

Amendments to the Securities Market Law and the Investment Funds Law

Mexico – Legal Flash

November 2023



On November 15, 2023, the Chambers of Deputies (*Cámara de Diputados*) approved a bill reforming several provisions of the Securities Market Law ("LMV"; *Ley del Mercado de Valores*) and the Investment Funds Law ("LFI"; *Ley de Fondos de Inversión*). These reforms were previously approved by the Senate (*Cámara de Senadores*) on April 28, 2023. The reforms will entry into force upon their promulgation by the Mexican President in accordance with the terms of the decree to be publicized in the Mexican Official Federal Gazette.

The amendments include, among other aspects:

- i. Simplified regime for the registration of securities and adjustments to disclosure principles applicable to information and reports from simplified issuers.
- ii. Modifications to corporate elements of public stock companies (S.A.B.S. and S.A.P.I.B.s) and in the provisions applicable to takeover protections.
- iii. The possibility of incorporating "hedge funds" in Mexico.



Securities Market Law

Relevant aspects of the Reform

i. Simplified regime for registration of securities.

- A simplified securities registration regime is introduced to allow "Simplified Issuers" to enter public markets through public offerings of any kind of securities. Securities subject to simplified registration may only be acquired by institutional and/or qualified investors.

NOTE: This amendment would potentially increase the activity in the Mexican securities market and the transfer of funds into new companies and assets, triggering the involvement of new participants (i.e. small and medium sized companies) that were traditionally excluded from such markets and resources from institutional investors.

- The simplified registration of securities in the National Securities Registry ("**RNV**" - *Registro Nacional de Valores*-) and the disclosure of information related to such securities does not require authorization from the National Banking and Securities Commission ("**CNBV**" - *Comisión Nacional Bancaria y de Valores*-) and only requires a favorable opinion from the stock exchange in Mexico where they intend to list. Such stock exchange will verify compliance with its internal requirements for simplified registration and listing and will also handle the application before the CNBV for registration with the RNV.
- "Simplified Issuers" (who may be legal entities (*personas morales*) or trusts) will be considered as different, for purposes of their supervision and treatment (specially with respect to disclosure obligations), from Issuers that opt for a traditional registration of their securities in the RNV. In this regard, "Simplified Issuers" will not be under the direct supervision of the CNBV but will be supervised the stock exchanges where their securities are listed, as long as they comply with CNBV regulations.
- Likewise, the reform imposes a series of significant obligations on broker dealers that participate in simplified registration securities offerings.
- The disclosure principle is updated to identify the responsibility inherent to each of the participants in the transactions conducted in the stock market.



NOTE: The implementation of these reforms requires that stock exchanges update and modify their internal regulations to align them accordingly, particularly with respect to Simplified Issuers and the simplified registration of securities regime. Also, broker dealers must update their internal manuals to include provisions with respect to their obligations and responsibilities related to the placement of securities subject to simplified registration. Likewise, the CNBV must establish in its applicable general provisions a differentiated regulation regime for Simplified Issuers with respect to the requirements for the registration of their securities, the offering thereof, and disclosure and reporting obligations, as well as the minimum content that stock exchanges must set forth in their internal regulations in connection with the relevant information to be disclosed and reported by Simplified Issuers.

ii. **Amendments to corporate elements of public stock corporations (S.A.B.s and S.A.P.I.B.s) and provisions relating to takeovers.**

- The reform also includes amendments in corporate aspects related to public stock corporations (“**S.A.B.**” -*sociedades anónimas bursátiles*-) and public stock promoting investment corporations (“**S.A.P.I.B.**” -*sociedades anónimas promotoras de inversión bursátil*-). For S.A.B.s, though the reform modifies the first paragraph of Article 54 of the LMV that states that such corporations are allowed to issue common and ordinary shares of capital stock by eliminating the final clause referring to the issuance of limited and restricted shares of such capital stock and addition that such corporations must disclosed the characteristics of the integration of their capital stock, the restriction for issuing non-ordinary shares with differentiated rights is maintained, provided that non-ordinary shares shall be approved by the CNBV and in any case those shares shall not represent more than 25% of the shares representing the capital stock of such corporations (except for certain cases and under certain circumstances set forth in the LMV).
- In the case of S.A.P.I.B.s, the obligation to become a S.A.B. within 10 years is repealed.
- For both, S.A.B.s and S.A.P.I.B.s, the reform allows shareholders’ meetings to delegate in the board of directors the power to increase capital by the issuance of new shares representing the capital stock and define the terms of subscription of those shares, even excluding the preemptive subscription right for current shareholders. The terms of the capital increase and subscription of new shares must be disclosed by the issuer in the stock exchange where they are listed. Such disclosure may be made on the same day in which the offering of such new shares is carried out. Once such offering and subscription is made, the issuer must request to the CNBV their registration.

NOTE: This amendment might give a clearer framework for PIPE transactions in the Mexican market, allowing a quicker access to new funds for listed companies.



- The statement of reasons (*exposición de motivos*) of the reform aims for strengthening the existing legal mechanisms to allow controlling shareholders to maintain control. In accordance with such statement of reasons, such purpose is meant to be achieved by allowing the issuance of shares with differentiated rights by series or classes (we note, as described above, that such issuances though restricted, were allowed and will continue to be allowed, with the authorization of the CNBV). Furthermore, the reform modifies the voting requirement approving anti-takeover provisions, now setting forth that such provisions may be integrated to their bylaws to the extent they are approved by an extraordinary shareholders' meeting where 20% (previously, 5%) of the capital stock represented in such meeting do not vote against it. Also, several restrictions of these protective measures are eliminated (namely Sections II and III of Article 48 that refer, accordingly, to (i) the non-exclusion of shareholders different to those intending obtain control, from economic benefits resulting from such provisions, and (ii) the non-absolute restriction for takeovers and requirements of the board of directors when approving acquisitions of portions of the capital stock), leaving only the requirement that such measures must not be contrary to the provisions of mandatory takeover bids and that the acquirer's economic rights must not be impaired.

NOTE: Based on experiences in other jurisdictions, it is possible to expect that these protection clauses will be subject to adjustments and negotiations as the market and our legal system internalize these provisions.

Investment Funds Law

- The reform covers the creation of "Hedge Funds" and the regulation of their minimum requirements, expanding investment and financing alternatives. Thus, it promotes the possibility and spectrum of investments in a wide variety of assets.
- For such purposes, hedge funds may hire independent price vendors for a transparent valuation of their assets, especially if they do not consist of securities or stock certificates.
- Hedge funds must be formed by a single founding partner, which may be (i) an investment fund manager, or (ii) an investment advisor that is a corporation registered in the Investment Advisors Registry. Investment advisors that have authorization to form Hedge Funds, may also provide asset management services as referred in the LFI to such funds and may make investment decisions in the name and on behalf of the Hedge Funds, and may also charge fees for the services rendered.



Other implications of the reforms

Tax

- The reform to the LMV will have very relevant tax implications as it significantly broadens the scope of application of the tax benefits derived from transactions in stock markets.
- Some of these benefits are:
 - Application of a 10% ISR (Income Tax) rate on capital gain for Mexican tax resident individuals (instead of 35%). There is currently a decree (valid until December 31, 2025) that, among other benefits, grants the 10% benefit to founding partners so long as certain requirements are met (this benefit is limited by law).
 - Exemption of ISR on capital gain for non-residents country of which has a tax treaty into force with Mexico (instead of 35% or reduced rate according to treaty).
 - Application of a 4.9% ISR rate on interest paid to non-residents by bonds placed on the stock exchange and registered in the RNV (public corporate debt). There is currently a decree (without a validity limit) that grants a 100% credit for the aforementioned 4.9% ISR.

Environmental, Social and Governance (ESG)

- The reform to the LMV includes a mandate to the Mexican Ministry of Finance (*Secretaría de Hacienda y Crédito Público*) to issue general rules on sustainability and gender equality for the securities market, in coordination with the CNBV and the Mexican Central Bank.



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