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FIBRA E, CerPI & FICAP: Milestones for the Financing of the Mexican Energy Infrastructure

Energy and Natural Resources Group
Tax and Legal





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The 2016 Budget presented by Mexican President Enrique Peña Nieto last September 8, 2015 proposes changes in legislation concerning investment vehicles.

Among the proposals are the creation of the real estate trust for the Energy Sector and Infrastructure (FIBRA E) and Investment Projects backed Certificates (CerPI); as well as changes in the rules for Private Equity Trusts (FICAP).

Consequently, on September 17, 2015 the Tax Administration and the National Banking and Securities Commission disclosed the draft of (i) amendments to the Fourth Omnibus provisions and (ii) the proposed amendments to the Issuers' rules (Circular Única).

Said proposals are a milestone in the Mexican tax system as it creates a financing vehicle (FIBRA E) based on the US Master Limited Partnership (MLP). A major consideration is that it is "transparent" for tax purposes (ie, the tax is paid at the level of each investor); it is expected that said vehicle will alleviate the fiscal burden on infrastructure.

The main objective of the measure is to capture, in an effective manner, important flows of domestic and foreign investment in all economic sectors, especially energy.

With the introduction of these vehicles, Mexico updated its investment instruments to generate greater flow of private investment into strategic projects.

FIBRA E

FIBRA E allows access to investors to projects in the energy and infrastructure sectors, under conditions similar to those offered by its real estate counterpart (FIBRA, which is based on the US Real Estate Investment Trusts, REIT).

The new vehicle will serve for all types of companies (both private and with government participation) with projects or stabilized assets that generate stable cash flows, and to be offered to the investors in exchange for resources that companies can continue to invest in new projects.

The new instrument is designed to attract capital into the energy sector, and comes at a time when a plunge in oil prices and a dwindling production hit the Mexican state-owned oil company, Pemex.

It is anticipated that like the FIBRA, the FIBRA E, will issue certificates to operate as stocks and allow investors to participate in the Mexican energy infrastructure. The trust might be required to distribute at least 95% of their taxable income and will not pay any corporate taxes, as the certificate holders will be withheld upon payments.

CERPI

The CERPI will be focused on pension funds (Afores), insurance companies and other domestic and foreign institutional investors.

They can invest in a wide range of projects in all productive sectors of the economy, especially in the energy sector

FICAP

Investment Trusts for Private Equity (FICAP) were created for the sole purpose of investing in shares issued by Mexican companies that are not listed on the stock exchange at the time of investment, as well as in providing financing to such companies.

As part of the requirements of FICAP, a maximum of 10 years was established.

The proposal includes the removal of the limit of 10 years, making the FICAP trust an indefinite vehicle.

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