

Mexican House of Representatives Approves Reforms to the Retirement Savings Systems Law

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Authors: [Vicente Corta Fernández](#), [Manuel Groenewold](#), [Carlos Mainero Ruíz](#), [Carlos Alonso Arellano](#)

As previously informed in our [Client Alert](#) from January 25, the Mexican Federal Executive branch submitted a bill that was published in the House of Representatives Parliamentary Gazette on January 23, 2019, with the purpose to amend, add and repeal various provisions of the Retirement Savings Systems Law (the “Initial Bill”). As part of the applicable lawmaking process, on April 29, 2019 the Mexican House of Representatives approved a revised bill, including revisions included by the House’s Finance and Public Credit Committee, as well as certain additional amendments to the bill that was originally submitted by the Mexican Federal Executive branch (the “Revised Bill”).

Following please find the main changes included in the Revised Bill with respect to the Initial Bill:

Fees

The Revised Bill has maintained that Afores shall be entitled to an integrated single fee comprised by a percentage of the assets under management, as they currently do, plus an additional component calculated over the returns received by workers above a threshold to be determined by CONSAR through enabling regulation. The Revised Bill adds that, in order for the CONSAR’s Board of Governors to authorize the calculation methodology to set said threshold, it must obtain the favorable opinion of CONSAR’s Risk Analysis Committee regarding the additional component calculated over returns, as well as regarding said threshold.

In addition, the Revised Bill includes two additional concepts through Transitory Articles:

- I. The amounts that Afores may charge as integrated single fees are capped to the amount authorized to each Afore on the date that the reforms are published. When authorizing fees to Afores, CONSAR’s Board of Governors will need to consider that said fees should decrease proportionally to the growth in the assets managed by each Afore.
- II. CONSAR must publish the enabling regulations to set the additional component calculated over returns, within the six months following the date of effectiveness of the reforms. The Revised Bill adds that such enabling regulations must include guiding principles to avoid that fees are excessive to workers’ interests, and to encourage the progressive reduction of fees, with the purpose of increasing workers’ pensions.

Investment Regime

The Revised Bill includes the following differences with respect to the Initial Bill:

- I. Unlike the Initial Bill, the Revised Bill provides that the investment regime of Fiefores must receive the prior favorable opinion of CONSAR’s Consultative and Surveillance Committee, as well as the prior opinion of the Ministry of Finance and Public Credit (SHCP), the Mexican Central Bank (Banxico) and, as a novelty, of the National Banking and Securities Commission (CNBV). However, the Revised Bill adds that if the opinion of SHCP, CNBV, or Banxico is not favorable, CONSAR must justify its

decision and include it in the quarterly report that it periodically submits to the Mexican Congress. In other words, CONSAR may approve the investment regime even if it fails to obtain the favorable opinion of any of the previous agencies, as long as it justifies its decision.

- II. In addition, the Revised Bill deletes the text in the Initial Bill that provided that Fiefores could acquire securities through private offerings. However, unlike the current regime, the Revised Bill includes that Fiefores may acquire securities registered in the National Securities Registry not offered through a public offering, as long as the Afore acting as their manager obtains its prior board approval with the 100% affirmative vote of its members, and in accordance with the regulation issued by CONSAR. It is worth mentioning that, according to the Mexican Securities Law, issuers of securities registered in the National Securities Registry not offered through a public offering must comply, among others, with the listing requirements established by any of the existing stock exchanges.
- III. The Revised Bill clarifies that Fiefores may create guarantees or grant collateral over their assets when entering into repurchase agreements, loans, credits and derivatives financial operations.
- IV. It is clarified that the ability of Fiefores to grant credits or loans, will be subject to the rules to be eventually issued by Banxico, and that in the execution of authorized credits or loans as borrowers, Fiefores will be subject to the enabling regulations issued by CONSAR, subject to the favorable opinion of the CONSAR's Risk Analysis Committee.

Workers' Rights

In addition to the provisions of the Initial Bill, the Revised Bill provides that workers may contribute the following types of funds to their voluntary savings sub-account: (i) resources from provisional funds; (ii) retirement retributions; (iii) funds maintained at savings accounts; (iv) funds available from indemnities; and (v) any funds constituted by employers in favor of their workers, other than those provided under the Social Security Laws.

Working Group

The Revised Bill requires the SHCP to call for the establishment of a Working Group for the Analysis and Proposal for a Comprehensive Reform to the Pensions System in Mexico, within the six months following the effectiveness of the reform. This group is expected to be comprised by financial, social security, legal and retirement matters experts, as well as representatives of workers, employers and of each political party certified to the National Electoral Institute, considering their personal reputation and the plurality of professional perspectives and disciplines.

Legislative Process

The Revised Bill is still subject to the legislative process, and must be approved by the Senate, which may still include additional amendments. Once approved by both the House of Representative and the Senate, the bill must be promulgated by the President and published at the *Official Federal Gazette*. Likewise, several provisions of the Initial Bill, as amended by the Revised Bill, will need to be detailed in enabling regulations.

White & Case, S.C.
Torre del Bosque – PH
Blvd. Manuel Avila Camacho #24
11000 Ciudad de México
Mexico

T +52 55 5540 9600

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