

Update: Amendments to the Pension Funds Systems Law

Category: Legal Alerts

written by Nader, Hayaux & Goebel | octubre 15, 2019

On September 30, 2019, the Mexican Senate (*Cámara de Senadores*) approved the legislative proposal introduced by the Federal Executive Branch of the Mexican Government, (the “**Proposal**”), which was approved by the House of Representatives (*Cámara de Diputados*) on April 30, 2019, to amend various provisions of the Pension Funds Systems Law (*Ley de los Sistemas de Ahorro para el Retiro*) (the “**SAR Law**”). The Senate in turn reverted its comments to the House of Representatives. If the Proposal is approved by the House of Representatives, the President must promulgate the Proposal and order its publication in the Official Gazette.

The following are the main amendments to the SAR Law proposed by the Mexican Congress:

New operating model for Afores

The Retirement Fund Administrators (*Administradoras de Fondos para el Retiro*) (“**Afores**”) will operate through Specialized Retirement Fund Investment Funds (the “**Fiefores**”) which will replace the Specialized Retirement Fund Investment Companies (“**Siefores**”). Furthermore, the Proposal contemplates that the Pension Funds System Commission (*Comisión Nacional del Sistema de Ahorro para el Retiro*) (“**Consar**”), with the prior opinion of the Ministry of Finance (*Secretaría de Hacienda y Crédito Público*) (“**SHCP**”), the Securities and Banking Commission (*Comisión Nacional Bancaria y de Valores*) (“**CNBV**”), and the Mexican Central Bank (*Banco de México*) (“**Banxico**”), shall determine the investment regime, the levels of liquidity and market risk for the Fiefores. However, if the opinion of SHCP, CNBV and/or Banxico is not favorable, Consar may approve the investment regime as long as it justifies its decision in its quarterly report before the Mexican Congress.

Siefores will have a 12 month period from the date the publication date of the amendment to request approval from Consar to convert the Siefores into Fiefores,

including the amendment to their bylaws to comply with the corporate governance provisions applicable to Fiefores pursuant to the revised SAR Law. If the application is not timely submitted or the authorization of Consar is not obtained within such 12 month period, the respective Siefore will enter into a state of dissolution and liquidation.

New investment opportunities

Fiefores will have access to greater investment opportunities than Siefores had, including the possibility of investing directly in securities registered in the National Securities Registry not offered through a public offering, as long as the Afore obtains its prior board approval with the affirmative vote of all of its members, in accordance with general provisions to be issued by Consar.

Fiefores will be able to **(1)** receive money deposits used as collateral in repo transactions, secured lending and derivative financial instruments, **(2)** carry out securities lending transactions and repurchase agreements, including over securities issued by companies, as well as credits or loans only in their capacity as creditors, **(3)** receive cash deposits as long as they are used as collateral in repurchase transactions, securities lending and derivative financial instruments, **(4)** acquire international securities authorized by Consar, **(5)** carry out loan, credit and repurchase transactions to satisfy the liquidity levels established by Consar, **(6)** carry out short transactions with securities used as collateral under pledge agreements, and **(7)** grant guarantees corresponding to repo agreements, loans, credits and derivative transactions, in accordance with the provisions issued to such effect by Banxico.

It is not yet possible to define the scope in the changes to the investment regime or if it will represent a more flexible investment regime. This scope will be defined in the secondary regulation issued by Consar.

Performance Fee

Fees charged by Afores will have an additional component that will be calculated on the basis of the investment returns received by pension holders through their investments in the Fiefores. Consar will publish a specific calculation methodology for such new component. Such performance component may serve to align the

interests of investment managers, pension holders and Afores.

Withdrawal of voluntary deposits

Pension holders will be allowed to withdraw their voluntary deposits from their retirement funds at any time.

Consar, SHCP and Banxico must issue secondary regulation in this regard. As soon as the secondary regulations are published, we will follow up on this release. Additionally, in a period not exceeding six months from the date of the amendment, the Federal Executive Branch must summon the assembly of a National Working Group for the Diagnosis and Proposal of the Amendment of the Pension Systems. Such Group will be composed of and function in accordance with the guidelines dictated by SHCP, incorporating experts in financial, social security, legal or pension matters, representatives of workforce, employees, and a representative of each Parliamentary Group in the House of Representatives and Senators of the Mexican Congress. The Working Group must submit a report to the head of the Federal Executive Branch and to the Mexican Congress.

For further information with respect to the Proposal and applicable regulation, please get in touch with your regular contacts at Nader, Hayaux & Goebel.

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

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

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

With respect to Mexican companies, what are the most common forms of financing for acquisitions? What advantages do companies obtain by seeking external financing?

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

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

The legal framework for development capital certificates has existed in Mexico for approximately eight years and was created mainly to allow Mexican pension funds (AFOREs) to invest in private equity-like structures for the funding of a wide variety of projects. Currently there exist more than 60 CKD issuances in the Mexican market. The regulations have evolved and have been improved throughout the years, which has allowed these funds to be structured more efficiently, granting general partners more flexibility in general terms. This instrument has become interesting

for issuers since it allows them to access the capital markets for purposes of funding and carrying out a business plan and to raise capital. It has also become interesting for investors given that they generally offer attractive returns and the ability to list a security that has been approved and is supervised by the securities regulators.

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

The number and amount of the transactions in the real estate industry has been growing during the last months due to several factors. Some of them include more sophistication of the participants and a more mature market, as well as the use of tax efficient structures, such as FIBRAs (Fideicomisos de Inversión en Bienes Raíces), the Mexican equivalent of a U.S. REIT.

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

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

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