is null and void. In this regard, it is generally implied that the provisions of the LCS apply to insurance contracts.

iv Intermediaries and the role of the broker

Conduct rules

Reinsurance intermediaries are the only entities authorised to provide reinsurance intermediation services (Article 106, LISF). To incorporate and operate a reinsurance intermediary, the prior authorisation of the CNSF is required. For these purposes, an application must be filed with the CNSF. The application must comply with the requirements set forth in the Intermediaries Rules. The reinsurance intermediary must be incorporated as a limited liability stock company and establish its corporate domicile in Mexican territory.

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

An insurance broker requires the prior authorisation of the CNSF to undertake insurance intermediation services. For this purpose an application must be filed with the CNSF. Provided they comply with the requirements set out in the Regulation of Insurance and Surety Brokers (Brokers Regulation), the authorisation may be granted to the following persons:

- a* individuals with a labour relationship with the insurance company or independent individuals with a mercantile agreement with the insurance company; and
- b* legal entities (insurance broker legal entities), which must be incorporated as limited liability stock companies.

The authorisation granted by the CNSF to act as an insurance broker is valid for three years for individuals, renewable at the request of the insurance broker. The CNSF can grant the authorisation to incorporate and operate an insurance broker legal entity 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 risk covered under the insurance policy. The party that initiates a claim and demands payment under an insurance policy must show an insurable interest in the policy.

The legal right to claim under an insurance contract lapses two years following the date of the occurrence of the insured event, except for life insurance, where the statute of limitations expires in five years (Article 81, LCS). The statute of limitations can be interrupted:

- a* on appointment of experts due to the occurrence of an insured event;
- b* if a claim is filed before the specialised unit of the corresponding insurance company or Condusef;
- c* by the commencement of any action or proceeding before competent courts, on service of process to the insurance company; or
- d* if the insurance company expressly acknowledges the rights of the insured or its beneficiaries.

Good faith and claims

The Insurance Contract Law 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 would either:

- 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; or
- c* release the parties from their obligations under the insurance contract.

Mexican courts do not recognise the concept of punitive damages and, therefore, punitive damages if insured would refer to risk that may occur only in jurisdictions in which courts have authority to impose punitive damages. Notwithstanding the foregoing, Mexican courts may award damages for moral harm.

Set-off and funding

Set-off of mutual debts and credits is a right that may be exercised provided that both debts and credits are due and payable.

Reinstatement

Reinstatement is the act through which an insurance contract regains its validity, once the circumstances that caused the suspension of the contract have ceased.

The LCS does not regulate reinstatement, but it may be included in the insurance contract. Reinstatement generally operates when the insured pays the outstanding premiums, provided the risk has not changed.

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

Dispute resolution clauses

Arbitration clauses are enforceable in insurance and reinsurance agreements. Additionally, choice of forum, venue and applicable law clauses in reinsurance contracts are recognised and enforceable in Mexico. 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 (also known as the New York Convention, 1958).

IV DISPUTE RESOLUTION

i Jurisdiction, choice of law and arbitration clauses

The parties to a reinsurance contract can freely agree the terms and conditions by which they will be bound. Therefore, reinsurance companies and cedents can agree the right for reinsurance companies to monitor claims, settlements and underwriting activities of the cedent companies, provided the agreement does not breach any mandatory legal provision or public policy. Arbitration clauses are enforceable in insurance and reinsurance agreements. The terms and conditions of a reinsurance contract are subject to and shall comply with the LCS, which is mandatory; any agreement 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: (1) filing of the claim by the plaintiff and response from the defendant; (2) submission and presentation of evidence of any kind; (3) pleadings; and (4) 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.

iii Arbitration

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

Only claims filed with Condusef, the insurance companies' specialised unit, or competent courts interrupt the statute of limitations.

Condusef is authorised to act as a mediator between insurance companies and the insured when the amount in dispute does not exceed 6 million Mexican investment units (approximately 33.5 million pesos). If the parties do not 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.

The parties also have, at all times, the option to bring a legal action before Mexican courts.

Mexico is a party to the New York Convention and agreements to submit disputes arising from reinsurance policies to arbitration and the respective awards are valid and enforceable in Mexico.

The Mexican Insurance and Bonding Law Association (AMEDESEF), in its capacity as the Mexican Chapter of AIDA, established the Mexican Chapter of the Insurance and Reinsurance Arbitration Society (ARIAS Mexico), in a joint venture with CAM, a well-known private institution specialised in the administration of arbitration proceedings. Jointly, they promote arbitration to resolve insurance and reinsurance disputes managed by Camara de Arbitraje Mexicano, with the technical assistance of AMEDESEF.

Reinsurance claims can be resolved in judicial proceedings before competent courts or through arbitration. Other forms of alternative dispute resolution such as mediation and conciliation can also be used.

iv Mediation

There is an important growth 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 Alternative dispute resolution

Even though the National Constitution refers in Article 17 to means of alternative dispute resolution, Mexico does not have a federal regulation regarding alternative dispute resolution processes. Nevertheless, several states of the Federation have enacted specific laws on this matter.

The most popular alternative dispute resolution procedures are arbitration and mediation, which are discussed in Sections IV.iii and IV.iv, *supra*.

V YEAR IN REVIEW

As of September 2015, the Mexican insurance sector was comprised of 104 insurance companies licensed to operate in Mexico, of which 49 are Mexican owned and 55 are foreign owned. There were 327 foreign reinsurance companies registered with the Reinsurance Registry, including Lloyd's of London, and, therefore, licensed to take reinsurance from Mexican insurance companies. Ten Atomic Pools were also registered with the Reinsurance Registry to take reinsurance in Mexico. The degree of concentration in terms of direct premiums decreased from 6.1 per cent in September 2014 to 6 per cent in September 2015.

According to the CNSF, overall annual growth in the Mexican insurance industry was 5.8 per cent in real terms, considering direct premiums adjusted to account for state-owned oil company Pemex's two-year policy renewal. Without adjusting for the Pemex renewal in 2013, real growth in direct premiums was 8.17 per cent, reaching 299 billion pesos. Out of the 8.17 per cent growth, property insurance (motor insurance excluded) was the line of business with the largest annual growth, with 3.6 percentage points, followed by life, which increased by 2.6 per cent; motor insurance grew 1.2 per cent while accident and health grew by only 1.1 per cent, and pensions increased 0.3 percentage points.

The property sector including motor insurance grew 12.9 per cent in real terms and excluding motor insurance premiums grew 19.4 per cent partly because of the increase in other risks such as maritime (25.9 per cent), earthquake (24.5 per cent), miscellaneous (20.4 per cent) and fire (18.5 per cent).

Life operations (excluding pensions) generated the biggest share of direct premiums on an adjusted basis, with 41.1 per cent of the total, followed by motor insurance (18.4 per cent), damages (17 per cent), accident and illness (14.5 per cent), liability (2.3 per cent) and pensions (5.2 per cent).

The insurance industry's combined ratio reached 103.7 per cent per cent in September 2015, down by two percentage points in comparison with the year before. The total net profits at the end of the third quarter of 2015 amounted to 18,275.6 million pesos for a return on equity of 15.2 per cent.

VI OUTLOOK AND CONCLUSIONS

The entry into effect of the new Insurance and Surety Law on 4 April 2015 was the most important change in the industry.

The most relevant changes included in the new LISF are the following: (1) development of reforms to incorporate principles of the EU Directive 2009/138/EC on the taking-up and pursuit of the business of insurance and reinsurance (Solvency II), such as corporate governance, self-regulation and internal controls; (2) creation of a new line of insurance named *seguro de caución*, similar to a surety but under the form of an insurance product; (3) the granting of authority on various regulatory matters to the CNSF; (4) replacement of the statutory examiner with an audit committee; (5) inclusion of the framework for the creation of self-regulatory bodies for the development of the industry; and (6) a new framework for the liquidation and dissolution of insurance and surety companies.

The most important innovation in the LISF is to allow insurance companies to carry out securities operations known as 'securitisations' that will allow them to transfer their insurance portfolio to a vehicle that offers securities to the investor market.

Another real change and innovation established in the LISF is the creation of a new line of business, denominated 'surety insurance', which will offer an alternative to bonds to guarantee legal and contractual obligations.

The new LISF does little to improve penetration of insurance in Mexico; on the contrary, it creates additional burdens and costs to insurance companies. We do not foresee the new LISF improving penetration or growth in the sector.

i Case law

Mexican courts, and in particular the Supreme Court, have continued to attract and resolve insurance-related cases. The insurance market must continue to be alert and adapt to developments by analysing the consequence of any rulings and the construction of laws and regulations, with the corresponding adjustments to the wording of insurance policies. Recent cases awarding compensation for moral damage have also raised concerns from liability insurance companies.

ii Reinsurance claims

The market continues to see disputes arising from the inconsistency of applicable laws and regulations governing reinsurance contracts.

Fronting arrangements are a common practice. The lack of understanding of Mexican law, and failure to review the effect that Mexican law has in relation to the English wording used in some placements through fronting arrangements, raises inconsistencies between the insurance or reinsurance policies and Mexican law. This has negative consequences for the parties when a risk occurs and, because of a need to construe these contracts under Mexican law, there is an incorrect assumption regarding what the policy is supposed to cover or exclude.

There continue to be disagreements over how to regulate the effects of international money laundering regulations in local placements and limitations of liability under reinsurance programmes.

Despite the efforts in developing alternative dispute resolution mechanisms in Mexico specialised in insurance and reinsurance claims, including mediation and arbitration and the creation of ARIAS Mexico, there is not sufficient use of correct arbitration clauses in insurance and reinsurance agreements to resolve disputes in arbitration.

While mediation continues to be an attractive alternative to settle claims and disputes between Mexican cedents and the London Market, wider use among local participants is still lacking.

iii Distribution

The CNSF and the Association of Mexican Insurance Companies have made efforts to expand insurance offers to small and medium-sized companies, which contribute 52 per cent of the national GDP, and also in enforcing automobile insurance and other mandatory insurance products.

These efforts have had limited success and the private sector continues to struggle to innovate and grow in a challenging regulatory environment.

The most important non-traditional distribution channel for insurance products continues to be financial institutions through joint ventures or other schemes with insurance companies. Bancassurance continues to develop and 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.

iv Further consolidation

The lack of penetration, the stagnation of the Mexican economy and the mediocre growth of the Mexican insurance market combined with the entry into effect of the LISF and Solvency II standards and, most importantly, de-risking and the concentration of global operations of international groups in regions that offer better prospects than those currently offered in Latin America and Mexico will contribute to further consolidation of the insurance industry in Mexico. However, most of the growth and innovation that we see in the market comes from companies focused mainly in niche sectors, and in cross-border alliances and collaborative structures securing and bringing capacity from London and other markets to the Mexican market.

v Lloyd's Corporation

The establishment of a representative office of Lloyd's Corporation in Mexico is serving to reinforce the strong links and prevailing business relationships between Mexico and the London market.

vi Product development

There is growing appetite in the Mexican insurance market for new and innovative products to cover risks such as environmental risks; all risks within the energy sector now opened to private sector investors, including exploration and production of hydrocarbons, upstream, midstream and downstream; cyber risk; health and medical coverage insurance; and professional liability, directors and officers, and errors and omissions policies. We are also seeing growth in asset management-related products and services.

Appendix 1

ABOUT THE AUTHORS

YVES HAYAUX-DU-TILLY

Nader, Hayaux & Goebel

Yves is a partner of the Mexican independent law firm, Nader, Hayaux & Goebel, the only Mexican law firm with an office in London.

Yves specialises in insurance and reinsurance, both in contentious and non-contentious matters. Yves currently represents the following Mexican affiliate insurance companies on an ongoing basis in transactional work, mergers and acquisitions, product development and general regulatory, corporate governance and compliance-related matters: AXA Seguros Mexico, Assurant Daños Mexico, Assurant Vida Mexico, BUPA Mexico, Cardif Mexico Seguros de Vida, Cardif Mexico Seguros Generales, Dentegra Seguros Dentales, Der Neue Horizont Re, Genworth, Grupo Nacional Provincial, Grupo Sudamericano de Inversiones (Grupo SURA), LandAmerica Mexico (in liquidation), Mapfre Asistencia, MetLife Mexico, Panamerican Life Mexico, Seguros Azteca, Seguros Principal, Skandia, Principal Pensiones, Prudential Seguros Mexico and Zurich Mexico.

Yves also represents Mexican and foreign insurance and reinsurance companies and has experience in arbitration and mediation.

Yves is former chairman, vice chairman and board member of the Mexican chapter of AIDA, former vice chairman of CILA, and was responsible for establishing ARIAS Mexico. He is also a member of the presidential council of AIDA, vice president of the transnational legal practice committee of the American Bar Association and honorary member of the Commercial Bar Association.

Yves is a co-founder of the Mexican Chamber of Commerce in Great Britain.

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