

Proposed bill to reform the Retirement Savings Systems Law

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On January 23, 2019, a bill proposed by the Mexican Federal Executive branch was published in the House of Representatives Parliamentary Gazette, with the purpose to amend, add and repeal various provisions of the Retirement Savings Systems Law (the “**Retirement Savings Bill**”).

The main purposes of the Retirement Savings Bill are: (i) to amend the corporate governance of Pension Investment Companies (“**Siefores**”) to be replaced by Pension Investment Funds (“**Fiefores**”), including amendments to their shareholders structure and their operation, to improve and give flexibility to their corporate governance; (ii) to give more flexibility to the Fiefores’ investment regime (e.g. the twenty percent limit to invest in foreign securities is repealed from the Law, to be now determined through enabling regulation to be issued by CONSAR, and investments in securities issued through private offerings will now be permitted, among others); (iii) to include as part of the authorized activities of Fiefores the ability to receive cash deposits for limited purposes (e.g. securities lending collateral, among others); and (iv) to establish additional incentives to promote greater value for investments in favor of workers.

Investment Regime

The Retirement Savings Bill provides that the Fiefores investment regime will be determined by the National Retirement Savings System Commission (“**CONSAR**”), through enabling regulation, with the prior opinion of the Ministry of Finance and Public Credit (“**SHCP**”), the Mexican Central Bank (“**Banxico**”), and of the advisory and surveillance committee of CONSAR. Consequently, the National Banking and Securities Commission would no longer participate in the decision.

The Retirement Savings Bill includes the following changes to the Fiefores’ investment regime:

- Remarkably, the prohibition against investing in foreign securities other than those authorized by CONSAR in excess of 20 percent of the total assets of a Siefore is repealed from the Law, allowing the limit to be determined through enabling regulations to be issued by CONSAR;
- Fiefores will be able to invest in securities offered through private offerings, following the enabling regulation to be issued by CONSAR, with the SHCP’s prior opinion, thus repealing the current statute that requires Siefores to invest only in securities issued through public offerings;
- Fiefores will be authorized to receive cash deposits in the form of collateral from their counterparties derived from repo agreements, securities lending and derivative financial instruments;
- Fiefores will be authorized to enter into securities lending and repo agreements, subject to the enabling regulation to be issued by Banxico, as well as into credits or loans, only in a creditor capacity, provided

that such loans are extended to settle purchase and sale transactions of authorized instruments for Fiefores' investment, and

- Fiefores will be authorized to act as repo sellers (*reportados*) in repo agreements to satisfy their liquidity requirements, as well as to settle transactions in accordance with their investment regime and to grant collateral in connection with such transactions.

Transition from Investment Companies to Investment Funds

The Retirement Savings Bill provides that Siefiores will be substituted by Fiefores, to be incorporated with the prior CONSAR's approval by a single founding partner, which can only be a Pension Fund Manager ("**Afore**"). Fiefores must be incorporated as limited liability corporations (*sociedades anónimas*) and registered in the National Securities Registry (no longer in the Public Registry of Commerce). The authorities granted to the Siefiores' shareholders' meetings and board of directors would now be exercised by such corporate bodies at the level of the Afore that manages such Fiefores.

The Retirement Savings Bill provides that Siefiores will have a 12-month period, counted from the effectiveness of the amendments under the Retirement Savings Bill, to request the authorization from CONSAR to amend their by-laws to become Fiefores. CONSAR will have a term not to exceed 12 months from the submission of the amendment request to issue its resolution.

Afores may manage more than one Fiefore, but they must manage at least one that, in addition to maintaining the purchase value of workers' savings, shall also maintain the liquidity and market risk levels to be determined by CONSAR through enabling regulation, with the prior opinion of SHCP.

Workers' Rights

The Retirement Savings Bill grants flexibility to the requirements to be complied by workers to withdraw funds from their voluntary contributions sub-accounts. Workers will be able to make withdrawals within the time periods to be determined in the offering memorandum prepared by each Fiefore, repealing the current restriction that only allows for extraordinary withdrawals every certain number of months.

Additionally, the Retirement Savings Bill provides that workers may invest in more than one Fiefore managed by their relevant Afore.

Fees

To incentivize greater returns for workers, the Retirement Savings Bill provides that Afores shall be entitled to a 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 established by CONSAR through enabling regulation. So long as CONSAR does not determine the methodology to calculate such additional component, the payment of fees will continue to be based on a percentage of the assets under management.

Securities Deposit Institutions

The shares of Fiefores will no longer need to be deposited at securities deposit institutions, as is currently required for Siefiores.

Risks Committee

The requirement for Fiefores to appoint at least one independent director is repealed, and is replaced by the obligation to appoint a non-board member independent advisor, subject to the same independence rules provided for independent directors in the Securities Market Law. Such independent advisor must participate in the Afore's investment committee and cannot be a member of the Afore's risk committee. His or her appointment will be subject to the same rules and requirements as those provided for independent directors.

The legislative process

The Retirement Savings Bill is subject to the legislative process, and must be subject to the approval of the Mexican House of Representatives and of the Senate, where it may undergo amendments, for subsequent promulgation by the President and publication at the *Official Federal Gazette*. In addition, several provisions of the Retirement Savings Bill will need to be detailed in enabling regulations.

Carlos Alonso Arellano, Fernando del Villar and Marie Trabluse, Legal Interns at White & Case, assisted in the development of this publication.

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