

Investment Funds: Mexico

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A Q&A guide to investment funds law in Investment Funds in Mexico.

This Q&A is part of the PLC multi-jurisdictional guide to investment funds. It provides a high level overview of investment funds in Mexico, looking at both retail funds and hedge funds. Areas covered include a market overview, legislation and regulation, marketing, managers and operators, restrictions and requirements, tax and upcoming reform.

For a full list of recommended investment fund lawyers and law firms, see *PLC Which lawyer?*

To compare answers across multiple jurisdictions, visit the Investment Funds *Country Q&A tool*. For a full list of jurisdictional Q&As visit www.practicallaw.com/investmentfunds-mjg.

Andrés Nieto, Von Wobeser y Sierra

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Contributor details

□ Andres Nieto

Retail funds

1. What is the structure of the retail funds market? What have been the main trends over the last year?

Open-ended retail funds

The Mexican equivalent to a retail fund is the *sociedad de inversión*. There are four general types of retail funds:

Equity investment fund (*sociedad de inversión de renta variable*), which invests in shares, debentures and other securities, titles or documents representing a third party-debt.

Debt instrument investment fund (*sociedad de inversión en instrumentos de deuda*), which invests exclusively in securities, titles or documents representing a third party-debt.

Capital investment fund (*sociedad de inversión de capitales*), which invests in shares or partnership interests, debentures and bonds of companies that require medium- and long-term financing.

Special purpose investment fund (*sociedad de inversión de objeto limitado*), which is created to follow a certain investment practice as defined in its bye-laws and published in its prospectus.

There is no public statistical information available that allows for a comprehensive overview of all four types of retail funds. Due to differences in registration requirements and the very small size of the relevant market, there is no statistical information available on capital and special purpose investment funds. There are currently 302 debt instrument investment funds and 246 equity investment funds (as of mid 2012). The large majority of those retail funds target both individuals and companies as investors. As of June 2012, the debt investment funds had a total number of 1,944,375 clients and net assets of about MXN1,187 million. Equity investment funds had 161,684 clients and net assets worth MXN242 million. Comparing these numbers to the 2011 statistics, the total number of retail funds has increased by about 1.7%, while the value of the assets of debt and equity investment funds increased by about 8.7% and 5.4%, respectively. While debt investment funds attracted more clients and increased their total number of clients by about 7%, equity investment funds lost about 2.3% of their clients.

Closed-ended retail funds

Generally, open-ended (*sociedades de inversión abiertas*) and closed-ended retail funds (*sociedades de inversión cerradas*) are legally defined in the Investment Fund Law (*Article 7, sections I and II*) (*Ley de Sociedades de Inversión*). Based on the corresponding legal definitions, the characteristic feature of an open-ended retail fund is that it has the legal obligation to repurchase or redeem its own shares while a closed-ended retail fund is expressly forbidden to repurchase its own shares from its investors

if they are not listed on any stock exchange. Apart from these definitions, very little on the distinction between open-ended and closed-ended funds is provided for under the Investment Fund Law as, in most aspects, the law treats them equally. Closed-ended retail funds are very rare in Mexico. More common is the semi-open retail fund with limited time periods for the repurchasing or redeeming of shares. Publicly available statistical information usually does not differentiate between the two types.

Regulatory framework and bodies

2. What are the key statutes, regulations and rules that govern retail funds? Which regulatory bodies regulate retail funds?

Open-ended retail funds

Regulatory framework. The primary sources of law governing retail funds are:

Investment Fund Law (*Ley de Sociedades de Inversión*).

General Provisions, applicable to investment companies and companies that render them services (*disposiciones de carácter general aplicables a las sociedades de inversión y a las personas que les prestan servicios*).

General Corporations Law (*Ley General de Sociedades Mercantiles*).

Securities Market Law (*Ley del Mercado de Valores*).

Circulars (*Circulares*) issued by the National Banking and Securities Commission (*see below*) or the Bank of Mexico (*Banco de México*).

Regulatory bodies. The principal regulatory body for retail funds is the National Banking and Securities Commission (*Comisión Nacional Bancaria y de Valores*) (CNBV). Additionally, and for certain specific operations only (such as repurchase transactions, securities lending, issuance of securities, derivative financial transactions and foreign currency transactions), retail funds may be subject to regulation by the Bank of Mexico.

Closed-ended retail funds

Closed-ended retail funds are generally subject to the same regulatory regime and regulated by the same regulatory bodies as open-ended retail funds. See above, *Open-ended retail funds*.

3. Do retail funds themselves have to be authorised or licensed?

Open-ended retail funds

To incorporate a Mexican retail fund or to operate as a retail fund in Mexico, prior authorisation by the CNBV is required. Along with the application for authorisation, the following information must be filed (*Article 8, Investment Fund Law*):

A draft of the bye-laws of the corresponding company.

The name, domicile and profession of the founding partners and future directors, and evidence of their experience in financial or administrative matters, their good reputation and their credit history.

A draft of the prospectus.

The name of the companies that are designated to render legally mandatory services to the fund.

A manual of conduct for the directors of the fund and for all companies that render their services to the fund.

After the application for authorisation of incorporation of a retail fund has been filed, and the corresponding fee for the analysis of the information has been paid, the CNBV may request additional information/clarifications within two months. Once the complete application has been filed, the CNBV has four months to decide whether to grant/deny the authorisation (*Article 94, Investment Fund Law*). If an application remains unanswered by the CNBV after this time, the application is considered rejected. When authorisation is received, a retail fund generally must register its shares as securities with the National Securities Register (*Registro Nacional de Valores*) (RNV).

Closed-ended retail funds

Closed-ended retail funds are generally subject to the same authorisation and registration procedures as open-ended retail funds. See above.

Marketing

4. Who can market retail funds?

Authorised financial intermediary. Generally, retail funds can be marketed by any authorised financial intermediary, such as:

Banks.

Brokerage houses.

Certain insurance institutions.

Auxiliary credit institutions (*organizaciones auxiliares del crédito*).

Exchange bureaus (*casas de cambio*).

Limited scope/special purpose financial institutions (*sociedades financieras de objeto limitado*).

Investment fund management companies.

Investment fund management company. To operate as an investment fund management company (*sociedad operadora de sociedades de inversión*), a distributor of shares of investment funds (*sociedad distribuidora de acciones de sociedades de inversión*), or an appraisal company for shares of investment funds (*sociedad valuadora de acciones de sociedades de inversión*), prior authorisation by the CNBV is required. To obtain this authorisation, a company must file the following information with the CNBV:

A draft of its bye-laws.

A general operations programme, which must contain at least the basics of the company's organisation and internal control mechanisms.

An operations manual.

Information on the relationship of shareholders, directors and key officials as well as the composition of the capital stock of the company.

In addition, investment fund management companies must provide the name of their compliance officer and information on procedures for his appointment and removal.

All investment fund management companies must fulfil certain minimum capitalisation requirements as established by the CNBV. For the distribution of shares of retail funds, authorised financial intermediaries involved in the marketing of retail funds must hire the services of natural persons who have been specifically authorised by the CNBV to advise on, promote, sell and purchase interests in retail funds.

5. To whom can retail funds be marketed?

There are no legal restrictions. Retail funds can be marketed to the public in general. However, a retail fund always defines its target group in its prospectus and may therefore be subject to self-imposed restrictions.

Managers and operators

6. What are the key requirements that apply to managers or operators of retail funds?

The board of directors of a retail fund consists of five to 15 members, a third of which or more must qualify as independent. An independent director must fulfil certain requirements relating to his experience, capacity and professional reputation. Independent directors can only be removed from their office when the entire board is removed. Persons who are not eligible to become a director include:

Relatives of board members.

Compliance officers of the fund's management company.

Persons convicted of certain crimes.

Persons who are insolvent.

The board of directors of investment fund management companies also consists of five to 15 members. There is no obligation to have independent directors on the board. The CEO and other high officials of investment fund management companies cannot be employees of any of the following.

Bank.

Brokerage house.

Insurance institution.

Auxiliary credit institution.

Exchange bureau.

Special purpose financial institution.

Foreign individuals are generally eligible to become a director or other key official of a retail fund. However, a foreign company cannot generally act as a managing company of a Mexican retail fund, as the incorporation of a Mexican company is required for the institutions enumerated by law as potential distributors of retail funds (*see Question 4*).

Assets portfolio

7. Who holds the portfolio of assets? What regulations are in place for its protection?

All securities, titles or documents registered in the RNV that form part of a retail fund's portfolio as well as the shares of the fund themselves must be deposited in an account with a licensed institution for the deposit of securities (*institución para el depósito de valores*) (INDEVAL), the Mexican equivalent to a clearing house. To operate as an INDEVAL, a company must obtain a concession from the Federal Government, discretionally granted by the Ministry of Finance (*Secretaría de Hacienda y Crédito*

Público). A concession can only be granted to companies that are incorporated as a public company (*sociedad anónima*) and have their domicile in Mexico. An INDEVAL must fulfil certain minimum capitalisation requirements as established by the Ministry of Finance. Only certain experts in the securities market can be shareholders of an INDEVAL, for example, the Bank of Mexico, brokerage houses or the Mexican Stock Exchange (*Bolsa Mexicana de Valores*). Every shareholder can hold only one share and the total number of shareholders must be at least 20. An INDEVAL is managed by a board of managers and a CEO. Key officials must be approved by the CNBV. To date, only one institution has been licensed and authorised to operate as an INDEVAL in Mexico, SD Indeval, SA de CV (licence granted 1 October 1987).

Additionally, a retail fund must contract with a third party for custody services. The following are eligible to serve as custodian:

Credit institutions.

Brokerage houses.

Investment fund management companies.

Distributors of shares of investment companies.

Legal fund vehicles

8. What are the main legal vehicles used to set up a retail fund and what are the key advantages and disadvantages of using these structures?

Open-ended retail funds

Legal vehicles. There is only one legal vehicle available to set up a retail fund, the *sociedad de inversión* (Article 5, *Investment Fund Law*). The investors' interest in a *sociedad de inversión* is called shares (*acciones*).

The *sociedad de inversión* is based on the following two-step concept:

It is incorporated as a public company (*sociedad anónima*) under the General Corporations Law.

It is automatically considered a *sociedad de inversión* and becomes subject to the provisions of the Investment Fund Law due to the nature of its operations as a fund.

The Investment Fund Law adapts the legal concept of the public company to the special requirements of a fund. A company cannot use terms such as retail fund, mutual fund, investment fund or investment company in its name unless it is authorised as a *sociedad de inversión*.

Advantages. There are no particular advantages.

Disadvantages. There are no particular disadvantages.

Closed-ended retail funds

Legal vehicles. See above, *Open-ended retail funds*.

Advantages. There are no particular advantages.

Disadvantages. There are no particular disadvantages.

Investment and borrowing restrictions

9. What are the investment and borrowing restrictions on retail funds?

A retail fund must comply with any self-imposed investment and borrowing restrictions in its prospectus.

According to the General Provisions applicable to investment companies and companies that render them services (*disposiciones de carácter general aplicables a las sociedades de inversión y a las personas que les prestan servicios*) (DGSJ), equity investment funds and debt instrument investment funds must comply with additional legal requirements, such as:

A minimum capitalisation requirement of MXN1 million (*Article 2, DGSJ*).

Investment placed in one single issuer or financial institution may generally not exceed 40% of the funds' total assets (*Article 5 I, DGSJ*).

The total amount of all investments, which individually are of more than 15% of the fund's total assets, cannot exceed 60% of the fund's total assets (*Article 5 I, DGSJ*).

Exceptions to investment restrictions may apply to government issued financial instruments, financial instruments guaranteed by the United Mexican State or issued by the Bank of Mexico, financial instruments acquired by ETFs, and so on.

The investment in one single emission of securities may generally not be higher than 20% of that emission (*Article 5 II, DGSJ*).

A certain maximum value-at-risk must be established, published in the prospectus and complied with (*Article 5, DGSJ*).

A certain minimum percentage of "easily negotiable securities" and securities maturing in less than three months must be established, published in the prospectus and complied with (*Article 5, DGSJ*).

Capital investment funds must meet the following requirements, among others:

At all times, their total investment must be divided between at least two companies (*Article 14 I, DGSJ*).

The amount of an investment made in securities other than shares or partnership interests of a company can never be higher than the smallest investment of the fund in shares or partnership interests of a company (*Article 14 I a, DGS!*).

When the fund promotes financial instruments representing company liabilities, their maturity date cannot exceed the termination date of the corresponding promotion agreement (*Article 14 I b, DGS!*).

Capital investment funds cannot invest in companies that are controlled by one or more of their own controlling shareholders (*Article 16, DGS!*).

Retail funds can engage in securities lending, that is, they can borrow financial instruments. They can also receive loans and accept credits (under the corresponding general provisions of the Bank of Mexico). However, retail funds must not accept cash deposits (*Article 18 I, Investment Fund Law*). Receiving cash deposits can be punished by administrative fines of up to 10,000 days of minimum salary (in the Federal District currently MXN62.33) (*Article 85, Investment Fund Law*). These fines can be imposed both on the fund and on responsible employees/officers of the fund (*Article 84, Investment Fund Law*).

10. Can the manager or operator place any restrictions on the issue and redemption of interests in retail funds?

Managers can place restrictions on the issue and redemption of interests, if the restrictions are authorised by the CNBV and properly disclosed in the prospectus.

11. Are there any restrictions on the rights of participants in retail funds to transfer or assign their interests to third parties?

Restrictions can be placed if those restrictions are authorised by the CNBV and properly disclosed in the prospectus.

Reporting requirements

12. What are the general periodic reporting requirements for retail funds?

Investors. Retail funds must provide their investors with periodic account statements, which must contain certain information such as (*Article 10, Investment Fund Law and Article 111, DGS!*):

The position of the shares held by the individual investor at the end of the corresponding period and compared to the preceding period.

Modifications, if any, made to the prospectus of the fund.

Whether the fund has issued any debt or obtained any credit.

Detailed description of all operations between the investor and the fund in the period concerned and the corresponding prices.

How and where to submit complaints about the information contained in account statements.

The following warning: Investments made in retail funds do not guarantee future returns; the managing companies of the fund are not liable for any losses that an investor might suffer as a consequence of such investments nor do they assume the risk of price variations in favour of clients.

The frequency of the provision of account statements will be established in the contract between the fund and its investor (*Article 10, Investment Fund Law*).

Regulators. Retail funds must provide the CNBV with the following periodic reports (*Articles 74 to 77, DGS*):

Accounting reports, which include:

trial balance including:

debt instrument funds (monthly); and

equity funds (quarterly).

certain information related to financial statements including:

debt instrument funds (daily);

equity funds (quarterly);

consolidated annual financial statements (filed annually).

information on the sale and purchase of investment assets including:

debt instrument funds (daily);

equity funds (quarterly);

a comprehensive report (filed annually).

information on repurchase transactions including:

debt instrument funds (daily);

equity funds (quarterly).

information on the following:

securities lending (daily);

interest accrued on the investment assets (daily);

derivative transactions (daily);

collateral (daily).

Valuation reports, which include:

up-to-date information on the value of the fund's shares (daily);

information on closing prices, sale and purchase prices of the fund (monthly).

Investment regime reports (daily).

Corporate information reports, which include:

information on the amount and type of foreign investment (monthly);

general corporate information, including:

debt instrument funds (daily);

equity funds (quarterly).

information on shareholding and corporate structure, including:

debt instrument funds (daily);

equity funds (quarterly).

This information is generally transmitted through an electronic system called SITI (*sistema electrónico de envío y difusión de información*).

Tax treatment

13. What is the tax treatment for retail funds?

Funds. The tax treatment of retail funds is regulated in the Income Tax Law (*Ley del Impuesto Sobre la Renta*); its specifics depend on the relevant type of retail fund.

For example, a capital investment fund is subject to the general tax regime applicable to legal persons. This type of retail fund can choose to accumulate its profit from the sale of shares and defer the corresponding tax payment to the fiscal year in which those profits are distributed to the fund's shareholders. Under certain conditions, capital investment funds can also accumulate earnings from interest and inflation adjustments and defer the corresponding tax payments until the earnings are paid to the shareholders. The current income tax rate for legal persons is 30% (29% in 2013 and 28% in 2014).

Resident investors. Equity and debt instrument investment funds are not considered as tax payers. The performance of the relevant fund is taxable on the individual shareholder level and not on the corporate level. The respective tax rate depends on the specific type of income (for example, interest, dividends and proceeds from the sale of shares) as well as the shareholder's overall income in the relevant fiscal year.

Non-resident investors. Income received by foreign investors is generally subject to withholding taxes, depending on the specific type of income concerned. For example, income received by the alienation of shares in equity and debt instrument investment funds is treated as income in the form of interest (*Income Tax Law*). Depending on who the beneficial owner of the income is, the relevant rates vary from 4.9% to 30%.

Reform

14. What proposals (if any) are there for the reform of retail fund regulation?

The Investment Fund Law General Provisions have been modified several times; the most current modification was published on 16 March 2012.

The Investment Fund Law was first published in 2001 and was reformed twice (2004 and 2007). On 27 July 2012, a proposal for an extensive reform of the Investment Fund Law was presented to the Mexican Association of Securities Intermediaries (*Asociación Mexicana de Intermediarios Bursátiles*) by the Technical Vice-Presidency of the CNBV and is currently under discussion (October 2012). The modifications proposed include to:

- Extend the Investment Fund Law to pension funds.

- Eliminate the minimum requirement of two shareholders to constitute a retail fund.

- Allow retail fund shares without par value.

- Simplify certain topics, such as the merger, demerger and liquidation of retail funds.

- Extend regulation on investment fund management companies.

- Include additional requirements for the board of directors and the compliance officer of retail funds and their management companies.

Extend the supervisory powers of the CNBV.

Extend the criminal liability of retail fund officials.

Hedge funds

15. What is the structure of the hedge funds market? What have been the main trends over the last year?

The Mexican hedge fund market is very small compared to the hedge funds industry in other countries, for example, the US. Hedge funds cannot be considered common players in the Mexican financial market. This is partly due to the fact that financial education in Mexico, as well as the culture of saving and investing, is not developed. In addition, Mexico does not qualify as an attractive place to set up a hedge fund as:

There is no company type that favourable to the setting up of a hedge fund either through a legal and tax regime.

Hedge funds cannot become authorised as such by the competent authorities (*see Question 16*), therefore they cannot advertise their products or publish any other information related to their operations to the general public.

Consequently, there are no current statistics available on the number of actors in the Mexican hedge fund market and the market development over the past year.

Regulatory framework and bodies

16. What are the key statutes and regulations that govern hedge funds in your jurisdiction? Which regulatory bodies regulate hedge funds?

Regulatory framework

The concept of a hedge fund is not regulated by Mexican law. However, a hedge fund as a private fund can be created using various legal vehicles. The regulatory framework changes depending on the legal vehicle chosen. Generally, the following laws apply to the most common types of hedge funds set up under private funds in Mexico:

General Corporations Law.

Securities Market Law.

Law on Credit Instruments and Operations (*Ley de Títulos y Operaciones de Crédito*).

Federal Civil Code (*Código Civil*).

General Provisions issued by the CNBV, and the Bank of Mexico.

Regulatory bodies

Depending on the type of company chosen for the creation of a hedge fund, the fund may be subject to regulation by the CNBV and/or the Bank of Mexico.

17. How are hedge funds regulated (if at all) to ensure compliance with general international standards of good practice?

Generally, hedge funds are not specifically regulated. However, depending on the legal vehicle used for the creation of the fund, certain provisions may apply that are designed to ensure compliance with general international standards of good practice.

Insider dealing and market abuse

Although the Securities Market Law contains several provisions on insider dealing and market abuse, these are only applicable in cases of public offering of securities registered with the RNV.

Money laundering

Several legal provisions exist to prevent and punish money laundering. However, as hedge funds are not specifically regulated, only general anti-money-laundering provisions are applicable (for example, Article 400bis, Federal Criminal Code (*Código Penal Federal*)). Money laundering can be punished by a fine of up to 5,000 days of minimum salary or imprisonment of five to 15 years (*Article 400bis, Federal Criminal Code*). Retail funds are also subject to Article 91 of the Investment Fund Law and the corresponding general provisions issued by the Ministry of Finance and Public Credit (*Secretaría de Hacienda y Crédito Público*) that establish detailed preventive mechanisms and procedures to prevent money laundering. Any retail fund that does not comply with these provisions (as well as its responsible employees/officers) is subject to a fine of up to 100,000 days of minimum salary.

Marketing

18. Who can market hedge funds?

Anyone can engage in the private placement of securities (*Article 8, Securities Market Law*). To facilitate the marketing and distribution of interests in hedge funds, centralised information systems, often run by brokerage houses, can be used. A prior authorisation by local authorities to make use of these systems is not required if only institutional or qualified investors (that is, investors who invest a certain minimum amount per year in securities or who have received a certain minimum return on such investments during a period of two years) participate in the negotiations. Centralised information systems are generally not subject to supervision by the CNBV.

19. To whom can hedge funds be marketed?

Generally, a hedge fund can privately place its interests only with institutional or qualified investors (*see Question 18*). In addition, shares or other securities representing the capital of a legal person can be offered to non-institutional/non-qualified investors, if the offer is extended to no more than 99 persons.

Investment restrictions**20. Are there any restrictions on local investors investing in a hedge fund?**

There are no legal restrictions for local investors when investing in hedge funds.

Assets portfolio**21. Who holds the portfolio of assets? What regulations are in place for its protection?**

As hedge funds are not specifically regulated, there is no explicit legal obligation for hedge funds to deposit their assets with the INDEVAL and contract for third party custodian services. However in practice, whenever a hedge fund invests in financial instruments that qualify as securities under the Security Market Law, the fund must use the services of the INDEVAL as well as of a custodian.

Requirements**22. What are the key disclosure or filing requirements (if any) that must be completed by the hedge fund?**

There are no legal disclosure or filing requirements that apply specifically to hedge funds. Depending on the legal vehicle used to create the hedge fund, there may be corporate law disclosure and filing requirements that the hedge fund must comply with due to its corporate nature.

23. What are the key requirements that apply to managers or operators of hedge funds?

As hedge funds are not specifically regulated, managers and operators of hedge funds are generally subject to requirements as established for the corresponding type of company that was chosen for the implementation of the fund.

Legal fund vehicles and structures

24. What are the main legal vehicles used to set up a hedge fund and what are the key advantages and disadvantages of using these structures?

Legal vehicles. A hedge fund can be set up using any legal vehicle provided for in the General Corporations Law (for example, a public company or a limited liability company (*sociedad de responsabilidad limitada*)). In addition, a hedge fund can be set up as a trust or an Investment Promotion Company (*sociedad anónima promotora de inversión*) (SAPI). In a SAPI, the investors' interests in the fund are called shares.

Advantages. The most suitable legal vehicle to create a hedge fund is a SAPI. A SAPI is a modified version of the public company (*sociedad anónima*) that was created in 2006 and that offers a more flexible and modern corporate regime than the public company. In a SAPI, minority and majority rights are not strictly related to the percentage of shares of the relevant shareholder. As opposed to a normal public company, a SAPI can allow contracting for certain exit strategies, such as drag-along and tag-along rights. If the private fund wants to go public, the SAPI can choose to adopt the regime of a public stock corporation (*sociedad anónima bursátil*).

Disadvantages. The main disadvantage of creating a hedge fund in the form of a SAPI generally also applies to the other legal vehicles available. Fund profits are subject to the general income tax regime for legal persons, under which profits are currently taxable at a 30% rate (October 2012). Unlike equity investment funds, the legal vehicles available under Mexican law for the creation of a hedge fund are generally not fiscally transparent (exceptions apply to certain kinds of trusts).

25. What are the advantages and disadvantages of using onshore and offshore structures?

Generally, the legal vehicles available for the constitution of a hedge fund in Mexico involve a rather complicated and costly tax regime that makes the concept of a Mexican hedge fund economically unattractive. Hedge funds cannot pass on to their investors the current income tax rate of 30%. In addition, options to offset profits against losses are not very flexible. For example, profits from buying and selling bonds may not be offset against losses from selling shares (*Article 32 XVII, Income Tax Law*), which causes the fund to pay higher taxes. Legal vehicles available for the creation of a hedge fund can often involve numerous formal requirements that lead to high administrative costs, such as the mandatory ratification of shareholders'/partners' meeting minutes by a notary public. Due to its nature, a hedge fund cannot obtain authorisation by the CNBV, which means that the fund is not allowed to publish information on its operations or to advertise its products. Compared to certain tax havens or countries where tax obligations can be passed on to investors, the taxation of Mexican hedge funds presents a significant disadvantage as an onshore structure.

Tax treatment

26. What is the tax treatment for hedge funds?

Funds

The tax treatment of hedge funds is not specifically regulated and depends on the legal vehicle chosen for the creation of the hedge fund. See *Question 24, Legal fund vehicles and structures: Disadvantages*.

Resident investors

The tax treatment of income earned by resident investors due to their investment in a hedge fund is not specifically regulated. Generally, profits made by the hedge fund are taxable at the level of the fund, not the level of the individual investor. See *Question 24, Legal fund vehicles and structures: Disadvantages*.

Non-resident investors

The tax treatment of income earned by non-resident investors due to their investment in a hedge fund is not specifically regulated.

Restrictions

27. Can participants redeem their interest? Are there any restrictions on the right of participants to transfer their interests to third parties?

Redemption of interest

Whether or not investors can redeem their interest depends on the legal provisions applicable to the type of company chosen to create the hedge fund.

Transfer to third parties

Whether investors can transfer their interest to third parties depends on the legal provisions applicable to the type of company chosen to create the hedge fund. For a public company or a SAPI, for example, interests are generally transferrable unless otherwise agreed to and established in the company's bye-laws.

Reform

28. What (if any) proposals are there for the reform of hedge fund regulation?

There are currently no proposals for reform of hedge fund regulation.

Contributor details

Andres Nieto**Von Wobeser Y Sierra**

T +52 55 5258 1027

F +52 55 5258 1098/99

E anieto@vwys.com.mx

W www.vonwobeserysierra.com

Qualified. Mexico, 2005

Areas of practice. Project finance; banking and finance; capital markets; securities and secured transactions; corporate; M&A; mining; arbitration.

Recent transactions

Representing Anheuser-Busch InBev in the US\$20.1 billion acquisition of Grupo Modelo.

Advising BMW Financial Services Mexico in structuring their credit facility agreements with main distributors in Mexico.

Representing Mitsubishi Power Systems Americas Inc in a buy-out acquisition of a JV entity in Mexico.

Advising Canadian New Gold Inc in its private offering (in reliance on Rule 144A and Regulation S) of US\$300 million aggregate principal amount of 7.0% Senior Notes.

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