

# CONSAR

OCTOBER 2010

## Latin American Corporate Governance Roundtable



# An update of investment possibilities: Mexican pension funds were granted more flexibility regarding equity markets

## Local equity market



Mexican pension funds can invest in **individual stocks** listed in the Mexican exchange (before they could only invest in equity indices).



Pension funds can participate in **IPO's** of firms listed in the Mexican stock exchange (this helps to foster listings)

The share of the pension funds' portfolios that is invested in domestic equity is 7.83% of the AUM (approx. 8.7 billions of USD) and in international equity is 6.48%.

# Investment in listed vehicles of private equity (DCCs)

## DCC or CKDs

- ✓ PE investment by Mexican pension funds that manage mandatory savings (the so called Afores) can be done only through listed vehicles: DCCs (CKDs in Spanish)
- ✓ This type of investments started in 2007 and later the vehicle was refined to better its financial structure, among other things its CG.
- ✓ Investment in DCC o CKDs is slightly higher than 2 billion USD.

**Mexican pension funds have been the main investor in these securities. The share they have acquired is 88.9% of the total issued.**



MACQUARIE



ATLAS



AUTOPISTAS CONCESIONADAS



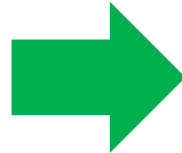
Agropecuaria Santa Genoveva, S.A.P.I. de C.V.



PROMECAP  
Capital de Desarrollo

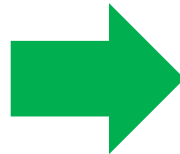
## Stakeholders rights

1) Stockholders of 10% of the total outstanding of DCCs



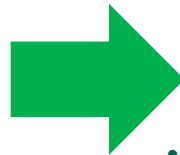
- Call for a general meeting.
- Postpone only once and up to 3 days any decision that may need more information to be taken

1) Stockholders of 20% of the total outstanding of DCCs



- They can oppose legally to any general assembly resolution

3) Stockholders of 10% of the total outstanding of DCCs



- Appoint/remove a member of the technical committee (the investment decision body of the DCC, made up by 21 members of which at least 25% must be independent.)
- They can give up to this right by written consent addressed to the common representative of DCC holders

# Challenges to effective CG in Mexico (focus on pension funds)

## The CG of the Institutional Investors (II)

- ❑ Risk Unit: More active role within the institution. New risk analysis
- ❑ Redefine the comptroller officer to focus on relevant financial activities
- ❑ Independent board members: Independence and more financial specialization
- ❑ Adoption of CG principles: revelation of CG and voting policies

## Integrated policy given mandates or business plans of II

- ❑ Mutual funds: Voluntary savings that require high liquidity. Regulated by the CNBV (Mexican SEC)
- ❑ Insurance Companies: Capitalization rules precludes them from investing in equity . Regulated by Insurance and sureties commission
- ❑ Pension funds: Ensure alignment of incentives with beneficiaries (CONSAR)

## Coherence of regulation and CG principles

- ❑ Some regulations appose CG principles:
  - ❑ Pension funds are forbidden to control or own firms (SAR Law)
  - ❑ Pension funds cannot themselves exercise ownership rights, because would constitute a violation of the Law of Securities market (see next point)
  - ❑ Outsourcing may be disincentivized by costs, in particular hiring of voting advisers may be inhibited

## Missing markets and supervisory clarity

- ❑ Need to develop specialist hat can act as gate keepers, voting advisers, representatives.
- ❑ Regulators need to reveal “jurisprudence” regarding violations , in particular related to CG, revelation of information, sanctions to board members, independent advisers, comptroller officer, and others.

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