UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
CORPORATION FINANCE

March 21, 2019

Marc S. Gerber
Skadden, Arps, Slate, Meagher & Flom LLP
marc.gerber@skadden.com

Re: BlackRock, Inc.
Incoming letter dated January 22, 2019

Dear Mr. Gerber:

This letter is in response to your correspondence dated January 22, 2019 concerning the shareholder proposal (the "Proposal") submitted to BlackRock, Inc. (the "Company") by Walter O. Garcia, Maria Luisa Garcia and Gaby M. Garcia (the "Proponents") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received correspondence from the Proponents dated January 30, 2019. Copies of all of the correspondence on which this response is based will be made available on our website at http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8.shtml. For your reference, a brief discussion of the Division's informal procedures regarding shareholder proposals is also available at the same website address.

Sincerely,

M. Hughes Bates
Special Counsel

Enclosure

cc: Walter O. Garcia
***

***FISMA & OMB Memorandum M-07-16

March 21, 2019

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: BlackRock, Inc.
Incoming letter dated January 22, 2019

The Proposal recommends that shareholders reject action by the Audit Committee appointing Deloitte & Touche LLP as the Company's independent registered public accounting firm.

There appears to be some basis for your view that the Company may exclude the Proposal under rule 14a-8(f). We note that the Proponents appear to have failed to supply, within 14 days of receipt of the Company's request, documentary support sufficiently evidencing that they satisfied the minimum ownership requirement for the one-year period as required by rule 14a-8(b). Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on rules 14a-8(b) and 14a-8(f). In reaching this position, we have not found it necessary to address the alternative bases for omission upon which the Company relies.

Sincerely,

Kasey L. Robinson
Special Counsel

DIVISION OF CORPORATION FINANCE
INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS

The Division of Corporation Finance believes that its responsibility with respect to matters arising under Rule 14a-8 [17 CFR 240.14a-8], as with other matters under the proxy rules, is to aid those who must comply with the rule by offering informal advice and suggestions and to determine, initially, whether or not it may be appropriate in a particular matter to recommend enforcement action to the Commission. In connection with a shareholder proposal under Rule 14a-8, the Division's staff considers the information furnished to it by the company in support of its intention to exclude the proposal from the company's proxy materials, as well as any information furnished by the proponent or the proponent's representative.

Although Rule 14a-8(k) does not require any communications from shareholders to the Commission's staff, the staff will always consider information concerning alleged violations of the statutes and rules administered by the Commission, including arguments as to whether or not activities proposed to be taken would violate the statute or rule involved. The receipt by the staff of such information, however, should not be construed as changing the staff's informal procedures and proxy review into a formal or adversarial procedure.

It is important to note that the staff's no-action responses to Rule 14a-8(j) submissions reflect only informal views. The determinations reached in these no-action letters do not and cannot adjudicate the merits of a company's position with respect to the proposal. Only a court such as a U.S. District Court can decide whether a company is obligated to include shareholder proposals in its proxy materials. Accordingly, a discretionary determination not to recommend or take Commission enforcement action does not preclude a proponent, or any shareholder of a company, from pursuing any rights he or she may have against the company in court, should the company's management omit the proposal from the company's proxy materials.

January 30, 2019

Via Electronic Mail to shareholderproposals@sec.gov

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: BlackRock, Inc. – 2019 Annual Meeting Omission of Shareholder Proposal of Walter O. Garcia, Maria Luisa Garcia and Gaby M. Garcia

Ladies and Gentlemen:

We ("Walter O. Garcia, Maria Luisa Garcia and Gaby M. Garcia") respectfully submit the following comments and observations and related documentation in response to the no action-request (the "Letter") dated January 22, 2019, submitted to your office by Mr. Marc S. Gerber, on behalf of BlackRock, Inc. ("BlackRock", the "Company"), regarding our shareholder proposal (the "Proposal") submitted in accordance with Rule 14-8a under the Securities and Exchange Act of 1934 for inclusion in the proxy statement to be distributed by the Company in connection with its 2019 annual shareholders' meeting.

Pursuant to the guidance provided in Staff Legal Bulletin No. 14D (November 7, 2008), we are submitting this letter and related documentation to the Staff via email to *shareholderproposals@sec.gov* (in lieu of mailing paper copies). Copies of this letter and its attachments are provided concurrently to Mr. R. Andrew Dickson III, Director & Corporate Secretary, BlackRock, Inc.

I. The Proposal

The Company's Mexican subsidiaries are audited by Galaz, Yamazaki, Ruiz Urquiza, S.C. (Deloitte Mexico). The audit work is referred to this firm by Deloitte & Touche LLP (Deloitte US). Both firms are members of Deloitte Touche Tohamatsu Limited. Deloitte Mexico has implemented a policy establishing that "Retired partners will not carry out any professional activities [with audit and non-audit clients] that require or are related to the profession or skills required when they were active partners of the firm". Violation of this policy results in termination of pension benefit payments (called retired partners share in profits for certain purposes). The policy limits retired partners right to work and is contrary to the principles established in Article Five of the Constitution of Mexico, to articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights, to Article 23 of the United Nations Declaration of Universal Human Rights and to the recommendations of the United Nations Guiding Principles on Business and Human Rights. Deloitte US' association with Deloitte Mexico is contrary to the Company's values, principles and policies. Therefore, we recommend that shareholders do not ratify the selection of Deloitte & Touche LLP as the Company's independent registered public accounting firm.

RESOLVED, That action by the Audit Committee appointing Deloitte & Touche LLP as the Company's independent registered public accounting firm to conduct the annual audit of the financial statements of the Company and its subsidiaries for the fiscal year ending December 31, 2019 is hereby rejected.

II. Tone of the Letter

The Letter expresses an all-out, concerted effort to impede the inclusion of the proposal regardless of its merits and informational value to the stockholders in order to make a better-informed decision regarding the intended proposal of BlackRock's audit committee to ratify its appointment of Deloitte & Touche LLP, as the Company's independent auditors for the fiscal year ending December 31, 2019.

The Letter ignores the flagrant human rights violations of Galaz, Yamazaki, Ruiz Urquiza, S.C. ("Deloitte Mexico). The nature and seriousness of the violations are amply covered in the 32-page report of Dr. Raúl Plascencia Villanueva (EXHIBITS A and B), a renowned leading international human rights expert (Resumé EXHIBIT C).

The Company's attitude is contrary to principles of good corporate citizenship and are in total disaccord with the *United Nations Guiding Principles on Business and Human Rights,* which establish the following (page 14, section 13):

> The responsibility to respect human rights requires that business enterprises:
>
> (b) Seek to prevent or mitigate adverse human rights impacts that are linked to their operations, products or services *by their business relationships, even if they have not contributed to those impacts* (emphasis added).

III. Sufficient Documentary Support to Satisfy the Ownership Requirement under Rule 14a-8(b)(1).

On December 26, 2018, we responded to a letter from the Company providing notice of a procedural deficiency regarding our ownership of BlackRock shares. As indicated in the Letter, we submitted a letter dated December 17, 2018 from a Morgan Stanley Compliance Risk Officer (EXHIBIT D) confirming the ownership of our BlackRock shares and stating that a "holdings page was included for our reference", the "holdings page" is a statement of account as of the close of business on December 14, 2018, showing in detailed form the purchase date of each lot of shares. These dates and the date of the statement of account prove beyond any reasonable doubt the continuous holding period in excess of the required two years.

The statement in the letter from the Compliance Officer to the effect that he is enclosing a "holdings page" authenticates the statement of account submitted. These two documents constitute sufficient, appropriate, relevant and reliable evidence to satisfy the requirement of proof of continued ownership of the shares. We should not be held to standards of evidentiary matter higher than those considered adequate in many other instances. Morgan Stanley could not provide any additional information as to the holding period of the shares arguing that that would be contrary to their compliance policies. Thus, it was impossible to obtain the corresponding confirmation with the wording suggested in the letter from the Company providing notice of a procedural deficiency. BlackRock and the Commission should not ignore *la Palisse's dictum* and the maxim *"Nemo Tenetur Ad Impossibile"* to the effect that nobody is expected to do the impossible.

IV. Exclusion of the Proposal because it Conflicts with a Proposal to be Submitted by BlackRock at its 2019 Annual Meeting.

Shareholders may vote "yes", "no", "abstain".

The Letter makes reference to the position of a member of the Office of Chief Counsel (the "Chief Counsel") regarding a shareholder proposal requesting the immediate disengagement and replacement of the independent auditors of *Huron Consulting Group*

("Huron") (Jan. 4, 2017). The Chief Counsel concluded that the proposal could be excluded from Huron's Proxy Materials on the basis that it conflicted with its proposal for stockholder ratification of its independent auditor because *"a reasonable shareholder could not logically vote in favor of both proposals" (*emphasis added). We believe that the Chief Counsel's position unfairly underestimated the intellectual capacity of "reasonable shareholders" to vote "yes", "no" or "abstain". Such rationale implies that no shareholder proposal requiring a "yes" vote to change independent auditors will ever be admitted irrespective of its merits. We sustain that simple wording indicating that "if by error a "yes" vote is cast on both proposals X and Z, the votes will be considered abstentions", will eliminate the supposed conflict.

V. Exclusion of the Proposal Because it Deals with Matters Relating to BlackRock's Ordinary Business Operations.

The selection and engagement of the independent auditor is the responsibility of the Audit Committee. It is not a fundamental management task. The fact that a proposal must be included in the Company's proxy materials asking shareholders to ratify the appointment of the independent auditors evidences clearly that the corresponding decision has no effect on management's ability to run the Company on a day-to-day basis.

VI. Exclusion of the Proposal Because it Relates to the Redress of a Personal Claim or Grievance Against Deloitte Mexico and Is Designed to Further a Personal Interest of the Proponents Which is Not Shared by Other Shareholders at Large.

We have not made any claim or sought any redress from Deloitte Mexico. Whether or not we would derive an indirect, collateral benefit if Deloitte Mexico revoked the policy at question is irrelevant vis-à-vis the gravity of their unchecked human right violations and does not nullify the impact of the violations.

The assumption that the substance of the proposal - to contribute to an increased respect of human rights - is not shared by other stockholders is unfounded. *Ipsos Human Rights in 2018, A Global Advisors Survey* finds that 83% of US interviewees responded, *"That it is important to have a law that protects human rights" and 77%* responded *"that human rights are important for creating a fairer society".* Ipsos's findings are corroborated by numerous other published studies, analyses and surveys. The statement in the Letter assumes incorrectly that the majority of the Company's shareholders have no concern for an increased respect of human rights.

VII. Conclusion

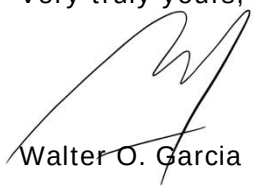
There is general consensus that all individuals are entitled to basic human rights. To protect human rights is to ensure that everyone receives a humane and decent treatment. To violate the individuals' basic human rights is to treat them as if they are less than human, denying them respect and dignity. Deloitte Mexico's policy to essentially prohibit the right of an important group of its stakeholders to exercise professional activities of their choice, encroaches blatantly on their dignity. Deloitte Touche Tohmatsu Limited is omissive in not having an effective human rights due diligence process to ensure that its member firms identify, prevent, mitigate and remedy human rights violations. Deloitte Touche Tohmatsu Limited and Deloitte & Touche LLP have been provided with the aforementioned report of Dr. Raúl Plascencia Villanueva, which arrives at the incontestable conclusion that Deloitte Mexico is a flagrant human rights violator, conclusion that apparently, they have chosen to accept, tolerate or ignore.

Consistent with the Company's enterprise risk-management systems, the audit committee's annual evaluation of the independent public accounting firm should include their level of adherence to appropriate human rights policies. We submitted the Proposal with the

objective of contributing to the respect of human rights, which objective is generally shared by the citizenry as whole.

For the reasons expressed in this response, we respectfully request the Commission to deny BlackRock, Inc's no-action request for the exclusion of the Proposal from its 2019 Proxy Materials.

Very truly yours,



Walter O. Garcia

cc: Mr. R. Andrew Dickson III, Director & Corporate Secretary, BlackRock, Inc.

Attachments

1. Exhibit A – Dr. Raúl Plascencia's Report in Spanish
2. Exhibit B – Free Translation of Dr. Plascencia's Report
3. Exhibit C – Dr. Plascencia's Resumé
4. Exhibit D – Morgan Stanley's Compliance Officer letter

INFORME

RELATIVO AL RESPETO A LOS DERECHOS HUMANOS DE LAS PERSONAS MAYORES POR PARTE DE GALAZ, YAMAZAKI, RUIZ URQUIZA, S.C., (DELOITTE MEXICO)

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Índice

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I Objetivos del informe

El suscrito, Raúl Plascencia Villanueva, Doctor en Derecho, rindo el presente informe a solicitud del Señor Walter Oswaldo García.

Se adjunta copia de mi *Currículum Vitae* al presente informe, para acreditar los conocimientos y preparación y experiencia académica y profesional que me autorizan a emitir esta opinión experta.

Declaro que he tenido acceso a los diversos documentos referidos a lo largo del presente informe.

El objetivo del presente informe es:

a. Identificar si Galaz Yamazaki, Ruiz Urquiza, S.C., ha vulnerado los derechos a la libertad de trabajo, igualdad y seguridad social.

b. Determinar si Galaz, Yamazaki, Ruiz Urquiza, S.C., en su calidad de persona jurídica cumple con su compromiso de actuar con la diligencia debida respetando los derechos de las personas de la tercera edad (mayores de 65 años) en relación al pago de pensión por jubilación y demás prestaciones relativas a la seguridad social.

Galaz, Yamazaki, Ruiz Urquiza, S.C., es la firma miembro de Deloitte Touche Tohmatsu Limited en México.

Los puntos centrales que se me han pedido analizar son los siguientes:

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a. Determinar si la actuación de Galaz, Yamazaki, Ruiz Urquiza, S.C., resulta violatoria de derechos humanos.

b. Determinar si los estatutos sociales y políticas de Galaz, Yamazaki, Ruiz Urquiza, S.C., resultan violatorias del artículo 1º, 5º y 123 de la Constitución Política de los Estados Unidos Mexicanos.

c. Determinar si Galaz, Yamazaki, Ruiz Urquiza, S.C., ha actuado con la diligencia debida en materia de trato y atención a las personas de la tercera edad.

II. Presentación del caso

1. Conforme a los Estatutos de Galaz, Yamazaki, Ruiz Urquiza, S.C., ("Galaz", la "Sociedad", la "Firma"), actualmente en vigor, los socios que hayan llegado a la edad de retiro ("Socio B") tendrán derecho a una participación equivalente a 1% del promedio de los ingresos anuales más altos que el socio haya percibido durante los seis últimos ejercicios en que haya sido socio activo ("Socio A"), por el número de años en que el socio haya permanecido en la Sociedad con la categoría de Socio A, sin exceder de 25%. El monto de la participación se actualiza anualmente aplicando el Índice Nacional de Precios al Consumidor.

2. En Agosto de 2014, el Director General de la firma implantó la siguiente política

> "... No podrán (los socios B) realizar actividades profesionales que requieran o se relacionen con la profesión o disciplina requerida cuando eran socios A (socios activos) en la Firma, excepto y bajo autorización de la Firma, actividades docentes, de investigación o culturales".

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La Firma comunicó verbalmente que los Socios B que estuvieran realizando actividades que violaran la política arriba descrita, y que no renunciaran a ellas durante un periodo de transición a autorizarse por la Dirección General, a partir del 1 de octubre de 2014, se consideraría que estaban violando los estatutos de la Sociedad y se procedería a suspender o terminar los pagos llamados participación en las utilidades.

El pago al Socio B es el pago de una pensión y no se puede configurar como una participación en las utilidades de la Sociedad al no existir concordancia entre los derechos y deberes del Socio B, según los estatutos de la Sociedad, y las definiciones jurídica y académica del concepto socio. El pago al Socio B es una obligación individualizada y definida de la Sociedad y un beneficio real y consumado del Socio B; es decir, un derecho adquirido por éste, que se genera al estar cumplidos los presupuestos exigidos para que surta efecto el pago definido por los años de servicio activo.

4. Los estatutos sociales de Galaz, Yamazaki, Ruiz Urquiza, S.C., señalan lo siguiente en relación a actividades profesionales de los socios B:

> "Fuera de su membresía o afiliación a sociedades o asociaciones de hombres de negocios, grupos sociales, deportivos, (el socio B) no se ocupará o continuará ocupándose de cualquier actividad que la Asamblea Especial de Socios juzgue perjudicial a los intereses o prestigio de la Sociedad. *Sin embargo, podrá desempeñar y disponer para sí de las remuneraciones correspondientes al puesto de comisario de empresas que sean o no clientes de la Sociedad o consejero de estas últimas*".

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III. OPINIÓN SOBRE LA INFORMACIÓN ANALIZADA

El análisis de la información proporcionada permite observar incumplimiento de parte de Galaz, Yamazaki, Ruiz Urquiza, S.C., a un actuar acorde a la Diligencia Debida que supone el pleno respeto de los derechos de las personas que laboran para dicha sociedad y en particular, para las personas perteneciente a uno de los grupos en mayor riesgo de vulnerabilidad como lo son los mayores de 65 años, en lo relativo a sus prestaciones de seguridad social derivadas de la pensión o pago de jubilación.

En efecto, se observa una actuar contrario a la Diligencia Debida correspondiente a una sociedad respetuosa de los derechos de las personas previstos en la Constitución Política de los Estados Unidos Mexicanos, así como en los instrumentos internacionales de que el Estado mexicano es parte las cuales redundan en violaciones al derecho a la libertad de trabajo, a la igualdad, actos de discriminación en contra de personas mayores de 65 años de edad, atentados en contra a la seguridad social y afectaciones al proyecto de vida en los términos siguientes:

1. Empresas, sociedades privadas y la Diligencia Debida

En la actualidad toda empresa o sociedad privada se encuentra obligada a una actuación acorde a la debida diligencia, lo cual implica la observancia, respeto y protección de los derechos de todas las personas con las que interactúa, particularmente de aquellas que conforman su fuerza laboral.

En efecto, la violación a los derechos humanos por parte de particulares en contra de particulares ha sido materia de análisis y resolución por parte

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de la Corte Interamericana de Derechos Humanos y la Suprema Corte de Justicia de la Nación de México.

En efecto, el amparo en revisión 2/2000, resuelto por la Segunda Sala de la Suprema Corte de Justicia de la Nación, en la sentencia se precisa que "en los artículos 2°, 4°, 27 y 31 constitucionales, encontramos disposiciones que imponen un deber de hacer o no hacer a los particulares. El artículo 2° invocado prohíbe la esclavitud; dicha prohibición no puede, por lógica y mayoría de razón, ser atribuida a la autoridad sino a los particulares; en el artículo 27, que previene los límites a la propiedad privada, su infracción por los particulares provocaría una ilicitud constitucional; "concluyendo que los deberes previstos en la Constitución vinculan tanto a las autoridades como a los gobernados, toda vez que, tanto unos como otros, pueden ser sujetos activos en la comisión del ilícito constitucional con total independencia del procedimiento que se prevea para el resarcimiento correspondiente.

Los conflictos en los que un particular denuncia que otro particular ha vulnerado sus derechos fundamentales, el amparo a consideración de la Suprema Corte de justicia de la Nación es una vía importante en la revisión de la constitucionalidad de las interacciones entre particulares que parte de normas constitucionales y en cuanto se refiere a cosas que ya se han estado haciendo lo cual permite fortalecer la vigencia de la libertad y la igualdad en el amplio ámbito de las interacciones privadas

Por otra parte, la oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos es clara en el sentido de la responsabilidad de las

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empresas de proteger, respetar y remediar cualquier violación a los derechos humanos, tal y como se desprenden de los Principios Rectores sobre la Empresa y los Derechos Humanos, aprobados por las Naciones Unidas como la norma de conducta a nivel mundial que se espera sea observada por todas las empresas.

En efecto, la observancia de la diligencia debida permite prevenir y mitigar las consecuencias negativas en materia de derechos humanos, con el objetivo de poder corregir cualquier abuso, exceso u omisión, lo cual implica comunicar y hacer frente a los riesgos relativos a violaciones a derechos humanos.

2. El deber constitucional de observar los derechos humanos

Ahora bien, de la lectura del artículo 1° de la Constitución Política de los Estados Unidos Mexicanos (CPEUM) se desprende el reconocimiento hacia todas las personas de gozar de los derechos humanos contenidos tanto en la CPEUM, como en los instrumentos internacionales en los que el Estado mexicano es parte[1]; asimismo, gozarán de las garantías para su protección, cuyo ejercicio podrá restringirse o suspenderse sólo en los casos y condiciones descritos en la propia CPEUM, imponiendo a todas las autoridades en el ámbito de sus competencias, la obligación de promover, respetar, proteger y garantizar los derechos humanos de conformidad con los principios de universalidad, interdependencia, indivisibilidad y progresividad.

Respecto al contenido del artículo primero, conviene precisar que cuando un derecho humano es reconocido tanto por la CPEUM como por los

[1] La CPEUM incluye a todos los derechos contenidos en un Tratado Internacional vinculante para México, con independencia de la naturaleza del instrumento internacional, esto es, no importa que no sea especializado en derechos humanos.

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diversos instrumentos internacionales en los que el Estado mexicano es parte, se debe acudir a ambas fuentes para determinar su contenido y alcance, favoreciéndose en todo tiempo a las personas la protección más amplia *(principio pro personae)* y, si llegase a existir una restricción expresa al ejercicio de ese derecho humano, se deberá estar a lo que indica la CPEUM, por ser la ley fundamental de nuestro orden jurídico mexicano, tal y como lo resolvió la Primera Sala de la Suprema Corte de Justicia de la Nación en la Tesis de Jurisprudencia 29/2015.[2]

Las normas de derechos humanos contenidas en la CPEUM y en los instrumentos internacionales se integran a un catálogo de derechos que funciona como un parámetro de regularidad constitucional y no se relacionan entre sí en términos jerárquicos.[3] Todos los derechos humanos, sean políticos y civiles o económicos, sociales y culturales tienen la misma validez e importancia, sin que exista jerarquía entre ellos.

Al respecto, la Suprema Corte de Justicia de la Nación interpretó el alcance del principio de progresividad en el sentido siguiente:

> **PROGRESIVIDAD DE LOS DERECHOS HUMANOS. CRITERIOS PARA DETERMINAR SI LA LIMITACIÓN AL EJERCICIO DE UN DERECHO HUMANO DERIVA EN LA VIOLACIÓN DE AQUEL PRINCIPIO.**
>
> El principio de progresividad de los derechos humanos, tutelado en el artículo 1o. de la Constitución Política de los Estados Unidos Mexicanos, es indispensable para consolidar la garantía de protección de la dignidad humana, porque su observancia exige, por un lado, que todas las autoridades del Estado mexicano, en el ámbito de su competencia, incrementen gradualmente la

[2] Tesis de jurisprudencia 29/2015 (10a.). Derechos humanos reconocidos tanto por la Constitución Política de los Estados Unidos Mexicanos, como en los Tratados Internacionales. Para determinar su contenido y alcance debe acudirse a ambas fuentes, favoreciendo a las personas la protección más amplia, aprobada por la Primera Sala de este Alto Tribunal, en sesión privada de quince de abril de 2015.

[3] Tesis de jurisprudencia P./J. 20/2014 (10a.), Derechos humanos contenidos en la Constitución y en los tratados internacionales. Constituyen el parámetro de control de regularidad constitucional, pero cuando en la Constitución haya una restricción expresa al ejercicio de aquéllos, se debe estar a lo que establece el texto constitucional, Tribunal en Pleno de la Suprema Corte de Justicia de la Nación, 30 de abril de 2014.

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> promoción, respeto, protección y garantía de los derechos humanos y, por otro, les impide, en virtud de su expresión de no regresividad, adoptar medidas que disminuyan su nivel de protección. Respecto de esta última expresión, debe puntualizarse que la limitación en el ejercicio de un derecho humano no necesariamente es sinónimo de vulneración al principio referido, pues para determinar si una medida lo respeta, es necesario analizar si: (I) dicha disminución tiene como finalidad esencial incrementar el grado de tutela de un derecho humano; y (II) genera un equilibrio razonable entre los derechos fundamentales en juego, sin afectar de manera desmedida la eficacia de alguno de ellos. En ese sentido, para determinar si la limitación al ejercicio de un derecho humano viola el principio de progresividad de los derechos humanos, el operador jurídico debe realizar un análisis conjunto de la afectación individual de un derecho en relación con las implicaciones colectivas de la medida, a efecto de establecer si se encuentra justificada[4].

Los derechos sociales pueden ser analizados en dos dimensiones, en una vertiente subjetiva como derecho individual de todas las personas y, en otra, social o institucional, así lo ha sostenido la Primera Sala de la Suprema Corte de Justicia de la Nación (SCJN), en la tesis 1a. CCLXXXVII/2016 (10a.), establece que el derecho a la seguridad social presenta esas dos dimensiones por su conexión con la autonomía personal y el funcionamiento de una sociedad democrática[5].

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[4] Tesis de jurisprudencia 41/2017 (10a.). Aprobada por la Segunda Sala de este Alto Tribunal, en sesión privada del veintiséis de abril de dos mil diecisiete.

[5] DERECHO FUNDAMENTAL A LA EDUCACIÓN BÁSICA. TIENE UNA DIMENSIÓN SUBJETIVA COMO DERECHO INDIVIDUAL Y UNA DIMENSIÓN SOCIAL O INSTITUCIONAL, POR SU CONEXIÓN CON LA AUTONOMÍA PERSONAL Y EL FUNCIONAMIENTO DE UNA SOCIEDAD DEMOCRÁTICA.
El contenido mínimo del derecho a la educación obligatoria (básica y media superior) es la provisión del entrenamiento intelectual necesario para dotar de autonomía a las personas y habilitarlas como miembros de una sociedad democrática. Por ello, el derecho humano a la educación, además de una vertiente subjetiva como derecho individual de todas las personas, tiene una dimensión social o institucional, pues la existencia de personas educadas es una condición necesaria para el funcionamiento de una sociedad democrática, ya que la deliberación pública no puede llevarse a cabo sin una sociedad informada, vigilante, participativa, atenta a las cuestiones públicas y capaz de intervenir competentemente en la discusión democrática...". Amparo en revisión 750/2015. María Ángeles Cárdenas Alvarado. 20 de abril de 2016.
Tesis: 1a. CCLXXXVII/2016 (10a.), Gaceta del Semanario Judicial de la Federación, Décima Época, Primera Sala, Libro 37, diciembre de 2016, Tomo I, p. 367

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En consecuencia, el Derecho a la Seguridad Social (DSS) también puede ser examinado en dos dimensiones, en la individual, como derecho subjetivo que permite a la persona desarrollar un plan de vida autónomo, libre de temor y de las cargas de la miseria, que le garantice acceso a la prestación de bienes o servicios para llevar una existencia digna (artículo 4° de la CPEUM y LGDS) y en su dimensión social, a través del funcionamiento de un sistema de seguridad social (SSS) eficaz y eficiente o de una institución social de naturaleza contributiva-prestacional que deriva de las relaciones de trabajo.

La sociedad, empresas y personas en el DSS tienen la obligación de respetar la norma jurídica y actuar con apego a la misma, en un plano de corresponsabilidad, de lo contrario, tendrían que ser forzados a cumplir con la misma, al extremo de que dicha exigencia fuese a través de juicios seguidos ante tribunales (justiciabilidad de los derechos). En caso de violaciones al DSS por parte de los particulares, el Estado tendrá que asegurarse que a la víctima se le restituya en el goce del derecho, y, de ser el caso, se le repare el daño.

En efecto, el DSS implica una corresponsabilidad entre el Estado, sociedad, empresas y personas. Tanto el Convenio Número 102 como en la OG19 y el PPS establecen como principal responsable, pero no de manera exclusiva, al Estado en la implementación y administración del SSS, así como en el cumplimiento de las obligaciones jurídicas de respetar, proteger y realizar el ejercicio del DSS.

Los empleadores son corresponsables con los beneficiarios en el financiamiento del sistema de seguridad social (con las cuotas obrero-patronales), e incluso, en algunas ocasiones, el propio Estado (párrafo 4, OG19). El artículo 71.1 del Convenio Número 102, establece que "el costo

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de las prestaciones concedidas en aplicación de dicho Convenio y los gastos de su administración serán financiados colectivamente por medio de cotizaciones o de impuestos, o por ambos medios a la vez" para evitar cargas onerosas a las personas de escasos recursos.

En México, el DSS se encuentra reconocido, de manera general (no expresamente) en el artículo 4° y, de manera específica, sólo para los trabajadores del sector formal que se encuentren afiliados a un seguro social, en el artículo 123, ambos de la CPEUM, así como en el artículo 6° de la LGDS y, conforme a los instrumentos internacionales, en los artículos 22 y 25 de la DUDH, 9 del PIDESC y 16 de la DADDH.

3. Violación al derecho a la Libertad de trabajo e Igualdad por actos de discriminación

La Constitución Política de los Estados Unidos Mexicanos prevé en el artículo 5º Constitucional el derecho de toda persona a dedicarse a la profesión, comercio o trabajo que mejor le acomode, siempre y cuando sean lícitos.

De igual manera, se prohíbe cualquier tipo de contrato, pacto o convenio que tenga por objeto el menoscabo, la pérdida o el irrevocable sacrificio de la libertad de la persona por cualquier causa. Tampoco puede admitirse convenio en que la persona pacte la renuncia temporal o permanentemente a ejercer determinada profesión, industria o comercio.

> **Artículo 5o. <u>A ninguna persona podrá impedirse que se dedique a la profesión, industria, comercio o trabajo que le acomode, siendo lícitos.</u>** El ejercicio de esta libertad sólo podrá vedarse por determinación judicial, cuando se ataquen los derechos de tercero, o por resolución gubernativa, dictada en los términos que marque la ley, cuando se ofendan los derechos de la sociedad.

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Nadie puede ser privado del producto de su trabajo, sino por resolución judicial.

La ley determinará en cada entidad federativa, cuáles son las profesiones que necesitan título para su ejercicio, las condiciones que deban llenarse para obtenerlo y las autoridades que han de expedirlo.

Nadie podrá ser obligado a prestar trabajos personales sin la justa retribución y sin su pleno consentimiento, salvo el trabajo impuesto como pena por la autoridad judicial, el cual se ajustará a lo dispuesto en las fracciones I y II del artículo 123.

En cuanto a los servicios públicos, sólo podrán ser obligatorios, en los términos que establezcan las leyes respectivas, el de las armas y los jurados, así como el desempeño de los cargos concejiles y los de elección popular, directa o indirecta. Las funciones electorales y censales tendrán carácter obligatorio y gratuito, pero serán retribuidas aquéllas que se realicen profesionalmente en los términos de esta Constitución y las leyes correspondientes. Los servicios profesionales de índole social serán obligatorios y retribuidos en los términos de la ley y con las excepciones que ésta señale.

El Estado no puede permitir que se lleve a efecto ningún contrato, pacto o convenio que tenga por objeto el menoscabo, la pérdida o el irrevocable sacrificio de la libertad de la persona por cualquier causa.

Tampoco puede admitirse convenio en que la persona pacte su proscripción o destierro, o en que renuncie temporal o permanentemente a ejercer determinada profesión, industria o comercio.

El contrato de trabajo sólo obligará a prestar el servicio convenido por el tiempo que fije la ley, sin poder exceder de un año en perjuicio del trabajador, y no podrá extenderse, en ningún caso, a la renuncia, pérdida o menoscabo de cualquiera de los derechos políticos o civiles.

La falta de cumplimiento de dicho contrato, por lo que respecta al trabajador, sólo obligará a éste a la correspondiente responsabilidad civil, sin que en ningún caso pueda hacerse coacción sobre su persona.

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De igual manera, el Pacto Internacional de Derechos Económicos Sociales y Culturales reconoce el derecho de toda persona a ganarse la vida mediante un trabajo libremente escogido y aceptado, en condiciones equitativas y satisfactorias, tal y como se despreden de los siguientes artículos:

> Artículo 6
>
> 1. Los Estados Partes en el presente Pacto reconocen el derecho a trabajar, que comprende **el derecho de toda persona a tener la oportunidad de ganarse la vida mediante un trabajo libremente escogido o aceptado, y tomarán medidas adecuadas para garantizar este derecho.**
>
> 2. Entre las medidas que habrá de adoptar cada uno de los Estados Partes en el presente Pacto para lograr la plena efectividad de este derecho deberá figurar la orientación y formación técnico profesional, la preparación de programas, normas y técnicas encaminadas a conseguir un desarrollo económico, social y cultural constante y la ocupación plena y productiva, en condiciones que garanticen las libertades políticas y económicas fundamentales de la persona humana.
>
> Artículo 7
>
> Los Estados Partes en el presente Pacto reconocen el derecho de toda persona al goce de condiciones de trabajo equitativas y satisfactorias que le aseguren en especial:
>
> a) Una remuneración que proporcione como mínimo a todos los trabajadores:
>
> i) Un salario equitativo e igual por trabajo de igual valor, sin distinciones de ninguna especie; en particular, debe asegurarse a las mujeres condiciones de trabajo no inferiores a las de los hombres, con salario igual por trabajo igual;
>
> ii) Condiciones de existencia dignas para ellos y para sus familias conforme a las disposiciones del presente Pacto;
>
> b) La seguridad y la higiene en el trabajo;

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c) Igual oportunidad para todos de ser promovidos, dentro de su trabajo, a la categoría superior que les corresponda, sin más consideraciones que los factores de tiempo de servicio y capacidad;

d) El descanso, el disfrute del tiempo libre, la limitación razonable de las horas de trabajo y las vacaciones periódicas pagadas, así como la remuneración de los días festivo.

Los estatutos sociales de Galaz, Yamazaki, Ruiz Urquiza, S.C., en el ARTÍCULO CUADRAGÉSIMO TERCERO, de manera expresa señalan:

Los socios B no tendrán participación en el capital de la sociedad, no tendrán derecho de voto en ninguna Asamblea de socios, no podrán participar en la administración de la sociedad.

Por otra parte, los socios B durante el periodo en que reciban pagos bajo esta categoría convienen en asumir los siguientes compromisos:

a) No se dedicarán a la prestación de cualesquier servicios regularmente ofrecidos por la Sociedad, ya sea personalmente o como miembro o empleado de otra sociedad profesional si no es con permiso escrito de la Asamblea Especial de Socios.
b) Tampoco podrán aceptar ningún empleo o cargo con algún cliente de la Sociedad, cuya posición pueda afectar la independencia de la misma, en opinión de la Asamblea Especial de Socios.
c) Fuera de la membresia o afiliación a sociedades o asociaciones de hombre de negocios, grupos sociales, deportivos, empresariales, religiosos, agrupaciones no lucrativas de carácter profesional, docencia e impartición de cursos y conferencias, no se ocupará o continuará ocupándose de cualquier actividad que la Asamblea Especial de socios, juzgue perjudicial a los intereses o prestigio de la Sociedad. Sin embargo, podrá desempeñar y disponer para sí de las remuneraciones correspondientes al puesto de comisario de empresas que sean o no clientes de la Sociedad o consejero.
El socio B que viole cualesquiera de las previsiones contenidas en los incisos anteriores de éste artículo, dejará de percibir

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> los pagos que bajo las estipulaciones de estos estatutos tuviera derecho a percibir, durante el triple del tiempo que dura la violación, a juicio de la Asamblea Especial de Socios.

Ahora bien, a partir de agosto de 2014 les fue comunicado a los socios jubilados una nueva política implementada por el Director General en el sentido siguiente:

> "... No podrán (los socios B) realizar actividades profesionales que requieran o se relacionen con la profesión o disciplina requerida cuando eran socios A (socios activos) en la Firma, excepto y bajo autorización de la Firma, actividades docentes, de investigación o culturales".

La mencionada prohibición, resulta contraria a lo dispuesto por el artículo 5 de la Constitución Política de los Estados Unidos Mexicanos, así como a lo previsto por los artículos 6 y 7 del Pacto Internacional de Derechos Económicos, Sociales y Culturales.

En efecto, el texto constitucional y los instrumentos internacionales en materia de derechos humanos establecen el derecho de toda persona a dedicarse a las actividades profesionales que más les acomoden, siempre y cuando se consideren lícitas, además de establecer una clara prohibición en el sentido de que exista contracto, pacto o convenio contrario a la libertad de trabajo de cualquier persona.

Al respecto, la Suprema Corte de Justicia de la Nación en México reconoce la posibilidad de violaciones a los derechos humanos por particulares y el compromiso que deben tener todas las empresas, sociedades o corporaciones para evitar la discriminación o el trato desigual a sus trabajadores.

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En este orden de ideas, el derecho humano a la igualdad es un principio adjetivo que se configura por dos distintas facetas que, aunque interdependientes y complementarias entre sí, pueden distinguirse conceptualmente dos modalidades: 1) igualdad formal o de derechos, es una protección contra distinciones o tratos arbitrarios y se compone a su vez de la igualdad ante la ley como uniformidad en la aplicación de la norma jurídica, que va dirigida a la autoridad materialmente legislativa y que consiste en el control de las normas, a fin de evitar diferenciaciones sin justificación constitucional; y, 2) igualdad sustantiva o de hecho, la cual radica en alcanzar una paridad de oportunidades en el goce real y efectivo de los derechos humanos de todas las personas, lo que conlleva que en algunos casos sea necesario remover y/o disminuir los obstáculos sociales, económicos o de cualquier otra índole.

Por otro lado, la Corte Interamericana de Derechos Humanos, al resolver el Caso Yatama vs. Nicaragua (Excepciones preliminares, fondo, reparaciones y costas. Sentencia de 23 de junio de 2005. Serie C. No. 127), sostuvo que el principio de la protección igualitaria y efectiva de la ley y de la no discriminación constituye un dato sobresaliente en el sistema tutelar de los derechos humanos, reconocidos en los instrumentos internacionales y desarrollado por la doctrina y jurisprudencia internacionales.

Al respecto, la sociedad Galaz, Yamazaki, Ruiz Urquiza, S.C., tiene el deber de respetar y garantizar los derechos humanos de los terceros, de manera que si los tribunales al ejercer el control difuso de constitucionalidad, advierten una relación contractual en la que una de

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las partes vulnera los derechos humanos de la otra, se debe ordenar la reparación integral de dicha violación.

Debe considerarse que los derechos de toda persona, previstos en la Constitución gozan de una doble cualidad, ya que por un lado se configuran como derechos públicos subjetivos (función subjetiva), y por otro se traducen en elementos objetivos que informan o permean todo el ordenamiento jurídico, incluyendo aquellas que se originaran entre particulares (función objetiva). De esta forma, se puede afirmar que la función objetiva de los derechos humanos permite afirmar que éstos obligan indirectamente a los particulares.

La libertad contractual sólo cumple su función cuando la relación entre las partes no está marcada por la desigualdad de una de ellas. Así, ante la existencia de un desequilibrio entre las partes, se debe verificar la eficacia de los derechos fundamentales y, por tanto, procurar su protección.

De tal forma que ante un contrato firmado por dos partes en una posición desigual, en donde la más débil acepta obligaciones inasumibles, se debe intervenir y examinar el contenido del contrato para corregirlo, independientemente de que la parte afectada haya convenido obligarse, ya que de otro modo, se vulnerarían sus derechos humanos.

En efecto, la voluntad de la autonomía de las partes expresada en un contrato que incida directamente en la afectación sobre los derechos humanos de alguno de los contratantes, no justifica la validez de las cláusulas del contrato, que sean contrarias a derecho pues la autonomía debe situarse en el marco de las leyes aplicables al contrato, las cuales a

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su vez están sometidas a los derechos fundamentales previstos en la Constitución y en los tratados internacionales.

Lo anterior, en razón de que la autonomía de la voluntad de las partes debe basarse en los derechos de libre desarrollo de la personalidad y autodeterminación, los cuales generan la necesidad de que las partes en el contrato se obliguen libremente y que ninguna de ellas tenga un poder tal -que puede ser económico, estructural o social sobre el objeto del contrato-, que esté en condiciones de imponer unilateralmente el pacto a su contraparte; es decir que se origine un desequilibrio entre las partes.

Por lo que, siendo el caso de la manera en que se reduce la libertad de los Socios B en los estatutos de Galaz, Yamazaki, Ruiz Urquiza, S.C., nos encontramos ante una actuar contrario a la diligencia debida por lo que con fundamento en el artículo 1o.y 5º de la Constitución, se debería restaurar el equilibrio perdido por virtud de las consecuencias que ocasionen desigualdad material.

De igual manera, se actualiza una forma de explotación por parte de Galaz, Yamazaki, Ruiz Urquiza, S.C., ante la "desigualdad material y la afectación a la dignidad" de una de las partes.

En efecto, nos encontramos ante un afectación al núcleo esencial de la dignidad de la persona discriminada. La dignidad humana es un derecho fundamental a favor de ser humano y por el cual se establece el mandato constitucional a todas las autoridades, e incluso particulares, de respetar y proteger la dignidad de todo individuo, entendida el interés inherente a

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toda persona, por el mero hecho de serlo, a ser tratada como tal y no como un objeto, a no ser humillada, degradada, envilecida o cosificada.

4. Violación a derechos inherentes a la seguridad Social

Por otra parte, el hecho de que se pretenda limitar la seguridad social a personas mayores que reciben una pensión en condición de jubilación, constituye una clara violación al derecho a la seguridad social, que no resulta acorde ni a la Constitución, ni a lo dispuesto por los instrumentos internacionales suscritos por el Estado Mexicano.

La política en cuestión prevé un contenido que limita el derecho al trabajo y ganarse el sustento de cualquier persona de la tercera edad, lo cual es contrario a lo dispuesto en el artículo 5º y 123 de la Constitución Política de los Estados Unidos mexicanos, así como en los instrumentos internacionales de que México es parte.

En efecto, acorde a los instrumentos suscritos en el seno de la Organización Internacional del Trabajo se afirma la importancia de "mejorar las condiciones de trabajo que generan injusticia, miseria y privaciones para la mayoría de los seres humanos, entre éstas, la protección del trabajador contra enfermedades y contra los accidentes de trabajo, las pensiones de vejez y de invalidez".

Atento a lo anterior, el respeto a la dignidad de los seres humanos en el trabajo tiene como objetivo garantizar el reconocimiento a los trabajadores como titulares de derechos fundamentales económicos y sociales.

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Por otra parte, en el Convenio Número 102 de la Organización Internacional del Trabajo (OIT) se define el campo de aplicación, las prestaciones y las condiciones de acceso para cada una de las ramas mencionadas, incluso se admite la coexistencia en el Sistema de Seguridad Social en dos vertientes: pública y privada.

A este respecto, los Estados pueden elegir los Sistemas de financiación y los métodos "contributivos" o "no contributivos" que juzguen más convenientes a condición de que las prestaciones garantizadas por su legislación alcancen el nivel y la extensión prescritos en los Convenios 102, 121, 128, 130, 168 y 183 de la OIT.

Para la OIT la seguridad social comprende:

> la protección que una sociedad proporciona a los individuos y los hogares para asegurar el acceso a la asistencia médica y garantizar la seguridad del ingreso, en particular en caso de vejez, desempleo, enfermedad, invalidez, accidentes del trabajo, maternidad o pérdida del sostén de familia[6].
>
> Dicha protección se garantiza a través de medidas relacionadas con las prestaciones, en efectivo o en especie. "Los sistemas de seguridad social pueden ser de carácter contributivo (seguro social) o de carácter no contributivo".[7]

Por otra parte, el Sistema Universal de los Derechos Humanos integrado por los instrumentos internacionales, la Jurisprudencia de los Tribunales Internacionales en materia de Derechos Humanos y las Observaciones Generales del Comité de Derechos Económicos, Sociales y Culturales, reconoce el derecho a la Seguridad Social como un derecho humano que podríamos calificar como de segunda generación con un contenido que

[6] (Organización Internacional del Trabajo, Hechos Concretos sobre la Seguridad Social. Suiza, Ginebra, OIT, 2003, p. 1, disponible en: http://www.ilo. org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/ wcms_067592.pdf (fecha de consulta: 12 de julio de 2017).

[7] Véase, Organización Internacional del Trabajo, La seguridad social para la justicia social y una globalización equitativa, Informe VI, Sexto punto del orden del día, Conferencia Internacional del Trabajo, 100.ª reunión, 2011, p. 9, ISBN: 978-92-2-323118-7, disponible en http://www.ilo.org/wcmsp5/groups/public/ (fecha de consulta: 6 de septiembre de 2017).

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sólo es dable realizar de manera progresiva, lo cual se entiende en el sentido de buscar un avance en su realización sin que se reduzca su alcance, ni mucho menos que se pretenda adelgazar su contenido.

En el mismo sentido la Declaración Universal de Derechos Humanos en sus artículos 22 y 25[8] dispone:

> Artículo 22. Toda persona, como miembro de la sociedad, tiene derecho a la seguridad social, y a obtener, mediante el esfuerzo nacional y la cooperación internacional, habida cuenta de la organización y los recursos de cada Estado, la satisfacción de los derechos económicos, sociales y culturales[9], indispensables a su dignidad y al libre desarrollo de su personalidad.
>
> Artículo 25.
>
> (1) Toda persona tiene derecho a un nivel de vida adecuado que le asegure, así como a su familia, la salud y el bienestar, y en especial la alimentación, el vestido, la vivienda, la asistencia médica y los servicios sociales necesarios; asimismo, tiene derecho a los seguros en caso de desempleo, enfermedad, invalidez, viudez, vejez u otros casos de pérdida de sus medios de subsistencia por circunstancias independientes de su voluntad.

La DUDH reconoce a la Seguridad Social como el derecho humano a un nivel de vida adecuado y a los niveles más altos posibles de bienestar físico, mental y económico de toda la población.

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[8] Organización de las Naciones Unidas, http://www.ohchr.org, (fecha de consulta: 19 de julio de 2017).

[9] La DUDH contempla dos categorías de derechos humanos: los "derechos civiles y políticos" y los "derechos económicos, sociales y culturales"; estos últimos, tienen como propósito primordial el logro de una mayor igualdad entre las personas, a través de la obtención de un trabajo y vivienda dignos, la seguridad social, un nivel de vida adecuado y el acceso a una cultura y a una educación de calidad. Cuando dichos derechos son reconocidos por un Estado, genera obligaciones jurídicas para el mismo, ya que éste deberá garantizar su goce y disfrute.
"Nunca podrá recalcarse lo suficiente la importancia de los derechos económicos, sociales y culturales. La pobreza y la exclusión se esconden detrás de muchas de las amenazas de seguridad a las que seguimos enfrentándonos tanto en el plano nacional como internacional y, por tanto, ponen en peligro la promoción y la protección de todos los derechos humanos. Incluso en las economías más prósperas persisten la pobreza y grandes desigualdades... Las desigualdades sociales y económicas repercuten en el acceso a la vida pública y la justicia. La globalización ha propiciado mayores tasas de crecimiento económico, pero no en todas las sociedades, ni en el seno de todas ellas, se disfruta de sus beneficios por igual. Ante esos desafíos tan importantes para la seguridad humana, es necesario no sólo actuar en el plano nacional sino también cooperar en el plano internacional". Louise Arbour, Alta Comisionada de las Naciones Unidas para los Derechos Humanos (Ginebra, 14 de enero de 2005). Ver http://www.ohchr.org, fecha de consulta (19 de julio 2017).

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En consecuencia, para el cumplimiento de los DESC, el PIDESC no sólo impone obligaciones a los Estados Miembros, sino también, responsabiliza directamente a todas las personas por la procuración, vigencia y observancia de estos derechos, ya sean propios o no.

Ahora bien, también resulta aplicable lo dispuesto por el Comité de Derechos Económicos Sociales y Culturales en la Observación General N° 20,[10] se desprende que el PIDESC reconoce los derechos iguales e inalienables de todos y, de manera expresa, el derecho de "todas las personas" al ejercicio del derecho a la seguridad social y a un nivel de vida adecuado.

Por otra parte, la Declaración Americana de los Derechos y Deberes del Hombre (DADDH) de 1948, "forma la base normativa en el periodo anterior a la Convención Americana sobre los Derechos Humanos"[11] y en su artículo XVI dispone:

> Toda persona tiene derecho a la seguridad social que le proteja contra las consecuencias de la desocupación, de la vejez y de la incapacidad que, proveniente de cualquier otra causa ajena a su voluntad, la imposibilite física o mentalmente para obtener los medios de subsistencia[12].

La Convención Americana sobre Derechos Humanos también conocida como "Pacto de San José", suscrita el 22 de noviembre de 1969, entró en vigor el 18 de julio de 1978.[13] En su artículo 26 establece el desarrollo progresivo de los Derechos Económicos, Sociales y Culturales en los siguientes términos:

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[10] ONU E/C.12/GC/20 2 de julio de 2009.
[11] Cançado Trindade, El sistema interamericano de protección de los derechos humanos, en Felipe Gómez Isa et al., dirs, La Protección internacional de los derechos humanos en los albores del siglo XXI, Bilbao, 2003, Universidad de Deusto, nota 24, pp. 550 y 551.
[12] *Idem*, (fecha de consulta: 26 de julio de 2017).
[13] México se adhirió en 1981.

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> Artículo 26. Desarrollo Progresivo
> Los Estados Partes se comprometen a adoptar providencias, tanto a nivel interno como mediante la cooperación internacional, especialmente económica y técnica, para lograr progresivamente la plena efectividad de los derechos que se derivan de las normas económicas, sociales y sobre educación, ciencia y cultura, contenidas en la Carta de la Organización de los Estados Americanos, reformada por el Protocolo de Buenos Aires, en la medida de los recursos disponibles, por vía legislativa u otros medios apropiados.

El Protocolo Adicional a la Convención Americana sobre Derechos Humanos en Materia de Derechos Económicos, Sociales y Culturales, conocido como Protocolo de San Salvador, el cual se adoptó en 1988 para dar solución a la omisión de la CADH en la previsión de los DESC, mismo que entró en vigor el 16 de noviembre de 1999 y en su artículo 9 contempla el DSS:

> 1. Toda persona tiene derecho a la seguridad social que la proteja contra las consecuencias de la vejez, y de la incapacidad que la imposibilite física o mentalmente para obtener los medios que le permitan llevar una vida digna y decorosa. En caso de muerte del beneficiario, las prestaciones de seguridad social serán aplicadas a sus dependientes.[14]
>
> 2. Cuando se trate de personas que se encuentran trabajando, el derecho a la seguridad social cubrirá al menos la atención médica y el subsidio o jubilación en casos de accidentes de trabajo o de enfermedad profesional y, tratándose de mujeres, licencia retribuida por maternidad antes y después del parto.

El Protocolo de Reformas a la Carta de la Organización de los Estados Americanos (Protocolo de Buenos Aires, adoptado en febrero de 1967); en su artículo 43-h) establece como condición para que el hombre pueda alcanzar la plena realización de sus aspiraciones dentro de un orden social

[14] Idem, (fecha de consulta: 26 de julio de 2017).

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justo, acompañado de desarrollo económico y verdadera paz, entre otras cuestiones, en trabajar en pos del desarrollo de una política eficiente de seguridad social, y en su artículo 44 dispone:

> Los Estados Miembros reconocen que, para facilitar el proceso de la integración regional latinoamericana, es necesario armonizar la legislación social de los países en desarrollo, especialmente en el campo laboral y de la seguridad social, a fin de que los derechos de los trabajadores sean igualmente protegidos, y convienen en realizar los máximos esfuerzos para alcanzar esta finalidad.[15]

Del contenido de los instrumentos internacionales enunciados en los dos apartados que anteceden, podemos aseverar que la Seguridad Social es un derecho humano, que forma parte del conjunto de los derechos económicos sociales y culturales.

Cabe señalar que la principal protección jurídica debe provenir del derecho interno y sólo en el supuesto de que el sistema nacional no dé solución a la violación del derecho humano, conocerán los mecanismos del sistema regional o, en su caso, del universal.

De lo expuesto, se advierte que conforme al principio de universalidad, la protección de los derechos humanos debe comprender a toda persona o grupo, con una protección especial para los grupos en situación vulnerabilidad y para la interpretación de la norma, los tribunales deben considerar la flexibilidad y la evolución de los derechos humanos.

Atento a lo anterior, la seguridad social constituye un derecho humano que es inherente a la dignidad de la persona[16] en condiciones de igualdad y no discriminación. La persona como titular del derecho y, en su alcance

[15] OEA, https://www.oas.org/dil/esp/tratados_B-31_Protocolo_de_Buenos_Aires.htm, (fecha de consulta: 26 de julio de 2017).
[16] En nuestro país, en la CPEUM y en los tratados internacionales vinculantes para México.

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obliga al Estado y a la sociedad a sumar esfuerzos hasta lograr una cobertura universal para alcanzar el desarrollo pleno del ser humano.

Dentro del contenido normativo del derecho a la seguridad social, la OG19 señala que el "derecho a la seguridad social incluye el derecho a no ser sometido a restricciones arbitrarias o poco razonables de la cobertura social existente, ya sea del sector público o del privado, así como del derecho a la igualdad en el disfrute de una protección suficiente contra los riesgos e imprevistos sociales".[17]

A este respecto, las medidas que el Estado puede adoptar para proporcionar las prestaciones a la seguridad social, la propia OG19 establece que éstas "no pueden definirse de manera restrictiva y, en todo caso, deben garantizar a toda persona un disfrute mínimo de este derecho humano". Las medidas pueden ser los planes contributivos, planes no contributivos, planes privados, medidas de autoayuda (como planes comunitarios o de asistencia mutua). Cualquier plan que se elija deberá estar amparado por el Estado y dicho plan deberá respetar en todo momento, los elementos esenciales del derecho a la seguridad social.

Por lo que la exclusión de un Socio B de la sociedad Galaz, Yamazaki, Ruiz Urquiza, S.C., como represalía por ejercer o pretender ejercer su derecho a la libertad de trabajo y a la igualdad, representa, además de ser un acto discriminatorio constituye una violación al derecho a la seguridad social.

[17] Observación General 19, párrafo 9.

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4. Afectaciones al Proyecto de vida, daño material e inmaterial.

El tema de las reparaciones ha sido uno de los principales temas en los que la Corte Interamericana de Derechos Humanos (CIDH) ha orientado su atención en los últimos años, por lo que la jurisprudencia ha avanzado de un daño moral y material, así como de los perjuicios que pudieren ser reclamados de manera tradicional en la vía civil acorde a la legislación de cada país a una dinámica que busca ser de mayor cobertura.

En efecto, el tema de las reparaciones visto desde la perspectiva de la jurisprudencia de la CIDH, comprende:

1. Material
    a. Daño emergente
    b. Lucro cesante o perdida de ingreso
    c. Daño al patrimonio familiar
    d. Reintegro de gastos y costas
2. Inmaterial
    a. Moral
    b. Psicológico
    c. Físicos
    d. Al proyecto de vida y
    c. Colectivo o social
3. Medidas de reparación integral

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4. Medidas de rehabilitación (tratamiento o asistencia médica y psicológica)

5. Satisfacción (publicación especial de la sentencia, acto público de reconocimiento de responsabilidad, medidas en conmemoración de las víctimas o hechos y derechos, becas de estudio y conmemorativas, medidas socioeconómicas de reparación colectiva)

6. Garantías de no repetición (capacitación, medidas legislativas)

7. Indemnización compensatoria

8. Condena al pago de gastos y costas

Ahora bien, la suspensión o terminación de los pagos por participación en las utilidades (pensión) a los Socios B resulta en una afectación al proyecto de vida, lo cual constituye una de las cinco variables que la CIDH ha identificado en su jurisprudencia como reparaciones inmateriales, a las que deben complementarse las otras siete variables antes mencionadas, al haber limitado la empresa Galaz, Yamazaki, Ruiz Urquiza, S.C., a los Socios B, el derecho de ejercer su libertad de trabajo, lo cual constituye una flagrante violación al derecho de igualdad y una afectación a la libertad personal que los coloca en la condición de cosa.

Es importante identificar que es el desarrollo de la jurisprudencia de la Corte Interamericana de Derechos Humanos la que ha permitido definir los derechos humanos, comprenderlos y delimitar el alcance de cada uno de ellos.

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En el anterior orden de ideas, el monto de cada una de las reparaciones debe cuantificarse a partir de la magnitud del daño ocasionado, así como de la capacidad de Galaz, Yamazaki, Ruiz Urquiza, S.C.

Los antecedentes del daño inmaterial podemos ubicarlos en el caso Soler vs. Colombia, a pesar de ya haber sido introducido en el caso Loayza Tamayo. En este caso la víctima (Wilson Gutiérrez Soler) fue objeto de detención arbitraria y tortura, concluyéndose que se destruyó su proyecto de vida a raíz de la falta de reparación del daño en instancias nacionales. Se sistematiza este concepto de la siguiente manera:

> "Los hechos impidieron la realización de sus expectativas de desarrollo personal y vocacional, factibles en condiciones normales, y causaron daños irreparables a su vida, obligándolo a truncar sus lazos familiares y trasladarse al extranjero, en condiciones de soledad, penuria económica y quebranto físico y psicológico... Asimismo. Esta probado que la forma específica de tortura que la víctima sufrió [...] ha disminuido de manera permanente su autoestima y su capacidad de realizar y gozar de relaciones afectivas íntimas"[18]

Por lo tanto, la CIDH reconoció el daño al proyecto de vida derivado de la violación de sus derechos humanos. Sin embargo, dicho Tribunal consideró que, aun cuando, no es cuantificable en términos económicos, debido a la naturaleza compleja e íntegra del derecho al proyecto de vida exige "medidas de satisfacción y garantías de no repetición que van más allá de la esfera económica."[19] Por lo tanto, se estimó que ninguna forma de reparación podría devolverle a la víctima las opciones de realización personal de las que se vio privado.

[18] Caso Gutiérrez Soler vs. Colombia, párrafo 88.
[19] Ibídem, párrafo 89.

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La Corte, al resolver el caso, agrupó todas las referidas situaciones como si fueran diversas expresiones del rubro de "daño moral", fijando determinadas sumas de dinero en compensación de este. Es decir, estableció una compensación global por todas las "diversas clases de daños morales", incluyendo dentro de éstos la "destrucción del proyecto de vida de los jóvenes".

En el caso Cantoral Benavides, resuelto el 3 de diciembre del año 2001, la Corte distingue entre los denominados daños inmateriales los "dolores corporales y sufrimientos emocionales, es decir, el "daño moral (párrafo 59), de una parte, del "serio menoscabo" del proyecto de vida de la víctima (párrafo 60), de la otra.

La Corte, para los efectos de la reparación de los daños, en atención a dicha distinción conceptual, fijó reparaciones distintas para cada uno de los mencionados daños inmateriales. Así expresa el párrafo 63 que "la compensación del menoscabo del "proyecto de vida" será efectuada en los términos diferenciados a las otras formas de reparación.

Las reparaciones derivadas del "daño al proyecto de vida" constituye el aporte más importante, significativo y novedoso efectuado por la Corte Interamericana de Derechos Humanos en lo atinente a la reparación de las violaciones de dichos derechos.

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Conclusiones

1. Galaz, Yamazaki, Ruiz Urquiza, S.C., se encuentra obligada a una actuación acorde a la debida diligencia, lo cual implica la observancia, respeto y protección de los derechos de todas las personas con las que interactúa, particularmente de aquellas que conforman su fuerza laboral.

2. Los Estatutos de Galaz, Yamazaki, Ruiz Urquiza, S.C., (Deloitte Mexico), especialmente el ARTÍCULO CUARENTA Y TRES, así como las políticas internas adoptadas limitan los derechos de los socios jubilados a trabajar, por lo que resulta contrario a los principios reconocidos en los artículos 5º de la Constitución Política de los Estados Unidos Mexicanos, 6º y 7º del Pacto Internacional de Derechos Económicos Sociales y Culturales, 23 de la Declaración Universal de los Derechos Humanos de las Naciones Unidas y a los Principios de Actuación de las Empresas y los Derechos Humanos de las Naciones Unidas.

3. Las políticas internas en cuanto al trato a los Socios B por parte de la empresa Galaz, Yamazaki, Ruiz Urquiza, S.C., orientadas a suspender o dar por terminados los pagos de pensión (denominados participación de utilidades, para propósitos internos) en caso de que los Socios B realicen actividades profesionales o laborales aprovechando el conocimiento y experiencia adquirida, constituye una política interna discriminatoria y una clara violación al derecho de recibir las prestaciones derivadas de la jubilación y a la seguridad social, lo cual es contrario a lo dispuesto por la Constitución Política de los Estados Unidos Mexicanos y a los instrumentos internacionales suscritos por el Estado Mexicano. El riesgo de que los pagos de pensión se suspendan o se den por terminados afectan de manera significativa el proyecto de vida de los Socios B lo cual constituye

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una flagrante violación al derecho a la igualdad y redunda en una cosificación de las personas.

4. Deloitte Touche Tohmatsu Limited ha incumplido con el deber de actuar con la Diligencia Debida al omitir asegurar que los directivos de Galaz, Yamazaki, Ruiz Urquiza, S.C. (Deloitte Mexico) cumpla a su vez con el deber de actuar con la Diligencia Debida en el respeto de los derechos humanos a través de acciones que les permitan identificar, prevenir y remediar cualquier acto u omisión que pueda ser violatoria de los derechos humanos y que sea ocasionada durante sus operaciones.

Dr. Raúl Plascencia Villanueva

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Plascencia Villanueva y Asociados S.C.

The following is a free translation of the Spanish version of Dr. Plascencia's report issued on November 29, 2018

REPORT

RELATIVE TO THE RESPECT OF THE HUMAN RIGHTS OF SENIOR PERSONS BY **GALAZ, YAMAZAKI, RUIZ" URQUIZA, S.C., (DELOITTE** MEXICO)

Index

I Report objectives

The undersigned, Raul Plascencia Villanueva, Doctor of Law, render this report at the request of Mr. Walter Oswaldo Garcia.

Enclosed is a copy of my *Curriculum Vitae* as of the date of this report, that support the knowledge, academic preparation and academic and professional experience that provide me with the authority to issue this expert opinion.

I declare that I have had access to the several documents refer to throughout this report.

The objective of this report is:

a. Identify whether Galaz Yamazaki, Ruiz Urquiza, S.C., has nullified the rights to free choice of employment, equality and social safety.

b. Determine whether Galaz, Yamazaki, Ruiz Urquiza, S.C., as a legal entity, complies with its obligation to act in accordance with human rights due diligence by respecting the rights of senior citizens (65 and older) with respect to the payment of pension benefits upon retirement and other benefits relative to social safety.

Galaz, Yamazaki, Ruiz Urquiza, S.C., is the member firm of Deloitte Touche Tohmatsu Limited in México.

Following are the principal aspects that I have been requested to analyze:

Determine whether Galaz, Yamazaki, Ruiz Urquiza, S.C's actions have resulted in human rights violations.

a. Determine whether the articles of partnership and policies of Galaz, Yamazaki, Ruiz Urquiza, S.C., violate articles 1, 5 and 123 of the Constitution of Mexico.

b. Determine whether Galaz, Yamazaki, Ruiz Urquiza, S.C., has observed human rights due diligence in the treatment and attention to senior citizens.

II. Case presentation

1. The articles of partnership of Galaz, Yamazaki, Ruiz Urquiza, S.C., ("Galaz", "Partnership", the "Firm"), partners who reach the retirement age (B partners) will have the right to profit-sharing in an amount equivalent to 1% of the highest average earnings of the last six years as active partner

times the number of years the partner remained in the Partnership as an active partner up to a maximum of 25. The amount of profit sharing is adjusted annually by applying the National Consumer Price Index.

2. In August 2014, the Chief Executive Officer of the Firm implemented the following policy:

> "**. . .**B partners will not carry out any professional activities that require or are related to the profession or skills required when they were A partners, except and with the authorization of the Firm: teaching, research or cultural activities**..."**

The CEO communicated orally to B partners that those who were carrying out activities contrary to the aforementioned policy and did not resign from them during a transition period that was to be authorized by Firm Management, commencing on October 1, 2014, would be deemed to be in violation of the Firm's articles of partnership and all profit-sharing payments would be suspended or terminated.

Payments to B partners are pension payments and they cannot be construed as a share in partnership earnings since there is no correlation between the duties and rights of retired partners stipulated in the articles of partnership and the legal and academic definition of the term partner. Payments to B partners are individualized and defined obligations of the Partnership and real and consummated benefits of B partners; i.e., vested benefits that are generated by complying with all the conditions required to give effect to the defined payments based on their years and earnings as active partners.

4. The articles of partnership of Galaz, Yamazaki, Ruiz Urquiza, S.C. in effect at the time the aforementioned policy was implemented established the following with respect to professional activities of B partners:

> "Other than memberships or affiliations in associations of businessmen, social and sport groups, B partners will not engage in activities that the **Special Partners' Assembly** deems detrimental to the interest or reputation of the Partnership. However, B partners may keep the emoluments corresponding to the position of official examiner of entities that are or are not clients of the Firm or member of the *board of directors of the latter* (emphasis added)."

III. OPINION ON THE INFORMATION ANALYZED

The analysis of the furnished information allows me to observe that Galaz, Yamazaki, Ruiz Urquiza, S.C.'s, conduct is not in accordance with human rights due diligence* that presupposes full respect of human rights of the persons who

work for the Partnership, particularly of those older than 65 years as it concerns its social safety derived from pension payments.

*Human Rights Due Diligence is the process to identify, prevent, mitigate, and account for how business addresses impacts on human rights. UN Guiding Principles on Business and Human Rights.

In effect, we observe that its conduct is contrary to human rights due diligence corresponding to an entity respectful of the rights established in the Constitution of Mexico, as well as other international covenants subscribed by Mexico. Its acts have resulted in violations of the right to work and to equality, are discriminatory against persons older than 65 years, and constitute attempts against social safety and are detrimental to life projects.

1. Private entities and human rights due diligence

At present, all private entities are obligated to act in accordance with human rights due diligence, which implies the observation, respect and protection of the rights of all persons with whom they interact, particularly those that comprise their workforce.

The violation of human rights by private individuals against other private individuals has been the subject of analysis and resolution on the part of the Inter-American Court of Human Rights and the Supreme Court of Justice of Mexico.

The sentence of the Amparo (2/2000) (an Amparo suit is an appeal on the grounds of unconstitutionality filed before the Supreme Court of Mexico), in review, resolved by the Second Chamber of the Supreme Court, specifies: "in constitutional articles 2, 4, 27 and 3:I we find provisions that impose to private individuals duties of to do and not to do. Article 2 prohibits slavery; such prohibition cannot, by logic and reason, be attributed to the state but to private individuals; the infringement of article 27, which establishes the limits of private property, would provoke a constitutional violation; concluding that the provisions established in the constitution apply equally to authorities and to private citizens, since both may be active subjects in the commission of a constitutional violation independent of the procedures contemplated for the corresponding redress."

In conflicts in which a private individual denounces that another private individual has nullified his fundamental rights, the Amparo under consideration

by the Supreme Court is an important mean to review the constitutionality of the interactions between private individuals. With respect to matters that have already occurred it strengthens liberty and equality in the broad area of private interactions.

On the other hand, the office of the United Nations High Commissioner for Human Rights is clear with respect to the responsibility of business enterprises to protect, respect and remediate any violation of human rights, as stipulated in The United Nations Guiding Principles on Business and Human Rights which establish the international framework and standards of conduct expected to be observed by all business enterprises.

The observance of human rights due diligence permits the prevention and mitigation of adverse consequences on human rights and the correction of any excess, abuse or omission. It implies the communication and confrontation of human rights violation risks.

2. Constitutional duty to observe human rights

A reading of article 1of the Constitution of Mexico conveys the acknowledgement that all persons have the right to enjoy the human rights contained in the Constitution and in international covenants subscribed by Mexico[1], as well as the enjoyment of the guarantees to protect them, which exercise can be restricted or suspended only in the cases and conditions described in the Constitution, imposing on all authorities the obligation to promote, respect, protect and guarantee human rights in accordance with the principles of universality, indivisibility and progressiveness in the areas of their responsibilities.

With respect to the text of article one, it is important to specify that when a human right is recognized by the Constitution of Mexico as well as the different international covenants subscribed by Mexico, it is necessary to consider the contents and scope of all sources and grant those affected the highest protection offered (pro persona principle). If there were to exist any restriction to exercise that human right, the provisions of the Constitution of Mexico would apply, it being the fundamental law of Mexico's judicial system, as resolved by the First Chamber of the Supreme Court of Mexico in its jurisprudence thesis 29/2015[2]

' in CPEUM incluye a todos los derechos contenidos en un Tratado Internacional vinculante para México, con independencia de la naturaleza del instrumento internacional, esto es, no importa que no sea especializado en derechos humanos.

The human rights norms contained in the Constitution of Mexico and in international covenants are integrated in a compendium of rights that function as a constitutional parameter; they are not mutually related in hierarchical terms[3]. All human, civic, social, economic and cultural rights have the same validity and importance, without there being any hierarchy among them.

In that regard, the Supreme Court of Mexico interpreted the principle of progressiveness in the following sense:

> PROGRESSIVENESS OF HUMAN RIGHTS PRNCIPLE. CRITERIA TO DETERMINE WHETHER A LIMITATION TO EXCERCISE A HUMAN RIGHT RESULTS IN THE VIOLATION OF SUCH PRINCIPLE.
>
> The principle of progressiveness of human rights, guaranteed by article 1 of the Constitution of Mexico, is a requisite for consolidating the guarantee of protection of human dignity, as its observance requires, on one hand, that all authorities within their area of competence increase gradually the promotion, respect, protection and guarantee of human rights, and on the other, precludes them, given the concept of non-regressiveness, to adopt measures that would decrease the level of protection. With respect to the latter concept, it must be emphasized that the limitation of the exercise of a human right is not necessarily a synonym of nullification of such principle, since determining whether a certain measure respects the principle, it is necessary to analyze whether (I) the decrease in the level of protection is intended mainly to increase the guarantee of a human right; and (II) it affords a reasonable balance between the fundamental rights in question, without impairing significantly the efficaciousness of one of them. To determine whether the limitation in the exercise of a human right violates the principles of human rights progressiveness, the legal practitioner should make a combined analysis of the individual impact of a certain measure in relation to its collective implications in order to establish if it is justified[4].

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2 Tesis de Jurisprudencia 29/20 TS (10a.). Derechos humanos reconocidos tanto por la Constitución Política de los Estados Unidos Mexicanos, como en Nos Tratados internacionales. Para determinar su contenido y alcance debe acudirse a ambas fuentes, favoreciendo a las personas la protección más amplia, aprobada por la Primera sala de este Alto Tribunal, en sesión privada de quince de abril de 2015.

3 Tesis de Jurisprudencia P./J. 20/2014 (10a.), Derechos humanos contenidos en la Constitución y en los tratados Internacionales. Constituyen el parámetro de control de regularidad constitucional, pero cuando en la Constitución haya una restricción expresa at ejercicio de aquéllos, se debe estar a lo que establece e) texto constitucional, Tribuna) en Pleno de la Suprema Corte de Justica de la Nación, 30 de abril de 2014.

Social rights may be analyzed from two different perspectives, first subjectively as an individual right of all persons and second from a social and institutional viewpoint, as sustained by the First Chamber of the Supreme Court of Mexico in its thesis 1a. CCLXXXVII/2016 (10a.), establishing that the right to social safety presents the two aspects given the relationship between personal autonomy and the functioning of a democratic society[5].

Consequently, the Right to Social Safety (RSS) may also be viewed from two perspectives, individually as a subjective right that allows a person to develop an autonomous life plan, free of fear and the burdens of poverty, guaranteeing access to goods and services in order to live a dignified existence (article 4 of the Constitution of Mexico and the General Law of Social Development), and socially through an effective and efficient system of social safety or a social institution of a contributory nature established for the benefit of workers.

Society, business and individuals are responsible for observing the law and acting accordingly in a framework of co-responsibility, otherwise they would be forced to comply with the law, reaching the extreme that enforcement would have to be resolved by the courts (justiciability of rights). In case of violation of the RSS by private individuals, the State would have to ensure that the enjoyment of the right is restored to the victim and, if applicable, reparation of the damaged caused.

In effect, the RSS implies a co-responsibility between the State, society, business and individuals. The Covenant 102 as well as OG19 and the PPS establish that the State is principally, but not exclusively, responsible for implementing and administering a system of social safety, and for complying with the legal obligation of observing and protecting the exercise of the RSS.

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4 Tesis de Jurisprudencia 41/2017 (:t 0a.). Aprobada por la Segunda Sada de este Alto Tribunal, en sesión privada del veintiséis de abril de dos mil diecisiete.

5 DERECHO PUNDAMEWAL A LA EDUCACIIN B@ICA. TIENE UNA DI MENSI§N SUBJETTVA COMO DERECLJO INDIVTD UAL Y UNA DIMENSION SOCIAL 0 7NSTTTLIOONAL, POR SU CONEXT§N CON LA AUTONONIIA PERSONAL Y EL FUNCIONAMIENTO DE UNA SOCIEDAD DEMOCR/\PTCA.
El contenido mínimo del derecho a la educación obligatoria (básica y media superior) es la provisi6n del entrenamiento intelectual necesario para dotar de autonomía a las personas y habilitarlas como miembros de una sociedad democrática. Por ello, e) derecho "humano a la educación, además de una vertiente subjetiva como derecho individual de todas las personas, tiene una dimensión social o institucional, pues la existencia de personas educadas es una condicl6n necesaria para el funcionamiento de una sociedad democrática, ya que la deliberación publica no puede llevarse a cabo sin una sociedad informada, vigilante, participativa, atenta a las cuestiones públicas y capaz de intervenir competentemente en la discusión democrática...". Amparo en revisión 750/2015. Maria Angeles Cárdenas Alvarado. 20 de abril de 20:t6.
Tesis: 1a. CCLXXXVII/2016 (10a.), Gaceta del Semanario judicial de la Federación, Décima Época, Primera Sala, Libro 37, diciembre de 2016, Tomo I, p. 367

Employers and beneficiaries have a joint responsibility to finance a system of social safety (through the contributions of employers and workers), In certain cases the State has that responsibility (paragraph 4, OG19). Article 71.1 of the Covenant 102 establishes that the "cost of benefits granted by applying said covenant and administrative costs shall be financed collectively through contributions or taxes or both to avoid burdensome costs to persons of limited means.

In Mexico the RSS has been recognized in a general way (not expressly) in article 4 and, specifically, for workers in the formal employment sector who are enrolled in a social security system, in article 123 of the Constitution of Mexico, as well as in article 6 of the General Law of Social Development and, in articles 22 and 25 of the UN Universal Declaration of Human Rights (UNUDHR), in article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and in article 16 of the American Declaration of the Rights and Duties of Man (ADRDM).

3. Violation of the right to the liberty to work and equality for acts of discriminations

Article 5 of the Constitution of Mexico establishes the right of all persons to engage in the profession, trade or commercial pursuit of his or her choice so long as it is lawful.

Agreements whose objective is the impairment, loss or irrevocable sacrifice of a person's freedom, for any reason, are prohibited. Likewise, no agreement in which a person agrees to renounce temporarily or permanently to his or her right to exercise a given profession, trade or business would be recognized.

> Article 5 of the Constitution of Mexico. No one may be impeded to engage in the profession, industry, commerce or work of his or her choice, so long as they are lawful. The exercise of the freedom to exercise the profession, trade or business of a person's choice may be forbidden only by judicial resolution when the rights of a third party are infringed, or by a government resolution, issued in accordance with the terms of the law, when the rights of society are undermined.
>
> No person may be deprived of the fruit of his or her work, except by judicial resolution.
>
> The law in each state will determine, the professions that require a college degree, license or certificate for their practice, the necessary requisites for obtaining them, and the authorities empowered to issue and regulate them.

No person may be obligated to work without fair compensation and without his or her consent, except work imposed as punishment by the judicial authorities, which shall conform with the provisions of sections I and II of articles 123 of the Constitution of Mexico.

Public service is compulsory only in the terms established by the respective laws: military service and jury duty, as well as councilships and popularly elected, directly or indirectly, positions. Electorate and census functions will be compulsory and non-remunerated, except that those rendered professionally consistent with the terms of the Constitution of Mexico and related laws will be compensated. Professional services of a social nature will be compulsory but remunerated in the terms established by law with the exceptions indicated therein.

The state cannot allow the enforcement of a contract, pact or covenant whose end is the impairment, loss or irrevocable **sacrifice of a person's freedom**, for any reason. Likewise, no agreement in which a person agrees to his or her banishment or in which he or she renounces temporarily or permanently to his or her right to exercise a given profession, trade or business.

An employment contract would be binding only to render the service agreed upon for the time provided by the law, without exceeding one year to the detriment of the worker, and it may not be extended, in any case, to the waiver, loss or restriction of any the civil or political rights.

Breach of such contract by the worker shall render him or her liable for damages, but in no case will it imply coercion against him or her.

Likewise, the International Covenant on Economic, Social and Cultural Rights recognizes the right of everyone to earn his living by engaging in work that he or she freely chooses or accepts, under equitable and satisfactory conditions, as drawn from the following articles:

Article 6

1.The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts and will take appropriate steps to safeguard this right.

2.The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programs, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favorable conditions of work which ensure, in particular:

a) Remuneration which provides all workers, as a minimum, with:

i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

b) Safe and healthy working conditions;

c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

Articles of partnership of Galaz, Yamazaki, Ruiz Urquiza, S.C., in ARTICLE FOURTY THREE O CUADRAGESIMO TERCERO, establish expressly:

B partners will have no participation in the capital of the partnership, will not have voting rights in any Partners' meeting and will not participate in the management of the partnership.

On the other hand, B partners so long as they receive payments under this category agree to the following commitments:

a) They will not render any services regularly offered by the Partnership, either personally or as member or employee of professional entity without the written permission of the Special Partners' Assembly.

b) Nor will they accept any job or position with a client of the Partnership, which may impair its Independence, in the opinion of the Special Partners' Assembly.

c) Other than memberships or affiliations in associations of businessmen, in social, sports, trade and religious groups, in not-for–profit professional organizations, teaching courses and seminars, a retired

> partner will not engage or continue to engage in any activity that the Special Partners' Assembly deems detrimental to the interests or prestige of the Firm; however, he or she may serve, and keep the corresponding emoluments, as statutory examiner of companies that are clients or not of the Partnership or as member of the board of directors of the *latter* (emphasis added).
>
> A B partner who violates any of the provisions contained in the above sections of this article, will stop receiving the payments that under the provisions of these articles of partnership may have the right to receive, during three times the period of the violation, at the judgement of the Special Partners' Assembly.

However, in August 2014 the CEO of the Partnership informed retired partners of the implementation of the following policy:

> "Retired partners will not engage in any professional activities that require or are related to the profession or skills required when they were active partners of the Firm, except, and subject to prior **authorization of the Firm, teaching, research or cultural activities".**

This prohibition is contrary to the provisions of article 5 of the Constitution of Mexico, as well as to articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights.

In effect, the constitutional text and the international covenants treating human rights establish the right of everyone to engage in professional activities of his or her choice, so long as they are lawful, in addition to providing a clear prohibition of any contract, agreement or covenant contrary to the freedom to work of any person.

In that regard, the Supreme Court of Mexico recognizes the possibility of human rights violations by private persons and the commitment that all businesses and associations must make to avoid discrimination and unequal treatment of their employees.

In this spirit, the human right to equality is a principle that is composed of two different facets, which although interdependent and complementary, conceptually they have two distinct attributes: 1) formal in equality and in rights, constituting a protection against distinctions or arbitrary treatment and comprehending at the same time equal treatment before the law and uniformity in the application of judicial norms. It is addressed to the materially legislative authority and consists of the control of norms, in order to avoid differentiations without constitutional justification; and 2) substantive in equality or fact, which

end is to attain equality in the real and effective enjoyment of human rights by everyone. In certain cases, this may entail the necessary removal and/or reduction of social, economic or any other type of obstacle.

On the other hand, the Inter-American Court of Human Rights, in resolving the case Yatama vs Nicaragua (preliminary exceptions, basis, redress and costs. Sentence of June 23, 2005. Series C. No. 127), sustained that the principle of equitable and effective protection by the law and from discrimination constitutes an important aspect of the human rights protection system, recognized by international covenants and expanded by international legal doctrine and jurisprudence

In this respect, the association Galaz, Yamazaki, Ruiz Urquiza, S.C., has the duty to respect and guarantee the human rights of third parties. In case the courts, in exercising control of constitutionality, observes a contractual relationship in which one of the parties nullifies the human rights of the other, the total reparation of the violation would be mandated.

It should be considered that the rights of everyone, as established in the Constitution of Mexico, enjoy a double quality, since on one hand they are composed of subjective public rights (subjective function), and on the other hand they become objective elements that inform or permeate all judicial norms, including those that originate between private individuals (objective function). Thus, it may be stated that the human rights objective function binds indirectly private individuals.

Contractual Liberty fulfills its function only when the relationship among the parties is not tainted by the inequality of one of them. Thus, given an imbalance between the parties, the efficacy of fundamental rights must be confirmed and, therefore, seek their protection.
Thus, in case of a contract signed by two parties in an unequal position, where the weakest accepts unassumable obligations, the terms of the contract must be reconsidered and corrected, notwithstanding that the affected party agreed to assume the obligations under the contract, otherwise his or her human rights would be nullified.

In effect, the free will of the parties expressed in a contract that has a negative impact on the human rights of one of them does not justify the validity of contract terms that are contrary to the law, since free will must be based in the framework of the laws applicable to the contract, which in turn are subjected to the fundamental rights established in the Constitution of Mexico and in international covenants.

The free will of the parties must be based on the rights of free development of the personality and self-determination, which result in the requirement that all parties to the contract obligate each other freely and that none of them has such power- which may be economic, structural or social on the subject matter of the contract- that places it in a position to impose unilaterally the terms of the contract on the other party, resulting in an imbalance among the parties.

Therefore, the manner in which the articles of partnership of Galaz, Yamazaki, Ruiz Urquiza, S.C. reduce the liberty of B partners, results in an act contrary to human rights due diligence; accordingly, the balance lost by virtue of the consequences caused by the material inequality should be restored pursuant to articles 1 and 5 of the Constitution of Mexico.

Likewise, given the "material inequality and the detriment of the dignity" of one of the parties there arises a form of exploitation by Galaz, Yamazaki, Ruiz Urquiza, S.C.

In effect, we are before the detriment of the essential nucleus of the dignity of the person discriminated. Human dignity is a fundamental right for which there exists a constitutional mandate to all authorities, and private individuals, to respect and protect the dignity of everyone, given the inherent interest of everyone by the mere fact of being a person, to be treated as such and not as an object and not to be humiliated, degraded, debased or reified.

4. Violation of the inherent rights to social safety

On the other hand, the fact that there is an intent to limit the social safety to persons of old age who receive a pension in their retirement, constitutes a clear violation of the right to social safety, which is contrary to the provisions of the Constitution of Mexico and of international covenants subscribed by Mexico

The wording of the text of the policy at question limits the right of any senior person to work and to earn his or her livelihood, which is contrary to the provisions of article 5 and 123 of the Constitution of Mexico and of the international instruments in which Mexico is a party.

In effect, in the covenants subscribed in the framework of the International Labour Organization the importance to "improve working conditions that generate injustice, extreme poverty, and economic privation for the majority of human beings, as well as the protection of workers against illness, workplace accidents, pensions for retirements and disability, is confirmed".

Considering the above, the respect for the dignity of human beings in the workplace has the objective of guaranteeing the recognition of workers as owners of fundamental economic and social rights.

On the other hand, Convention 102 of the International Labour Organization (ILO) defines the scope, benefits and conditions to access each of the fields mentioned therein, including the co-existence of a social security system in two facets: public and private.

In this respect, the member states may elect the financing systems and contributory or non-contributory that they deem more advantageous so long as the legislatively guaranteed benefits meet the level and scope established in conventions 102, 121, 128, 130, 168 y 183 of the ILO.

For the ILO social safety comprises:

> The protection that a society provides individuals and households to ensure access to medical assistance and guaranteed income, especially in cases of old-age, unemployment, sickness, disability, workplace accidents, maternity and loss of the household head.
>
> Said protection is guaranteed through measures relating to benefits, in cash or in kind. "The systems of social security may be of a contributory and non-contributory nature".

Also, the Universal Human Rights System composed of international covenants, jurisprudence of international courts on human rights matters and the General Observations of the Committee on Economic, Social and Cultural Rights, recognize the right to social security as a human right that could be characterized as one of a second generation with a content that is only possible to realize in a progressive manner, which is understood in the sense of seeking to advance in its accomplishment without a reduction in its scope and content.

Likewise, the Universal Declaration of Human Rights in its articles 22 and 25[8] provide:

> Article 22. Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights[9] indispensable for his dignity and the free development of his personality.

Article 25.

(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

The UDHR recognized social security as the human right to a level of adequate life and at highest possible levels of physical, mental and economic wellbeing of all people.

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8 organización de las Naciones Unidas, http://www.ohchr.org, (fecha de consulta: 19 de Julio de 20z7).

9 La DUDH contempla dos categorías de derechos humanos: los "derechos civiles y políticos′ y los "derechos económicos, sociales y culturales"; estos últimos, tienen como propósito primordial el logro de una mayor igualdad entre las personas, a través de la obtenci6n de un trabajo y vivienda dignos, la seguridad social, un nivel de vida adecuado y el acceso a una cultura y a una educación de calidad. Cuando dichos derechos son reconocidos por un Estado, genera obligaciones jurídicas para el mismo, ya que éste deberá garantizar su goce y disfrute.

"Nunca podrá recalcarse lo suficiente la Importancia de los derechos económicos, sociales y culturales. La pobreza y la exclusión se esconden detrás de muchas de las amenazas de seguridad a has que seguimos enfrentándonos tanto en el piano nacional como internacional y, por tanto, ponen en peligro la promoción y la protección de todos los′ derechos humanos. 1ncIuso en las economías más prósperas persisten la pobreza y *gra*ndes desigualdades... Las desigualdades sociales y económicas repercuten en el acceso a la vida publica y la justicia. La globalización ha propiciado mayores tasas de crecimiento económico, pero no en todas las sociedades, ni en el seno de todas ellas, se disfrute de sus beneficios por igual. Ante esos desafíos tan importantes para)a seguridad humana, es necesario no solo actuar en el piano nacional sino también cooperar en eT plano internacional". Louise Arbour, Alta Comisionada de las Naciones Unidas para los Derechos Humanos (Ginebra, 14 de enero de 2005). Ver httD'//www ohChr.org, fecha de consulta (19 de Julio 2077).

Consequently, compliance with economic, social and cultural rights and the International Covenant on Economic, Social and Cultural Rights imposes not only obligations on all member states, but also holds everyone directly responsible for the procurement, permanence and observance of these rights, being their own or not.

The provisions of the General Observation No. 20[10] of the Committee on Economic, Social and Cultural Rights are also applicable. The International Covenant on Economic, Social and Cultural Rights recognizes the equal and inalienable rights of everyone and, explicitly, the right of "everyone" to exercise the right to social safety and an adequate level of existence[12].

On the other hand, the American Declaration of the Rights and Duties of Man of 1948, which "constitutes the normative foundation in the period prior to the American Convention on Human Rights[11], provides the following in its article XVI:

> Every person has the right to social security which will protect him from the consequences of unemployment, old age, and any disabilities arising from causes beyond his control that make it physically or mentally impossible for him to earn a living.

The American Convention on Human Rights also known as the "Pact of San Jose, Costa Rica", subscribed on November 22, 1969, became effective on July 18, 1978[13]. Its article 26 establishes the progressive development of the Economic, Social and Cultural Rights in the following terms:

> Article 26. Progressive Development
>
> The States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires, to the extent of available economic resources, through legislative or other appropriate means.

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10 OMU E/C. 72/GC/ 20 2 de julio de 2OO9.

11 Gancado Trindade, El sistema Interamericano de protección de los derechos humanos, en Felipe Gomez Isa et at., dirs, La Protección internacional de los derechos humanos en los albores del siglo XXI, Bilbao, 2003, Universidad de Deusto, nota 24, pp. 550 y S51.

12 Idem, (fecha de consulta: 26 de Julio de 2017].

13 México se adhirió en 1981.

The Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights, known as the Protocol of San Salvador, which was adopted in 1988 to correct the omission of the American Convention on Human Rights with respect to Economic Social and Cultural Rights became effective on November 16, 1999, contemplates the right to social security in its article 9:

> 1. Everyone shall have the right to social security protecting him from the consequences of old age and of disability which prevents him, physically or mentally, from securing the means for a dignified and decent existence. In the event of the death of a beneficiary, social security benefits shall be applied to his dependents.[14]
>
> 2. In the case of persons who are employed, the right to social security shall cover at least medical care and an allowance or retirement benefit in the case of work accidents or occupational disease and, in the case of women, paid maternity leave before and after childbirth.

The Protocol of Amendments to the Charter of the Organization of American States (Protocol of Buenos Aires adopted on February 27,1967; in article 43-h) establishes as a condition for man to reach the full realization of its aspirations within a fair social order accompanied by economic development and true peace, among other things, to work towards the development of an efficient policy of social safety, and in its article 44 establishes:

> The Member States recognize that, in order to facilitate the process of Latin American regional integration, it is necessary to harmonize the social legislation of the developing countries, especially in the labor and social security fields, so that the rights of the workers shall be equally protected, and they agree to make the greatest efforts possible to achieve this goal.

From the contents of the international covenants enunciated in the preceding two sections, we can reaffirm that social safety is a human right that is part of the body of all economic, social and cultural rights.

It should be pointed out that the principal legal protection must come from domestic laws and only in the assumption that the national legal system does not solve a human right violation, the mechanisms of the regional or universal systems will be used.

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14 Idem, (fecha de consulta: 26 de julio de 2017).

From the foregoing, it is observed that in accordance with the principle of universality, the human rights protection must include every person or group, particularly the groups in a vulnerable situation. The courts must consider the flexibility and evolution of human rights in interpreting this norm.

Based on the above, social security constitutes a human right that is inherent in the dignity of persons in conditions of equality and non-discrimination. The person as owner of the right obligates the state and society to joint efforts until a universal coverage is reached in order to achieve the full development of the human being.

In the normative content of the right to social security, the General Observation 19 indicates that the "right to social security includes the right to not be subjected to arbitrary or unreasonable restrictions from the existing social coverage, either public or private, as well as the right to equality in the enjoyment of sufficient protection against unforeseen social risks."[17]

With respect to the measures that the State may adopt to provide the benefits of social security, the General Observation 19 establishes that "they cannot be defined in a restrictive manner and, in any case, they must guarantee a minimum enjoyment of this human right to every person". The measures may be contributory and non-contributory plans, private plans, self-help measures (like community or mutual assistance plans). Whichever plan is chosen it must be guaranteed by the State. The plan must respect at any time, the essential elements of the right to social security.

Therefore, the exclusion of a B partner from Galaz, Yamazaki, Ruiz Urquiza, S.C. association as reprisal for exercising or intending to exercise her or her right to work and to equality, represents, in addition to being a discriminatory act, a violation of the right to equality.

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15 OEA, *QBhttps://www.oas.org/dil/esp/tratados B-31 Protocolo de Buenos Aires.htm,* (fecha de consulta: 26 de julio de 2017).

16. En nuestro país, en)a CPEUM y en Nos tratados Internacionales vinculantes para México.

17. Observación General 19, párrafo 9.

4. Impairment of Life Project, economic and non-economic damages.

The issue of reparations has been one of the principal issues on which the Inter-American Court of Human Rights has directed its attention in the last few years, thus, the jurisprudence has advanced from a moral and economic damage, as well as the damages that could be claimed in a traditional manner through civil proceedings in conformity with the legislation of each country, to a dynamic that seeks greater coverage

In effect, the issue of reparations viewed from the perspective of the jurisprudence of the Inter-American Court of Human Rights, comprises:

Economic

a. Consequential damages

b. Lost profits

c. Damage to family net worth

d. Reimbursement of costs and expenses

2. Non-economic

a. Moral

b. Psychological

c. Physical

d. Life project

c. Collective or social Colectivo o social

3. Measures of comprehensive reparation

4. Measures of rehabilitation (medical and psychological treatment and assistance)

5. Satisfaction (special publication of the sentence, public act recognizing responsibility, commemorative measures for the victims or facts or rights, scholarships, socio-economic measures of collective reparation).

6. Guarantees of non-recidivism

7. Indemnization

8. Sentence to pay costs and expenses

Therefore, suspension or termination of profit-sharing payments (pensions) to B partners results in an impairment of their life project, which constitutes one of the five variables that the Inter-American of Human Rights has identified in its jurisprudence as non-economic. This variable must be complemented with the other seven mentioned above. Galaz, Yamazaki, Ruiz Urquiza, S.C. in limiting the right of B partners to exercise their liberty to work incurs in a flagrant violation of their right to equality and an impairment of their personal liberty which places them in a condition of thing (reification).

It is important to recognize that the development of the jurisprudence of the Inter-American Court of Human Rights has allowed to define human rights, understand them and determine the scope of each one of them.

Considering the foregoing, the amount of each one of the reparations must be quantified based on the magnitude of the damaged caused, as well as the economic capacity of Galaz, Yamazaki, Ruiz Urquiza, S.C.

The antecedents of non-economic damage can be found in the case Soler vs. Colombia, in spite of having already been introduced in the case Loaysa Tamayo. In this case the victim (Wilson Gutiérrez Soler) was the subject of arbitrary detention and torture. It was concluded that his life project was destroyed as a result of the lack of reparation of the damage in national courts.

This concept is systematized in the following manner:

> "The facts impeded the realization of his expectations of personal and vocational development, feasible under normal conditions, and caused irreparable damages in his life which forced him to cut off his family ties and immigrate to a foreign country, in condition of loneliness, poverty, and physical and psychological weakening. Also, it has been proven that the specific torture suffered by the victim has permanently diminished his self-esteem and his capacity to realize and enjoy intimate relations." [18]

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18 Caso Gutiérrez Soler Vs. Colombia, párrafo 88.

Therefore, the Inter-American Court of Human Rights recognized the damage to his life project derived from the violation of his human rights. However, said court considered that even though the damages were not quantifiable in economic terms, given the complex and integral nature of the right to a life project, it demanded "measures of satisfaction and guarantees of non-recidivism, which go beyond the economic sphere.[19] Therefore, it was deemed that no form of reparation could give him back the options of personal realization of which he was deprived.

The Court, in resolving the case, combined all the above-mentioned situations as if they were different instances of "moral damage", and determined certain sums of money to compensate it. That is, it established an overall reparation for all the "different types of moral damages", including the "destruction of the life project".

In the case of Cantoral Benavides, resolved on December 3, 2001, the Court distinguished among the denominated non-economic damages, the corporal pain and emotional suffering, e.g., "moral damage" (paragraph 59), of one part, and the "serious impairment" of the life project of the victim (paragraph 60), of another part.

The Court, for purposes of the reparation of the damages, given such conceptual distinction, determined different reparations for each one of the above-mentioned non-economic damages. Thus paragraph 63 states that the compensation for the impairment of the "life project" will be made in terms different from the other forms of reparation

The reparations derived from the "damage to the life project" constitutes the most important, significative, and innovative contribution of the Inter-American Court of Human Rights pertaining to reparations for human rights violations.

19Ibídem, párrafo 89

CONCLUSIONS

1. Galaz, Yamazaki, Ruiz Urquiza, S.C., (Deloitte-Mexico) has the responsibility to respect human rights and to implement a human rights due diligence process to ensure that the rights of all persons with whom it interacts, particularly those who comprise its workforce, are observed, respected and protected.

2. The Articles of Partnership of Galaz, Yamazaki, Ruiz Urquiza, S.C. (Deloitte-Mexico), especially its Article Forty Three, and certain internal policies limit retired partners right to work and are contrary to the principles established in Article 5 of the Constitution of Mexico, articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights, to Article 23 of the United Nations Declaration of Universal Human Rights and to the recommendations of the United Nations Guiding Principles on Business and Human Rights.

3. The internal policy implemented by Galaz, Yamazaki, Ruiz Urquiza, S.C. (Deloitte-Mexico) terminating pension payments (denominated profit sharing for certain purposes), in case retired partners carry out professional activities employing the skills and experience required while they were active partners, constitutes a discriminatory policy and a clear violation of their right to retirement benefits and social safety and is contrary to the principles of the Constitution of Mexico and to the provisions of international pacts subscribed by Mexico. The potential termination of pension payments may affect significantly the retired partners life project which constitutes a flagrant violation of their right to equality and results in their reification.

4. Deloitte Touche Tohmatsu Limited has been omissive by not ensuring that its member firm Galaz, Yamazaki, Ruiz Urquiza, S.C. (Deloitte-Mexico) has a human rights due diligence process in place to Identify, prevent and mitigate adverse impacts on human rights caused by Its operations.

Dr. Raul Plascencia Villanueva

Dr. Raúl Plascencia

Is currently a visiting professor at the ITAM Law School. In 1987 obtained a degree in Law from the Universidad Autónoma de Baja California (Mexico). In 1994 at the Universidad Nacional Autónoma de México (UNAM) completed a Ph. D. in Law.

His professional career has spanned both in academic and the public sector. From 1990 to 2000, worked as a full time professor at the Instituto de Investigaciones Jurídicas, UNAM, and from 1989-2011, as a professor of criminal law and international public law at the UNAM Law Faculty.

Dr. Plascencia have also carried out many courses, presentations at major academic conferences related to criminal law, justice and human rights in more than 30 countries; published 150 academic articles and 6 books:"Los Delitos Contra el Orden Económico (Economic Crimes); La Responsabilidad Penal de la Persona Jurídica (Corporation criminal liability)"; "La Jurisprudencia en México (The Jurisprudence in Mexico) "; "Teoría del Delito (Theory of Crime)"; "Los Homicidios y Desapariciones de Mujeres en Ciudad Juárez (1993-2009) (Murders and enforced women disappearances in Ciudad Juárez México"; "Compendio de Normas Oficiales Mexicanas en materia de salud (Medical Official Standards)".

In the government, He held for ten years the position of second and first general visitor at the Mexican Ombudsman. In 2009 was elected by the Mexican Senate as the National Ombudsman for the period 2009-2014. Also elected President of the Iberoamerican Federation of Ombudsman (FIO) and President of the World Finance Committee of the National Human Rights Institutions (NHRI´s-CIC).

Dr. Plascencia research interest areas are human rights, criminal law, criminal procedure, white collar crimes, criminal compliance, money laundering and criminal justice.

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Morgan Stanley

December 17, 2018

Walter O. Garcia & Gaby Garcia
& Maria Luis Garcia
***

Re: ***

Dear Mr. Garcia,

As per your request, we are verifying that your account at Morgan Stanley currently holds 25 shares of Blackrock Inc (BLK) common stock.

As of the close of business on December 14, 2018 the shares were valued at $382.30, for a total value of $9,557.50.

A holdings page is enclosed for your reference.

Sincerely,

Lester Kuan
Complex Risk Officer

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January 22, 2019

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
100 F Street, N.E.
Washington, D.C. 20549

RE: BlackRock, Inc. – 2019 Annual Meeting
Omission of Shareholder Proposal of
Walter O. Garcia, Maria Luisa Garcia and Gaby M. Garcia

Ladies and Gentlemen:

Pursuant to Rule 14a-8(j) promulgated under the Securities Exchange Act of 1934, as amended, we are writing on behalf of our client, BlackRock, Inc., a Delaware corporation ("BlackRock"), to request that the Staff of the Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission (the "Commission") concur with BlackRock's view that, for the reasons stated below, it may exclude the shareholder proposal and supporting statement (the "Proposal") submitted by Walter O. Garcia, Maria Luisa Garcia and Gaby M. Garcia (collectively, the "Proponents") from the proxy materials to be distributed by BlackRock in connection with its 2019 annual meeting of shareholders (the "2019 proxy materials").

In accordance with Section C of Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D"), we are emailing this letter and its attachments to the Staff at shareholderproposals@sec.gov. In accordance with Rule 14a-8(j), we are simultaneously sending a copy of this letter and its attachments to the Proponents as notice of BlackRock's intent to omit the Proposal from the 2019 proxy materials.

*** FISMA & OMB Memorandum M-07-16

Rule 14a-8(k) and Section E of SLB 14D provide that shareholder proponents are required to send companies a copy of any correspondence that the shareholder proponents elect to submit to the Commission or the Staff. Accordingly, we are taking this opportunity to remind the Proponents that if the Proponents submit correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should concurrently be furnished to BlackRock.

I. The Proposal

The text of the resolution contained in the Proposal is set forth below:

> RESOLVED, That action by the Audit Committee appointing Deloitte & Touche LLP as the Company's independent registered public accounting firm to conduct the annual audit of the financial statements of the Company and its subsidiaries for the fiscal year ending December 31, 2019 is hereby rejected.

II. Bases for Exclusion

We hereby respectfully request that the Staff concur in BlackRock's view that it may exclude the Proposal from the 2019 proxy materials pursuant to:

- Rule 14a-8(b)(1) and Rule 14a-8(f)(1) because the Proponents failed to provide proof of the requisite stock ownership after receiving notice of such deficiency;

- Rule 14a-8(i)(9) because the Proposal directly conflicts with one of BlackRock's own proposals to be submitted to shareholders at the same meeting;

- Rule 14a-8(i)(7) because the Proposal deals with a matter relating to BlackRock's ordinary business operations; and

- Rule 14a-8(i)(4) because the Proposal relates to the redress of a personal claim or grievance against Galaz, Yamazaki, Ruiz Urquiza, S.C. ("Deloitte Mexico") and is designed to further a personal interest of the Proponents, which is not shared by other shareholders at large.

III. Background

BlackRock received the Proposal, accompanied by a cover letter and a client statement from Morgan Stanley for the period November 1-30, 2018, by FedEx on December 11, 2018. On December 14, 2018, after confirming that the Proponents were not shareholders of record, in accordance with Rule 14a-8(f)(1), BlackRock sent a letter

to the Proponents via UPS (the "Deficiency Letter") requesting a written statement from the record owner of the Proponents' shares verifying that the Proponents beneficially owned the requisite number of shares of BlackRock common stock continuously for at least one year preceding and including December 9, 2018, the date of submission of the Proposal. UPS tracking verified delivery of the Deficiency Letter on December 17, 2018.

On December 26, 2018, BlackRock received a letter from the Proponents, via FedEx, with a holdings page from Morgan Stanley reflecting the Proponents' holdings on December 14, 2018. In addition, on January 9, 2019, BlackRock received a letter from the Proponents, via FedEx, with a client statement from Morgan Stanley for the period December 1-31, 2018. The client statement for November 1-30, 2018, the holdings page for December 14, 2018 and the client statement for December 1-31, 2018 are referred to collectively as the "Client Statements." The Proponents' letters did not include verification from Morgan Stanley that the Proponents beneficially owned the requisite number of shares of BlackRock common stock continuously for at least one year preceding and including December 9, 2018, the date of submission of the Proposal. Copies of the Proposal, the cover letter, the Deficiency Letter, the Client Statements and related correspondence are attached hereto as Exhibit A.

IV. BlackRock May Exclude the Proposal Pursuant to Rule 14a-8(f)(1) Because the Proponents Failed to Provide Sufficient Documentary Support to Satisfy the Ownership Requirement under Rule 14a-8(b)(1).

Rule 14a-8(b)(1) provides that, in order to be eligible to submit a proposal, a shareholder must have continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal for at least one year by the date the proposal is submitted and must continue to hold those securities through the date of the meeting. If the proponent is not a registered holder, he or she must provide proof of beneficial ownership of the securities. Under Rule 14a-8(f)(1), a company may exclude a shareholder proposal if the proponent fails to provide evidence that it meets the eligibility requirements of Rule 14a-8(b), provided that the company notifies the proponent of the deficiency within 14 calendar days of receiving the proposal and the proponent fails to correct the deficiency within 14 calendar days of receiving such notice.

The Client Statements provided by the Proponents in their initial submission and in response to BlackRock's Deficiency Letter do not satisfy the requirements of Rule 14a-8(b)(1) because they fail to demonstrate that the Proponents beneficially owned the requisite number of shares of BlackRock common stock continuously for at least one year preceding and including December 9, 2018, the date of submission of the Proposal. In Section C.1.c (2) of Staff Legal Bulletin No. 14 (July 13, 2001), the Staff addressed

whether periodic investment statements, like the Client Statements, could satisfy the continuous ownership requirements of Rule 14a-8(b):

> **(2) Do a shareholder's monthly, quarterly or other periodic investment statements demonstrate sufficiently continuous ownership of the securities?**
>
> No. A shareholder must submit an affirmative written statement from the record holder of his or her securities that specifically verifies that the shareholder owned the securities *continuously* for a period of one year as of the time of submitting the proposal.
>
> (Emphasis in original.)

Consistent with the foregoing, the Staff has on numerous occasions permitted exclusion of proposals on the grounds that the brokerage statement or account statement or a letter showing holdings or transactions submitted in support of a proponent's ownership was insufficient verification of continuous ownership under Rule 14a-8(b). *See, e.g., FedEx Corp.* (June 28, 2018) (an account statement, broker trade confirmation and a list of stock transactions was insufficient verification of continuous ownership); *PepsiCo, Inc.* (Jan. 20, 2016) (account statement showing ownership of company shares as of a certain date was insufficient verification of continuous ownership); *Int'l Business Machines Corp.* (Jan. 31, 2014) (security record and position report showing ownership account names and a quantity of company shares held as of a certain date was insufficient verification of continuous ownership); *Rite Aid Corp.* (Feb. 14, 2013) (account statement from broker verifying ownership of securities as of a certain date was insufficient proof of continuous ownership); *E.I. du Pont de Nemours and Co.* (Jan. 13, 2012) (one-page excerpt from monthly brokerage statement was insufficient proof of continuous ownership); *Verizon Comm. Inc.* (Jan. 25, 2008) (broker letter providing current ownership of shares and original date of purchase was insufficient proof of continuous ownership); *General Motors Corp.* (Apr. 5, 2007) (account summary was insufficient verification of continuous ownership); *Yahoo! Inc.* (Mar. 29, 2007) (account statements, trade confirmations, email correspondence, webpage printouts and other selected account information was insufficient to verify continuous ownership); *General Electric Co.* (Jan. 16, 2007) (brokerage statement was insufficient to prove continuous ownership); *Sky Financial Group* (Dec. 20, 2004, *recon. denied* Jan. 13, 2005) (monthly brokerage account statement was insufficient proof of continuous ownership); *Int'l Business Machines Corp.* (Jan. 11, 2005) (pages from quarterly 401(k) plan account statements was insufficient proof of ownership); *Bank of America Corp.* (Feb. 25, 2004) (monthly brokerage account statement was insufficient proof of ownership); *RTI Int'l Metals, Inc.* (Jan. 13, 2004) (monthly account statement was insufficient proof of ownership).

The Deficiency Letter timely informed the Proponents that they could cure the procedural deficiencies by sending the type of statement or documentation necessary to demonstrate beneficial ownership under Rule 14a-8(b). However, the Client Statements, which purport to verify ownership as of November 30, 2018, December 14, 2018 and December 31, 2018, fail to prove the Proponents' continuous ownership of BlackRock common stock for the one year period preceding and including December 9, 2018, the date of submission of the Proposal. As outlined in Rule 14a-8(f)(1), the Proponents' response to the Deficiency Letter providing the proper verification must be postmarked, or transmitted electronically, no later than 14 days from receipt of the Deficiency Letter, in this case December 31, 2018. Because the Proponents failed to provide adequate proof of ownership within 14 days of receiving the Deficiency Letter, the Proponents have not demonstrated their eligibility to submit the Proposal as required by Rule 14a-8(b)(1).

Accordingly, BlackRock believes that the Proposal is excludable under Rule 14a-8(f)(1).

V. BlackRock May Exclude the Proposal Pursuant to Rule 14a-8(i)(9) Because the Proposal Directly Conflicts with a Proposal to be Submitted by BlackRock at its 2019 Annual Meeting.

Rule 14a-8(i)(9) provides that a shareholder proposal may be omitted from a proxy statement "[i]f the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting." The Commission has stated that, in order for this exclusion to be available, the proposals need not be "identical in scope or focus." Exchange Act Release No. 34-40018, n. 27 (May 21, 1998). Further, Staff Legal Bulletin No. 14H (Oct. 12, 2015) ("SLB 14H") articulated that the question underlying Rule 14a-8(i)(9) is "whether there is a direct conflict between the management and shareholder proposals" such that "a reasonable shareholder could not logically vote in favor of both proposals, i.e., a vote for one proposal is tantamount to a vote against the other proposal." *See, e.g.*, *NetApp, Inc.* (Jun. 26, 2018) (concurring in the exclusion of a shareholder proposal requesting that shareholders owning 10% of the company's outstanding shares be permitted to call a special meeting, which conflicted with the company's proposal seeking ratification of governing document provisions permitting shareholders owning 25% of the company's outstanding shares to call a special meeting); *Illumina, Inc.* (Mar. 18, 2016) (concurring in the exclusion of a shareholder proposal requesting that the company's governing documents be amended to replace supermajority voting provisions with a simple majority voting standard, which conflicted with the company's proposal seeking ratification of the supermajority voting provisions in the company's governing documents).

In this instance, the Proposal, which asks shareholders to reject the appointment of Deloitte & Touche LLP ("Deloitte") as BlackRock's independent auditor, directly conflicts with a proposal BlackRock intends to submit to its shareholders for approval at the 2019 annual meeting asking shareholders to ratify the appointment of Deloitte as BlackRock's independent auditor. Indeed, the Staff has granted no-action relief in very similar circumstances. In *Huron Consulting Group Inc.* (Jan. 4, 2017), the proposal requested that the company disengage its current independent registered public accounting firm and replace the firm with another independent auditor. The company explained in its no-action request that it intended to include its own proposal in the proxy materials seeking ratification of its current independent auditor and that a shareholder could not logically vote in favor of ratification of the company's independent auditor and in favor of the shareholder proposal to immediately disengage the company's independent auditor. The Staff permitted exclusion under Rule 14a-8(i)(9), agreeing that "the proposal directly conflicts with management's proposal because a reasonable shareholder could not logically vote in favor of both proposals."

As was the case in *Huron*, the Proposal to reject Deloitte as BlackRock's independent auditor directly conflicts with BlackRock's proposal requesting that shareholders ratify the appointment of Deloitte as BlackRock's independent auditor. As a result, BlackRock shareholders could not logically vote for both the Proposal and the proposal to be included by BlackRock in the 2019 proxy materials.

Accordingly, BlackRock believes that it may exclude the Proposal under Rule 14a-8(i)(9).

VI. BlackRock May Exclude the Proposal Pursuant to Rule 14a-8(i)(7) Because it Deals with Matters Relating to BlackRock's Ordinary Business Operations.

Under Rule 14a-8(i)(7), a shareholder proposal may be excluded from a company's proxy materials if the proposal "deals with matters relating to the company's ordinary business operations." In Exchange Act Release No. 34-40018 (May 21, 1998) (the "1998 Release"), the Commission stated that the policy underlying the ordinary business exclusion rests on two central considerations. The first recognizes that certain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight. The second consideration relates to the degree to which the proposal seeks to "micro-manage" the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.

The Staff has long recognized that proposals dealing with the selection of a company's independent auditor relate to a company's ordinary business operations. In

Rite Aid Corp. (Mar. 31, 2006), for example, the proposal requested that the board amend the governing documents to require that the board present the appointment of the company's independent auditors for shareholder ratification at the annual meeting. The Staff concurred in the exclusion of the proposal and noted that the proposal related to the company's "ordinary business operations (*i.e.*, the method of selecting independent auditors)." *See The Charles Schwab Corp.* (Feb. 23, 2005); *Xcel Energy Inc.* (Feb. 23, 2005); *Xcel Energy Inc.* (Jan. 28, 2004) (each permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the board take action to allow shareholders to vote on ratification of the company's independent auditor); *see also, e.g.*, *Intel Corp.* (Jan 21, 2016); *Ace Limited* (Jan. 20, 2016); *T. Rowe Price Group, Inc.* (Jan. 19, 2016); *Norfolk Southern Corp.* (Jan. 15, 2016); *AT&T Inc.* (Jan. 5, 2012); *The Dow Chemical Co.* (Jan. 4, 2012); *Deere & Co.* (Nov. 18, 2011); *J.P. Morgan Chase & Co.* (Mar. 5, 2010); *Masco Corp.* (Jan. 13, 2010); *Masco Corp.* (Nov. 14, 2008); *Masco Corp.* (Feb. 26, 2008) (each permitting exclusion under Rule 14a-8(i)(7) of a proposal seeking to limit the term of engagement of the company's independent auditor to a specific number of years).

In this instance, the Proposal deals with the selection of BlackRock's independent auditor. In particular, the Proposal seeks to reject the appointment of Deloitte as BlackRock's current independent auditor. Such matters relate to a company's ordinary business operations, as recognized by the Staff on numerous occasions. Accordingly, consistent with the precedent above, BlackRock believes that the Proposal may be excluded pursuant to Rule 14a-8(i)(7) as relating to BlackRock's ordinary business operations.

VII. BlackRock May Exclude the Proposal Pursuant to Rule 14a-8(i)(4) Because the Proposal Relates to the Redress of a Personal Claim or Grievance Against Deloitte Mexico and Is Designed to Further a Personal Interest of the Proponents Which is Not Shared by Other Shareholders at Large.

Rule 14a-8(i)(4) permits the exclusion of shareholder proposals related to the redress of a personal claim or grievance against a company or any other person, or that is designed to result in a benefit to a proponent or to further a personal interest of a proponent, which is not shared by other shareholders at large. In adopting this rule, the Commission stated that it "does not believe that an issuer's proxy materials are a proper forum for airing personal claims or grievances." Exchange Act Release No. 34-12999 (Nov. 22, 1976). The Commission also has stated that Rule 14a-8(i)(4) is intended to "insure that the security holder proposal process [is] not abused by proponents attempting to achieve personal ends that are not necessarily in the common interest of the issuer's shareholders generally." Exchange Act Release No. 34-20091 (Aug. 16, 1983). The Commission also has noted that "Rule 14a-8 . . . is not intended to provide a means for a person to air or remedy some personal claim or grievance or to further some personal interest" and that "such use of the security holder proposal procedures is an

abuse of the security holder proposal process, and the cost and time involved in dealing with these situations do a disservice to the interests of the issuer and its security holders at large." Exchange Act Release No. 34-19135 (Oct. 14, 1982) (the "1982 Release").

The 1982 Release made clear that even if the shareholder proposal is phrased in broad terms that "might relate to matters which may be of general interest to all security holders," the proposal may be omitted from a company's proxy materials "if it is clear from the facts . . . that the proponent is using the proposal as a tactic designed to redress a personal grievance or further a personal interest." The Staff on numerous occasions has concurred in the exclusion of a proposal that included a facially neutral resolution where the surrounding facts demonstrated that the proposal was submitted to redress a personal claim or grievance. In *General Electric Co.* (Jan. 12, 2017), for example, the proposal requested that the board take the steps necessary to permit shareholders to act by written consent. The company explained that the proponent and a former employee had been submitting multiple proposals over the years as a way to speak during the company's annual meeting and advance the former employee's employment related grievance. Despite the proposal's facially neutral resolution, the Staff concurred in the exclusion of the proposal noting that "the proposal appears to relate to the redress of a personal claim or grievance against the company." *See also American Express Co.* (Jan. 6, 2017) (concurring in the exclusion of a proposal under Rule 14a-8(i)(4) that would have required the company to amend its code of conduct to include mandatory penalties for non-compliance when the proposal was submitted by a former employee of the company who had a history of engaging in litigation with the company); *State Street Corp.* (Jan. 5, 2007) (concurring in the exclusion of a proposal under Rule 14a-8(i)(4) requesting an independent chairman when submitted by a former employee who had been ejected from the company's previous annual meeting for disruptive conduct and had engaged in a lengthy campaign of public harassment against the company and its CEO); *MGM Mirage* (Mar. 19, 2001) (concurring in the exclusion of a proposal under Rule 14a-8(i)(4) asking for a written political contributions policy, along with a list of such contributions, when the proposal was submitted on behalf of a proponent who had filed a number of lawsuits against the company based on decisions by the company to deny the proponent credit and to later bar the proponent from company casinos).

In this instance, the Proposal seeks to redress a personal grievance against Deloitte Mexico and is designed to further a personal interest. The Proposal's supporting statement states that BlackRock's Mexican subsidiaries are audited by Deloitte Mexico. The Proposal's supporting statement then claims that Deloitte Mexico "has implemented a policy establishing that '[r]etired partners will not carry out any professional activities [with audit and non-audit clients] that require or are related to the profession or skills required when they were active partners of the firm.'" The Proposal's supporting statement also claims that "[v]iolation of this policy results in termination of pension benefit payments" to retired partners and that the "policy limits

retired partners right to work." In a letter to BlackRock's corporate secretary, dated January 18, 2019 (the "Deloitte Letter"), Deloitte stated that "[i]t is [Deloitte]'s understanding that Mr. José Oswaldo Garcia Mata is a retired [p]artner of [Deloitte Mexico] [and] [i]t is also our understanding that Mr. Garcia Mata is the [f]ather of Walter, Maria Luisa and Gaby Garcia, the proponents of the proposal." The Deloitte Letter is attached hereto as Exhibit B.

Based on the foregoing, it is apparent that the Proposal seeks to address the Proponents' personal grievance with Deloitte Mexico by requesting that BlackRock's shareholders not ratify Deloitte as BlackRock's independent auditor. The use of BlackRock's proxy materials by the Proponents for that purpose amounts to an abuse of the shareholder proposal process, at the expense of shareholders, and is precisely the type of situation Rule 14a-8(i)(4) is intended to prevent.

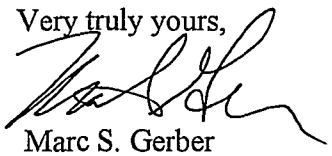
Accordingly, BlackRock believes the Proposal is excludable under Rule 14a-8(i)(4).

VIII. Conclusion

Based upon the foregoing analysis, BlackRock respectfully requests that the Staff concur that it will take no action if BlackRock excludes the Proposal from the 2019 proxy materials.

Should the Staff disagree with the conclusions set forth in this letter, or should any additional information be desired in support of BlackRock's position, we would appreciate the opportunity to confer with the Staff concerning these matters prior to the issuance of the Staff's response. Please do not hesitate to contact the undersigned at (202) 371-7233.

Very truly yours,



Marc S. Gerber

Enclosures

cc: R. Andrew Dickson, III, Director & Corporate Secretary
BlackRock, Inc.

Walter Garcia

EXHIBIT A
(see attached)

WALTER O. GARCIA

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***

MR. R. ANDREW DICKSON III
CORPORATE SECRETARY
BLACKROCK, INC.
40 EAST 52nd STREET
NEW YORK, NY 10022

December 6, 2018

RE: Shareholder Proposal for 2019 Annual Meeting

Dear Mr. R. ANDREW DICKSON III,

I, Walter O. Garcia, and Maria Luisa Garcia and Gaby M. Garcia, shareholders of BlackRock, Inc., submit the attached shareowner proposal for inclusion in the proxy statement that BlackRock, Inc. plans to circulate to shareowners in anticipation of the 2019 annual meeting. The proposal is being submitted under SEC Rule 14a-8 and relates to a matter contrary to the Company's values, principles and policies.

We have beneficially owned more than $2,000 worth of BlackRock, Inc. stock for longer than one year. Enclosed is a statement of account from Morgan Stanley Smith Barney LLC, showing our ownership. Shareowners intend to continue ownership of at least $2,000 worth of Blackrock, Inc. stock through the date of the 2019 annual meeting, which I will attend.

Enclosed are the conclusions of a 32-page report (available upon request) from Dr. Raúl Plascencia Villaseñor, Doctor of Law, leading human rights expert and former president of Mexico's National Commission on Human Rights, which fully support the affirmations made in our proposal. Also enclosed is a condensed version of Dr. Plascencia's curriculum vitae.

I would be glad to discuss the issue set forth in the enclosed proposal with you. If you require additional information, please let me know.

Very truly yours,

Walter O. García

PROPOSED SHAREHOLDER RESOLUTION under SEC rule 14a-8

The Company's Mexican subsidiaries are audited by Galaz, Yamazaki, Ruiz Urquiza, S.C. (Deloitte Mexico). The audit work is referred to this firm by Deloitte & Touche LLP (Deloitte US). Both firms are members of Deloitte Touche Tohamatsu Limited. Deloitte Mexico has implemented a policy establishing that "Retired partners will not carry out any professional activities [with audit and non-audit clients] that require or are related to the profession or skills required when they were active partners of the firm". Violation of this policy results in termination of pension benefit payments (called retired partners share in profits for certain purposes). The policy limits retired partners right to work and is contrary to the principles established in Article Five of the Constitution of Mexico, to articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights, to Article 23 of the United Nations Declaration of Universal Human Rights and to the recommendations of the United Nations Guiding Principles on Business and Human Rights. Deloitte US' association with Deloitte Mexico is contrary to the Company's values, principles and policies. Therefore, we recommend that shareholders do not ratify the selection of Deloitte & Touche LLC as the Company's independent registered public accounting firm.

RESOLVED, That action by the Audit Committee appointing Deloitte & Touche LLP as the Company's independent registered public accounting firm to conduct the annual audit of the financial statements of the Company and its subsidiaries for the fiscal year ending December 31, 2019 is hereby rejected.

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ORIGIN ID:SMOA
WALTER GARCIA

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UNITED STATES US

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BILL CREDIT CARD

TO **MR. R. ANDREW DICKSON III**
BLACKROCK INC.
40 EAST 52ND STREET

NEW YORK NY 10022
(000) 000-0000 REF:
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BLACKROCK

December 14, 2018

BY EMAIL AND UPS

Walter O. Garcia
***

RE: Notice of Deficiency

Dear Mr. Garcia:

I am writing to acknowledge receipt of your shareholder proposal (the "Proposal") submitted to BlackRock, Inc., ("BlackRock") pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, as amended, for inclusion in BlackRock's proxy materials for the 2019 Annual Meeting of Stockholders (the "Annual Meeting").

Under Rule 14a-8, in order to be eligible to submit a proposal for the Annual Meeting, a proponent must have continuously held at least $2,000 in market value of BlackRock common stock for at least one year, preceding and including the date that the proposal was submitted. In addition, the proponent must provide a written statement that the proponent intends to continue to hold at least this amount of BlackRock common stock through the date of the Annual Meeting. For your reference, a copy of Rule 14a-8 is attached to this letter as Exhibit A.

Our records indicate that you are not a registered holder of BlackRock common stock. You have provided a client statement from Morgan Stanley for the period November 1-30, 2018, purporting to show ownership of BlackRock common stock as of specific dates. This statement does not, however, provide adequate proof that you have continuously held at least $2,000 in market value of BlackRock common stock for at least one year, preceding and including December 9, 2018, the date that the proposal was submitted.

Accordingly, please provide a written statement from the record holder of your shares (usually a bank or broker) and a participant in the Depository Trust Company (DTC) verifying that, at the time you submitted the Proposal, which was December 9, 2018, you had beneficially held the requisite number of shares of BlackRock common stock continuously for at least one year preceding and including December 9, 2018.

In order to determine if the bank or broker holding your shares is a DTC participant, you can check the DTC's participant list, which is currently available on the Internet at http://www.dtcc.com/client-center/dtc-directories. If the bank or broker holding your shares is not a DTC participant, you also will need to obtain proof of ownership from the DTC participant through which the shares are held. You should be able to find out who this DTC participant is by asking your broker or bank. If the DTC participant knows your broker or bank's holdings, but does not know your holdings, you can satisfy Rule 14a-8 by obtaining and submitting two proof of ownership statements verifying that, at the time the Proposal was submitted, the required amount of shares were continuously held for at least one year – one from your broker or bank confirming your ownership, and the other from the DTC participant confirming the broker or bank's ownership. For additional information regarding the acceptable methods of proving your ownership of the minimum number of shares of BlackRock common stock, please see Rule 14a-8(b)(2) in Exhibit A.

In addition, as required by Rule 14a-8, please provide a written statement that you, rather than shareholders more generally, intend to continue to hold at least $2,000 in market value of BlackRock common stock through the date of the Annual Meeting.

Rule 14a-8 requires that the documentation be postmarked or transmitted electronically to us no later than 14 calendar days from the date you receive this letter. Once we receive this documentation, we will be in a position to determine whether the Proposal is eligible for inclusion in the proxy materials for the Annual Meeting. BlackRock reserves the right to seek relief from the Securities and Exchange Commission as appropriate.

Very truly yours,

R. Andrew Dickson, III
Director and Corporate Secretary

Enclosure

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WALTER O.
GARCIA

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MR. R. ANDREW DICKSON III
CORPORATE SECRETARY
BLACKROCK, INC.
40 EAST 52nd STREET
NEW YORK, NY 10022

December 21, 2018

RE: Shareholder Proposal for 2019 Annual Meeting – Notice of Deficiency

Dear Mr. Dickson,

Thank you for your response to our letter dated December 6th, 2018. We are enclosing the information that our broker, Morgan Stanley, is able to provide at this time to prove ownership of BlackRock stock during the required period. Please be aware that our holdings in BlackRock were recently transferred from a managed account to a non-managed one to ensure that shares were retained until the dates required. The Compliance Department at Morgan Stanley has advised that the enclosed documentation is all the they can provide until statements reflecting stock in the non-managed accounts are printed in January 2019.

We will forward you an update as soon as the required broker documentation is available.

Very truly yours,

Walter O. García

WALTER O. GARCIA

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MR. R. ANDREW DICKSON III
CORPORATE SECRETARY
BLACKROCK, INC.
40 EAST 52nd STREET
NEW YORK, NY 10022

December 21, 2018

RE: Intent to hold shares through 2019 Annual Meeting

Dear Mr. Dickson,

As requested under Rule 14a-8(b), this letter is to confirm that we, Walter O. Garcia, Maria Luisa Garcia and Gaby M. Garcia, intend to hold at least $2,000 in BlackRock, Inc. shares through the date of the 2019 Annual Meeting of Stockholders.

Very truly yours,

Walter O. Garcia

Wealth Management
20807 Biscayne Boulevard
6th Floor
Aventura, FL 33180

tel 305 932 4250
fax 305 935 3272
toll free 800 327 2048

Morgan Stanley

December 17, 2018

Walter O. Garcia & Gaby Garcia
& Maria Luis Garcia
***

Re: ***

Dear Mr. Garcia,

As per your request, we are verifying that your account at Morgan Stanley currently holds 25 shares of Blackrock Inc (BLK) common stock.

As of the close of business on December 14, 2018 the shares were valued at $382.30, for a total value of $9,557.50.

A holdings page is enclosed for your reference.

Sincerely,

Lester Kuan
Complex Risk Officer

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ORIGIN ID:SMOA
WALTER GARCIA

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UNITED STATES US

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Part # 150287-2650 RMD REV EXP 08/19

TO MR. R. ANDREW DICKSON III
BLACKROCK, INC
40 EAST 52ND STREET

NEW YORK NY 10022
(000) 000-0000 REF:
INV:
PO: DEPT:

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10022
NY-US EWR

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WALTER O.
GARCIA

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MR. R. ANDREW DICKSON III
CORPORATE SECRETARY
BLACKROCK, INC.
40 EAST 52nd STREET
NEW YORK, NY 10022

January 6, 2019

RE: Shareholder Proposal for 2019 Annual Meeting – Notice of Deficiency

Dear Mr. Dickson,

As per my letter from December 21, 2018, enclosed please find the most recent statement from Morgan Stanley reflecting dates of purchase and cost basis of BlackRock stock for the required period. Also enclosed is the original letter from the Morgan Stanley Compliance Department, dated December 17, 2018, verifying our holdings, as well as our letter of intent to hold at least $2,000 worth of BlackRock stock through the Annual Shareholders Meeting.

Please confirm receipt at your earliest convenience.

Very truly yours,

Walter O. García

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Wealth Management
20807 Biscayne Boulevard
6th Floor
Aventura, FL 33180

tel 305 932 4250
fax 305 935 3272
toll free 800 327 2048

Morgan Stanley

December 17, 2018

Walter O. Garcia & Gaby Garcia
& Maria Luis Garcia
***

Re: ***

Dear Mr. Garcia,

As per your request, we are verifying that your account at Morgan Stanley currently holds 25 shares of Blackrock Inc (BLK) common stock.

As of the close of business on December 14, 2018 the shares were valued at $382.30, for a total value of $9,557.50.

A holdings page is enclosed for your reference.

Sincerely,

Lester Kuan
Complex Risk Officer

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WALTER O. GARCIA

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MR. R. ANDREW DICKSON III
CORPORATE SECRETARY
BLACKROCK, INC.
40 EAST 52nd STREET
NEW YORK, NY 10022

December 21, 2018

RE: Intent to hold shares through 2019 Annual Meeting

Dear Mr. Dickson,

As requested under Rule 14a-8(b), this letter is to confirm that we, Walter O. Garcia, Maria Luisa Garcia and Gaby M. Garcia, intend to hold at least $2,000 in BlackRock, Inc. shares through the date of the 2019 Annual Meeting of Stockholders.

Very truly yours,

Walter O. Garcia

Express

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WALTER GARCIA

UNITED STATES US

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BILL CREDIT CARD

TO MR.R.ANDREW DICKSON III
BLACK ROCK, INC.
40 EAST 52ND STREET

NEW YORK NY 10022
(000) 000-0000 REF:
INV: DEPT:
PO:

TUE - 08 JAN 3:00P
STANDARD OVERNIGHT

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XA JRBA

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Envelope

EXHIBIT B
(see attached)

Deloitte.

Deloitte & Touche LLP
30 Rockefeller Plaza
New York, NY 10112
USA

Tel: +1 212 492 4000
Fax: +1 212 489 1687
www.deloitte.com

January 18, 2019

Andrew Dickson, Corporate Secretary

BlackRock, Inc.

40 East 52nd Street

New York, New York 10022

Re: Shareholder Proxy Request

Dear Mr. Dickson:

It is Deloitte & Touche LLP's understanding that Mr. José Oswaldo Garcia Mata is a retired Partner of Galaz, Yamazaki Ruiz Urquiza, S.C. ("Deloitte Mexico"). It is also our understanding that Mr. Garcia Mata is the Father of Walter, Maria Luisa and Gaby Garcia, the proponents of the proposal.

Sincerely,

Deloitte & Touche LLP