

INFORMATION NOTICE
13 JANUARY 2010

MEXICAN PENSION FUNDS' PARTICIPATION IN PRIVATE EQUITY
INVESTMENT VEHICLES

As of September 2009, reforms to various regulations have lifted the private equity investment restrictions levied on Mexican Pension Funds (*Sociedades de Inversión Especializada en Fondos para el Retiro* or *SIEFORES*). Even though Pension Funds remain banned from direct investment, the possibility for indirect investment now exists through the issuance of Capital Development Certificates ("CKD", for its Spanish acronym).

CKD's are structured instruments whose yield is linked to certain underlying assets. Specifically, a trust ("Special Purpose Vehicle") is set up to issue the CKD which are then acquired by the investing public through a public offering; subsequently the pooled capital is utilized to invest in the equity of various promoted companies ("Promoted Companies") or in debt instruments issued by such Promoted Companies. Although they can be acquired by any investors, CKD's are specifically designed to attract Mexican Pension Fund investment. Thus, as title holders of the CKD's, Pension Funds have the right to participate in any distributions made by the Special Purpose Vehicle. A diagram of the basic structure and operation of a CKD issuance is detailed in Annex "A".

The parties to the Special Purpose Vehicle are as detailed below:

- § Trustee: Any credit institution authorized to act as such.
- § Trustor: Any legal Mexican vehicle, i.e. a Mexican Investment Bank (*Sociedad Anónima Promotora de Inversión*), etc.
- § Beneficiary: Pension Funds. When applicable, the Trustor can also be a Beneficiary in Second Place with respect to certain disbursements (i.e., premiums for success, dividends, etc.) after the Pension Funds have received the distributions they are entitled to.

The Special Purpose Vehicle may also institute the following bodies:

<u>§ Technical Committee:</u>	Although not required under law, it is expected that these type of Vehicles set up a Technical Committee to manage the pooled assets of the Special Purpose Vehicle and make investment decisions.
<u>§ Investment Committee</u>	Also not required under law. As in private equity funds, it is an advisory board seated by representatives of the Manager and Pension Funds, pursuant to the terms of the Trust, which analyzes investment opportunities for submission to the Manager.
<u>§ Conflict of Interest Committee:</u>	Also not required under law. As in private equity funds, it is an advisory board seated by representatives of the Pension Funds and/or independent board members, pursuant to the terms of the Trust, which audits investment opportunities and issues opinions as to whether or not a conflict of interest exists between the Manager and the Pension Funds.

(b) **Manager.** The duties mirror those of a manager of a private equity fund: to identify investment opportunities, manage the investment portfolios, and formalize and execute the sale of shares of the capital stock of the Promoted Companies, etc.

Upon incorporation of the Special Purpose Vehicle (and no later than the date of issuance), a management and agency commission agreement should be executed with the Manager (the "Management Agreement") which will provide, at least, provisions regarding the following:

- Manager's obligation to analyze investment opportunities.
- Criteria to be followed by the Manager to determine what is subject to Investment Committee review.
- Instructions to the Trustee to invest and disinvest pursuant to the purposes of the Special Purpose Vehicle, as well as to negotiate, when applicable, the shareholders' agreements executed with each Promoted Company.
- The management of the pooled resources under the Special Purpose Vehicle.

(c) **Key Officers.** As with a private equity fund, the Special Purpose Vehicle shall nominate key officers in charge of oversight of and attendance to the Special Purpose Vehicle's business matters ("Key Officers"). The Key Officers shall report directly to the Manager.

(d) Title Holders (Pension Funds). Through the acquisition of the CKD's, the Pension Funds will participate as Beneficiaries in the Special Purpose Vehicle and titleholders of the CKD's.

3. OPERATION

The Special Purpose Vehicle shall operate according to the following structure:

1. Incorporation of Trust and Initial Contribution. First, the Special Purpose Vehicle must be incorporated, and as with any other trust, an initial contribution is required- the prerequisite sum is subject to the policies of the Banking Institution acting as the Trustee (typically, \$1,000.00 MXN).

2. Public Offering. The Special Purpose Vehicle places the CKD on the Mexican Stock Exchange for a public offering, the terms of such offering to be determined by the Special Purpose Vehicle trust agreement, the investment prospectus, the notice of public offering, and the respective issuance title.

3. Acquisition by the Investing Public. CKD's are acquired on the Mexican Stock Exchange. CKD's are specifically designed to attract Pension Fund investment, but may be acquired by other classes of investors.

4. Investment in Promoted Companies. The capital obtained from the sale of the CKD's will be invested principally: **(i)** to acquire equity of the Promoted Companies; **(ii)** to grant loans to such Promoted Companies; or **(iii)** to acquire convertible security notes linked to the equity of the Promoted Companies.

As with private equity funds, equity investment and divestment in the Promoted Companies by the Special Purpose Vehicle will be regulated by a shareholders' agreement, which, amongst others, shall include investment protection mechanisms in favor of the Special Purpose Vehicle and clear exit strategies for the Special Purpose Vehicle.

5. Revenue of the Special Purpose Vehicle. As a consequence of the investments in the Promoted Companies, the Special Purpose Vehicle may receive remittances from the following activities: **(i)** as a holder of equity in the Promoted Companies; **(ii)** the sale of such equity upon disinvestment; **(iii)** payments from loans granted to Promoted Companies; or **(iv)** certain permitted investments (typically in government instruments).

6. Remittances to Pension Funds. After the Special Purpose Vehicle's administrative costs and other applicable fees have been deducted, any remaining profits shall be distributed amongst the Pension Funds.

4. TAX IMPLICATIONS

Provided that the requirements contained in Income Tax Law (*Ley del Impuesto sobre la Renta*) have been complied with, and assuming that the Special Purpose Vehicle does not engage into corporate activities (*actividades empresariales*) in our opinion the Special Purpose Vehicle should have the same tax treatment as a private equity investment trust (*Fideicomiso de Inversión en Capital Privado*) (“**FICAP**”, for its Spanish acronym), which is a tax transparent entity in Mexico, pursuant to articles 227 and 228 of the Income Tax Law (*Ley del Impuesto sobre la Renta*). In any event, this interpretation must be confirmed by the Tax Administration Service.

In order for the Special Purpose Vehicle to be considered as a private equity investment trust, the following criteria must be met:

(a) It is incorporated under the laws of Mexico, and the trustee is a duly authorized Mexican credit institution.

(b) The purpose of the Special Purpose Vehicle is to invest in or provide financing to Mexican companies based in Mexico, which are not listed on the stock exchange at the time of investment, as well as participating in the administration of such Promoted Companies.

(c) No less than 80% of the pooled assets of the Special Purpose Vehicle must be invested in equity or in the financing of Promoted Companies. Any remaining funds may be invested in government-issued securities registered with the National Securities Registry (*Registro Nacional de Valores*) or in the equity of investment companies holding debt instruments (*sociedades de inversión en instrumentos de deuda*).

(d) The acquired equity in the Promoted Companies shall not be transferred within two (2) years of the date of acquisition.

(e) The duration of the Special Purpose Vehicle shall not exceed 10 years.

(f) At least 80% of the annual revenues received by the Special Purpose Vehicle shall be distributed no later than two months after the end of such year.

(g) Full compliance with the general regulations established by the Tax Administration Service (*Servicio de Administración Tributaria*) (as of the date of publication of this Notice, the abovementioned regulations have not been issued).

In any case, appropriate legal and tax advice should be sought by any person interested in participating in this type of structure.

5. REGULATORY CONSIDERATIONS

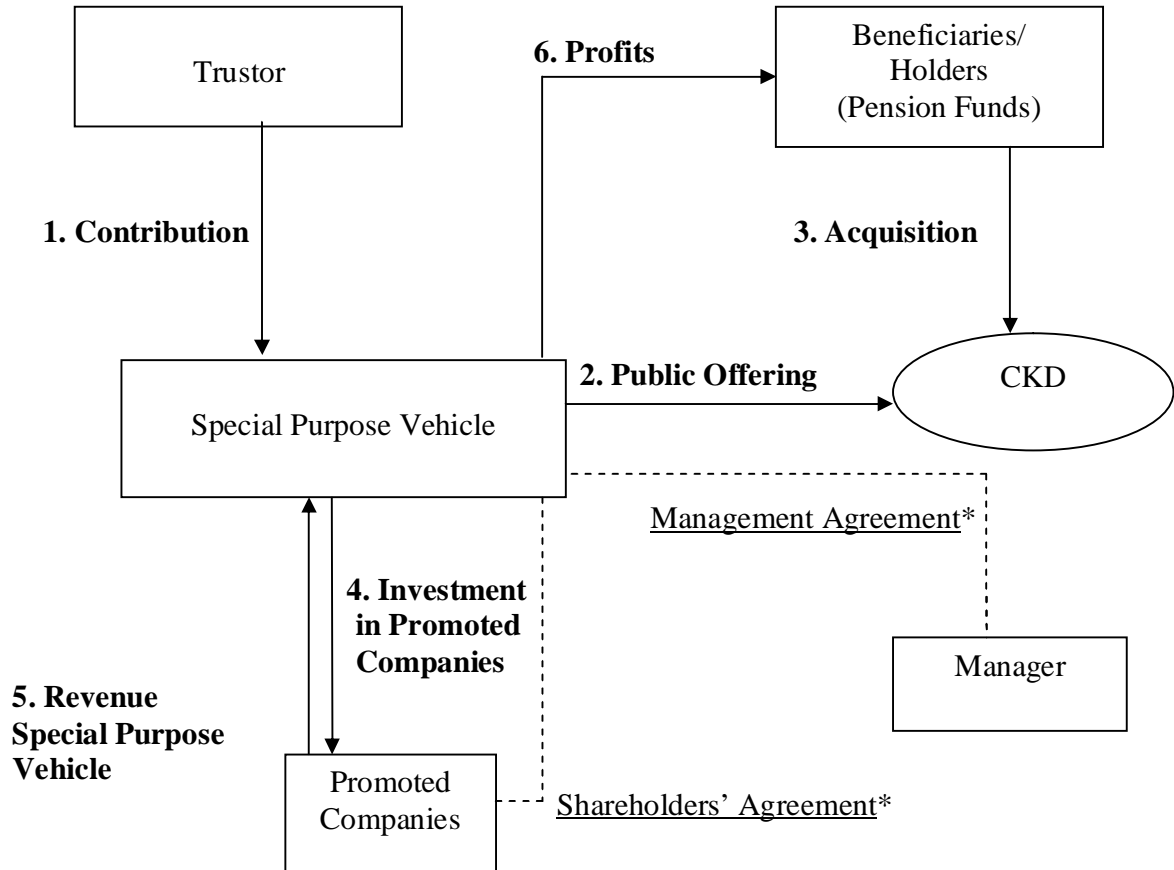
With respect to a public offering, the issuance of a CKD will be subject to the oversight and regulations of the National Banking and Securities Commission (*Comisión Nacional Bancaria y de Valores*).

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Please direct any comments or clarifications regarding the above to the attention of Luis Fernando González (luis.gonzalez@solcargo.com.mx) or Fernando Eraña (fernando.erana@solcargo.com.mx).

ANNEX “A”

DIAGRAM OF A CKD ISSUANCE



1. The Trustor makes the initial contribution.
2. The Trust issues a public offering of the CKD.
3. Investing public (including Institutional Investors) acquire the CKD's.
4. The assets pooled from the sale of the CKD's are passed through to form a portion of the resources of the Special Purpose Vehicle. The pooled assets are employed to invest in the Promoted Companies.
5. Any profits derived from dividends and/or the sale of shares are passed along to the Special Purpose Vehicle.
6. Once administration costs have been deducted (i.e fees, legal expenses, etc.), the remainder will be distributed amongst the Holders in accordance with the terms of the Special Purpose Vehicle.

* The Manager executes an Administration Contract with the Special Purpose Vehicle.

* The Special Purpose Vehicle will execute the Shareholders' Agreement for each investment.