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SUP. OF PENSIONS SUBMITS TO CONSULTATION PROVISIONS THAT WILL REGULATE INVESTMENTS MADE BY PENSION AND UNEMPLOYMENT FUNDS

On June 22, 2017, the Superintendence of Pensions placed the resolutions that intend to amend the investment regimes of Pension Funds and Unemployment Funds for public consultation (jointly, the "Resolution"). The Resolution intends to adapt the Investment Regime of Pension Funds and Unemployment Funds in consideration to the reforms introduced in October 2016 by Law No. 20,956, titled "Law for the Impulse of Productivity", which incorporated a series of amendments to various laws, with the purpose of increasing the country's productivity, amending (among other provisions) article 45 of Law Decree No. 3,500 applicable to the Pensions System, which regulates the instruments in which Pension Fund Administrators ("AFP") and Unemployment Fund Administrators ("AFC") can invest the funds that they manage.

The changes introduced by the Resolution have the main purpose of achieving a greater diversification of the investments of the funds, allowing a better access to risk and return combinations, improve yield, allow for long-term investments and direct investments in a greater variety of alternative assets, with potential savings in costs for Pension and Unemployment Funds. Said amendments would allow investing in non-liquid assets that are not frequently traded in the formal markets.

New eligible instruments

The Resolution establishes six new classes of alternative assets that are subject of investment by the Pension Funds and Solidarity Unemployment Funds:

1. Vehicles to invest in foreign private capital assets (including Limited Partnerships (LP), Limited Liability Companies (LLC) and other similar vehicles).
2. Vehicles to invest in foreign private debt (including Limited Partnerships (LP), Limited Liability Companies (LLC) and other similar

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vehicles).
3. Overseas co-investment in private capital and private debt.
4. Shares of closely held local corporations, such as shares in infrastructure concessionaire companies and real estate companies.
5. Endorsable non-residential mortgage loans.
6. Non-residential real estate properties subject to lease agreements with purchase option.

The Resolution specifies that resources of the Unemployment Fund (a fund that is different from the Solidarity Unemployment Fund) may not be invested in the abovementioned alternative assets.

Requirements to invest in alternative assets

Along with authorizing investments in these alternative assets, the Resolution establishes several conditions applicable to Pension Funds so that they may invest in the abovementioned instruments:

a. Investment and Risk Management Policy

The AFP shall previously have an explicit investment and risk management policy that addresses the individual treatment of each type of asset. Said policy must be approved by the AFP's board and investment committee, and a copy of the same must be sent to the Superintendence of Pensions.

Additionally, the Resolution establishes that the policy shall at least address the following aspects: liquidity conditions and exit or disinvestment mechanisms; appraisal; collection of commissions; investment limits; requirements applicable to administrators or issuers; competences of the administrator's team entrusted with the investment of the specific asset; transaction modality; risk management for the specific asset; and management of conflicts of interest for the specific asset.

This requirement shall also be applicable to the AFCs when performing direct or indirect investments in alternative assets.

b. Appraisal

It is imperative that the alternative assets are susceptible of being adequately appraised. For these purposes, the overseas investments in vehicles of private capital, private debt and private debt and capital co-investment, must be appraised by the manager (General Partner)

at least on a quarterly basis. The AFP shall contractually establish the manager's obligation to inform the appraisal and applied methodologies, both to the AFP as well as the Superintendence.

c. Approval of the Risk Rating Commission

The managers of the overseas private capital and private debt vehicles, as well as the manager in case of co-investment, must be previously approved by the Risk Rating Commission. The Pension Funds' direct or indirect investment in such assets shall be prohibited in the event that the Risk Rating Commission has not approved the manager.

d. Independent Auditing

The overseas private capital and private debt vehicles, the companies that issue titles that have been acquired through co-investment and the closely held national companies shall exhibit audited financial statements drafted on a yearly basis by independent and renown auditing firms.

e. Commissions

The investments in overseas vehicles of private capital and private debt, and overseas private debt and capital co-investment titles shall be subject to the requirement that the managers report, on a quarterly basis, the total commissions under the Institutional Limited Partners Association (ILPA) standard, both to the AFP itself as well as the Superintendence of Pensions.

f. Safety of the investments

The Administrator shall apply all safeguarding measures to guarantee that the investments in alternative assets are adequately supported, whether through investment contracts, relevant documentation, public registries or others, in order to certify the Pension Funds' ownership of such assets as well as the validity, existence and integrity of such investments.

g. Other conditions

Non-residential Mortgage loans that may be acquired by Pension Funds shall be issued by agents managing endorsable mortgage loans registered in the special registry maintained by the Superintendence of Securities and Insurances or by entities regulated

by the Superintendence of Banks and Financial Institutions.

The Pensions Superintendence may establish, through a general applicable rule, the additional requirements related with aspects such as mortgage guarantee and its appraisal, the characteristics of the contract and the assignment of the loans.

Prohibition to invest with related entities

In addition to the investment's prior conditions, the Resolution also establishes the following prohibitions regarding investments with entities related to the AFP or AFC, as applicable:

1. The co-investment in overseas private capital and private debt may not be performed with managers that are related to the administrator.
2. Operations regarding local non-residential real estate properties subject to lease agreements with purchase option may not be conducted with the administrator, its dependents or their related entities.
3. The Funds may not acquire endorsable non-residential mortgage loans granted to the administrator, its related entities or dependents.
4. The Funds may not acquire national mutual fund or investment fund quotas, nor overseas private capital and private debt vehicles whose underlying assets are commodities or hedge funds.

Finally, the Resolution establishes a series of limits applicable to Pension Funds and Unemployment Funds for the performance of this type of investments, whether such are made directly or indirectly.

The Resolution shall be available for comments from the public and market participants, until July 21, and shall come into force on November 1st of this year. To send comments, please click here .

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