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Mexico

Mergers & Acquisitions

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This country-specific Q&A provides an overview of mergers & acquisitions laws and regulations applicable in Mexico.

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Mexico: Mergers & Acquisitions

1. What are the key rules/laws relevant to M&A and who are the key regulatory authorities?

In Mexico, M&A transactions are primarily governed by the General Corporations Act (*Ley General de Sociedades Mercantiles),* the Commercial Code (*Código de Comercio*), the Federal Civil Code (*Código Civil Federal)* and corresponding local civil codes (to the extent applicable) and tax-related laws and regulations. Depending on the type of the entity, the partners of the entity (nationals and/or foreigners), services provided by the entity, and/or type of assets owned by such entity, other laws may apply, including among others: the Securities Law (*Ley del Mercado de Valores),* the Foreign Investment Law (*Ley de Inversión Extranjera*), Federal Labor Law (*Ley Federal de Trabajo*), Social Security Law (*Ley de Seguridad Social*), Federal Law for the Protection of Industrial Property (*Ley Federal de Protección a la Propiedad Industrial*), etc.

Also, applicable primarily laws for public entities and/or financial entities will apply depending on the type of entity. For example, the Credit Institutions Law (*Ley de Instituciones de Crédito*) will apply to financial entities, the Securities Market Law (*Ley del Mercado de Valores*) will apply to public and brokerage entities, and the Insurance and Bonding Institutions Law (*Ley de Instituciones de Seguros y Fianzas)* will apply to insurance entities, bonding entities and mutual insurance entities (*entidades aseguradoras, afianzadoras y mutualistas*), and so forth.

Regardless of the type of M&A transaction, Federal Economic Competition Law (*Ley Federal de Competencia Económica*) will apply when a transaction surpasses any of the thresholds provided by such law. Also, a prior written authorization from the National Foreign Investment Commission (*Comisión Nacional de Inversiones Extranjeras)* will be required when foreigners intend to acquire more than 49% of the equity interests of a Mexican entity if, at the time of the acquisition, the value of the target entity's assets exceeds the amount determined by the commission.

On the other hand, regarding key regulatory authorities, depending on the M&A transaction different authorities may be involved. For example, the National Banking and Securities Commission (*Comisión Nacional Bancaria y de Valores)* will be involved when the transaction pertains public entities and/or financial entities, the Insurance and Bonding National Commission (*Comisión Nacional de Seguros y Fianzas*) will be involved when the transaction pertains insurance and bonding entities.

2. What is the current state of the market?

According to public information, Mexico's M&A market declined compared to previous years. It is also reported that, despite there being a lower number of M&A transactions closed in 2024, the total value of such transactions increased compared to 2023.

3. Which market sectors have been particularly active recently?

Software and real estate markets were particularly active in 2024, according to public information.

4. What do you believe will be the three most significant factors influencing M&A activity over the next 2 years?

Significant factors influencing M&A activities over the next two years include: (i) the current turmoil in foreign trade policies between the United States, Canada, and Mexico, together with the upcoming USMCA review in 2026, (ii) the implementation of new laws and regulations by the current government (*that could either encourage or deter foreign investment*), and (iii) the approach on rule of law issues by the current government.

5. What are the key means of effecting the acquisition of a publicly traded company?

In Mexico, acquisitions of public corporations are somehow rare, which, in our view, can be attributable to the following factors: (i) the extensive regulatory framework, which requires the procurement and obtention of different authorizations, (ii) the limited number of public corporations, and (iii) the lack of shareholders willing to sell their stake.

6. What information relating to a target company

is publicly available and to what extent is a target company obliged to disclose diligence related information to a potential acquirer?

Private companies are not obliged to disclose information to third parties; therefore, when negotiating the acquisition of a private company it is customary to include representations, warranties, and covenants, within the relevant transaction documents, to ensure that the acquirer obtains proper information on the target company.

Nevertheless, pursuant to applicable law, specific legal acts must be recorded before different public registries for such acts to become opposable against third parties. Including relevant information, such as:

a. Acts of Commerce. Acts of commerce such as (i) incorporation of the entity, (ii) public documents confirming mergers, spin-offs, dissolutions, or liquidation of the entity, and (iii) changes in the entity name, business purpose, duration, or fixed capital or any amendments to the by-laws.
b. Acts Relating to Movable Property. The creation, modification, and termination of movable guarantees, any legal acts creating a special lien, or retention right on movable property in favor of third parties, should be recorded before the Collateral Movable Public Registry (*Registro Único de Garantías Mobiliarias*).
c. Acts Relating to Real Property. The declaration, recognition, acquisition, transfer, modification, limitation, encumbrance, or extinguishment of ownership or possession of real estate property rights or any other *in rem* rights should be recorded before the Public Registry of Property (*Registro Público de la Propiedad*).

Additionally, public entities are required to disclose relevant information to the National Securities and Banking Commission (*Comisión Nacional Bancaria y de Valores*) and the corresponding relevant stock exchange, which relevant information includes, among others: (i) quarterly and annual reports, (ii) reports on relevant events, (iii) reports on corporate restructurings, and (iv) certain board of directors' reports.

7. To what level of detail is due diligence customarily undertaken?

As a seller, it is customary to conduct a vendor's due diligence to prepare for an M&A transaction. Likewise, as a buyer, it is also customary to undertake detailed due diligence of the target company. Detailed due diligence includes reviewing accounting, financial, and legal matters of the company and its physical assets (*if applicable*). This will help the potential acquirer to assess the current condition of the target company and negotiate the corresponding transaction documents (*including representations, warranties, pre-closing covenants and indemnities*).

8. What are the key decision-making bodies within a target company and what approval rights do shareholders have?

Under applicable law, Mexican companies generally have following 3 governing bodies: (i) the shareholders' / partners' meeting, (ii) the board of directors / managers, or sole administrator / manager, and (iii) the supervisory body.

The highest governing body of a company (*whether private or public*) is the shareholders' meeting (*for companies that issue shares, primarily corporations "sociedades anónimas"*) or the partners' meeting (*for companies that issue equity interests, primarily limited liability companies "sociedad de responsabilidad limitada"*). This body is responsible for making the company's most significant decisions (*including mergers and spin-offs*). On the other hand, the management body (*which ranks second in importance*) is responsible for the company's day-to-day operations.

In limited liability companies (*sociedades de responsabilidad limitada*) the transfer of equity interests must be approved by the majority of the partners in a general partners' meeting. For stock corporations (*sociedades anónimas*) prior approval from the shareholders' meeting or any other governmental body is not required; however, it is common to include such requirement within the company's by-laws to avoid unauthorized transfers.

9. What are the duties of the directors and controlling shareholders of a target company?

Formal governing bodies—such as a board of directors, general manager, or sole administrator—have different duties. Although not always expressly codified as duties, these derive from civil and commercial law including the concept of "mandato" (*mandate*), under which for example such governing bodies act as agents (*mandatarios*) of the company. These duties include:

i. Acting in the company's best interests (*duty of loyalty*);
ii. Avoiding conflicts of interest (*duty of loyalty);*

iii. Observing good faith at all times (*duty of loyalty*); and
iv. Exercising functions with prudence and reasonable care (*duty of care*).

Additionally, regarding public entities, pursuant to the Securities Market Law (*Ley del Mercado de Valores*), its regulations, and the Code of Commerce (*Código de Comercio*), the board of directors must act as if they were managing their own business. Moreover, among others, the board of directors shall: (i) keep confidential all information and matters obtained by them as directors, and (ii) refrain from voting or acting in conflicts of interest.

10. Do employees/other stakeholders have any specific approval, consultation or other rights?

It is uncommon for employees to have approval or consultation rights for the consummation of an M&A transaction; nevertheless, in transactions when employees are to be transferred to a different employer, such employees have the right to be informed of the employer substitution and have the new employer maintain the same labor conditions granted by the former employer, such as seniority recognition, salary, benefits, work schedule, job position, and main duties.

Moreover, equity holders may have different types of approval, consultation, or other rights arising from the by-laws, the stock and/or contractual agreements entered with such equity holders. Third parties, such as creditors and/or landlords, may also have contractual rights that affect the consummation of a transaction (e.g., approval rights and/or right of first refusal rights).

11. To what degree is conditionality an accepted market feature on acquisitions?

In Mexico, the closing of M&A transactions are usually subject to the satisfaction of conditions, being the most common (i) obtaining approvals from governmental authorities (*e.g., antitrust relevant authority*), (ii) obtaining approvals from third parties (*e.g., creditors, landlords, service providers, etc.*.), (iii) fulfillment of specific obligations (*e.g., regularization of specific matters*), and (iv) no material adverse effect shall have occurred and be continuing (*e.g., adverse legal proceedings, adverse laws being enacted, force majeure, etc.*).

12. What steps can an acquirer of a target company take to secure deal exclusivity?

The execution of an agreement (*either a preliminary or a definitive agreement*), which includes an exclusivity provision for a specific time frame.

13. What other deal protection and costs coverage mechanisms are most frequently used by acquirers?

Parties to M&A transactions usually include no-shop, exclusivity, and indemnity provisions within the transaction documents.

14. Which forms of consideration are most commonly used?

Wire transfer of immediately available funds is the most commonly used form for paying a consideration. Cash payments are valid in Mexico, provided they do not exceed the thresholds set forth by Mexican anti-money laundering legislation; however, this option is seldom used in practice. Although less common, payments in kind (*e.g., shares*) are also customary in M&A transactions.

15. At what ownership levels by an acquirer is public disclosure required (whether acquiring a target company as a whole or a minority stake)?

Acquirers of a private entity are not required to publicly disclose the corresponding acquisition to any third parties. Nevertheless, the transfer of stock of public corporations shall be made public when: (i) a person or group of persons acquiring 10% or more, but less than 30%, of the corporation's capital stock, (ii) a related person increasing or decreasing its participation in more than 5%, and (iii) a person holding 10% or more of the company's capital stock shall disclose any transfer or acquisition made by such person.

Lastly, any person intending to acquire more than 30% of the stock of a public corporation, shall make a mandatory tender offer and comply with the provisions set forth in Section 26 below.

16. At what stage of negotiation is public disclosure required or customary?

Pursuant to Mexican applicable law, prior to the completion of a merger or a spin-off, the following information must be recorded via the Ministry of Economy's electronic publication system and/or the

Public Commercial Registry (*Registro Público de Comercio*): (i) the corresponding merger agreement and an excerpt of the resolution approving the spin-off, (ii) the financial statements (*latest balance sheet*) of the involved companies, and (iii) in connection with the company that will cease to exist, the method by which its liabilities will be extinguished (in *the case of a merger*) and the allocation of obligations to be assumed by each company (*in the case of a carve-out / spin-off*).

Nevertheless, as mentioned in other sections of this Chapter (*e.g., Section 11 and Section 15*), certain M&A transactions may require prior approval from governmental entities, and therefore information is sometimes made public, before the parties can close the corresponding transaction.

17. Is there any maximum time period for negotiations or due diligence?

There is no maximum time period for completing negotiations or a due diligence process in an M&A transaction, pursuant to Mexican law. It is customary for the parties to agree on having a reasonable period of time to allow for the acquirer to conduct a due diligence.

18. Is there any maximum time period between announcement of a transaction and completion of a transaction?

There is no maximum time period between the announcement and completion of an M&A transaction pursuant to Mexican law. It is customary for the parties to agree on having a reasonable period of time to allow for the parties to obtain all necessary documents and authorizations for closing the transaction (*e.g., antitrust approvals, or National Securities and Banking Commission (Comisión Nacional Bancaria y de Valores) approvals*). Typically, these approvals have an expiration date; therefore, if a transaction is not closed within the validity period of these approvals the parties will need to reapply for them.

19. Are there any circumstances where a minimum price may be set for the shares in a target company?

The price payable in terms of an M&A transaction should reflect the corresponding market value to avoid unfavorable tax consequences. If the parties to a transaction are related, then a transfer pricing study must be conducted to ensure the transaction is carried out at market value.

20. Is it possible for target companies to provide financial assistance?

Target entities cannot provide financial assistance in favor of an acquirer for purposes of acquiring the company's equity interests, as provided for in Article 139 of the General Corporations Act (*Ley General de Sociedades Mercantiles*).

21. Which governing law is customarily used on acquisitions?

Domestic M&A transactions are governed by Mexican law. In Mexico, entities are regulated by the General Corporations Act (*Ley General de Sociedaddes Mercantiles*) and the Commercial Code (*Código de Comercio*) which are both federal laws.

In our experience, parties to cross-border M&A transactions usually elect to be governed by the law applying to the place in which the target company is located/incorporated and/or the place where the acquired assets are located, as it will be easier for such parties to enforce their rights and obligations.

22. What public-facing documentation must a buyer produce in connection with the acquisition of a listed company?

Tender offers (*whether voluntary or mandatory*) are subject to obtaining authorization from the National Securities and Banking Commission (*Comisión Nacional Bancaria y de Valores*) (*except for public offers for the acquisition of securities subject to simplified registration, which are governed by the mechanisms established in the respective bylaws*). For an acquirer to obtain authorization from the National Securities and Banking Commission (*Comisión Nacional Bancaria y de Valores*) the following documentation must be submitted for review:

i. A brochure containing the information required by the National Securities and Banking Commission (*Comisión Nacional Bancaria y de Valores*) from time to time pursuant to secondary regulation.
ii. To the extent applicable: (a) a public instrument containing the power of the legal representative of the offeror, (b) a certification from the board of directors (*or its equivalent*) confirming that the legal representative has sufficient authority to make the

offer, (c) a copy authenticated by the secretary of the board of directors of the minutes of the shareholders' meeting or board session, which resolves to carry out the public offer, and (d) a copy of any prior agreements with other acquirers, shareholders, or directors of the issuer of the securities subject to the offer, related to such offer.

23. What formalities are required in order to document a transfer of shares, including any local transfer taxes or duties?

Formalities depend on the type of company. The most common types of commercial entities in Mexico are the stock corporations *"sociedades anónimas"* and limited liability companies *"sociedades de responsabilidad limitada"*. Below is a description of the essential and general legal steps required for such transfers:

a. General Meeting. Transferring stocks in a stock corporation (*Sociedad Anónima*) does not require approval from the shareholders' meeting. However, for limited liability companies (*Sociedades de Responsabilidad Limitada*), the transfer of equity interests must always be approved by the majority of the partners in a general meeting; additionally, existing partners have a preferential right to acquire such equity interests before they are transferred to a third party.
b. Contractual Agreement. A contractual agreement must be executed by the parties and must set forth the main terms and conditions of the share/equity interest transfer.
c. Endorsement of Share Certificates / Equity Interest Certificates. Share certificates of a stock corporation (*Sociedad Anónima*) are usually transferred by endorsement; nevertheless, transfers carried out by other means (*other than by endorsement*), must be recorded on the share certificate itself. Whereas equity interests in a limited liability company (*Sociedad de Responsabilidad Limitada*) do not need to be represented by certificates (*this is optional*); however, if the equity interests are represented by certificates their transfer must follow the same formalities as those applicable to share certificates.
d. Entry in the Shareholder's Registry Book / Special Partners' Register Book. For a person to be legally acknowledged as a shareholder or partner, such person must be registered in the shareholders´ registry or special partners' registry of the company.

Moreover, different notices must be submitted to the relevant government authorities.

24. Are hostile acquisitions a common feature?

Hostile acquisitions are not common in Mexico because of different factors, for example (i) the limited number of public companies in the Mexican market, (ii) such public companies are usually controlled by families or corporations, and (iii) mechanism implemented by such public companies to avoid takeovers.

25. What protections do directors of a target company have against a hostile approach?

Initially, members of the board of directors do not have legal mechanisms (*expressly granted by law*) aimed at preventing a hostile takeover. However, in accordance with the Securities Market Law (*Ley del Mercado de Valores*), provisions and/or mechanisms (*such as shareholders´ rights plans, known as "poison pills"*) may be included in the bylaws to prevent the acquisition of shares that grant control of the company, either by third parties or by the equity holders themselves, whether directly or indirectly, provided that these mechanisms: (i) are approved by means of a general extraordinary shareholders' meeting, in which less than 20% of the company's equity interest has voted against the measure, and (ii) do not contravene the provisions related to mandatory public acquisition offers.

26. Are there circumstances where a buyer may have to make a mandatory or compulsory offer for a target company?

A person or group of persons intending to acquire, by any means, either directly or indirectly, 30% or more of the equity interest of a public corporation through one or more transactions (*regardless of their nature*), shall make a tender offer (*in the same terms and conditions as for voluntary public tender offers*) as follows:

1. The offer must be extended to all classes of shares in the corporation (*including those with limited, restricted, or no voting rights*),
2. The consideration offer must be the same to all the equity holders, regardless of the class of shares,
3. the offer must be made: (a) for the percentage of the corporation's equity equal to the proportion of ordinary shares to be acquired or for 10% of such equity interest, whichever is greater, or (b) for 100% of the shares when the potential acquirer intends to obtain control of the corporation; and
4. The offer must specify the minimum and maximum number of shares to be acquired.

27. If an acquirer does not obtain full control of a target company, what rights do minority shareholders enjoy?

There are different rights available for minority shareholders pursuant to applicable law. The minimum equity required to exercise these rights varies depending on the type of company and its applicable law. For example:

i. General Corporations Act. The General Corporations Act (*Ley General de Sociedaes Mercantiles*), which regulates private entities, provides among other rights, as follows (i) Call for a Shareholders' Meeting. (a) Any shareholder may request a meeting when a general annual ordinary meeting has not been held within two years, or if it does not comply with the applicable law, and (b) Shareholders representing 33% of the company's equity may request the board of directors and/or the statutory auditors to call a shareholders' meeting, (ii) Appointment of Board Members. Shareholders representing 25% of the company's equity have the right to appoint one board member (*provided there are at least three board members*), (iii) Appointment of Statutory Auditor. Shareholders representing 25% of the company's equity have the right to appoint a statutory auditor, (iv) Postpone a Shareholders' Meeting. Shareholders representing 25% of the company´s equity have the right to postpone a meeting for three days if they do not have the necessary information to vote, (v) Civil Liability Against Directors and Statutory Auditors. Shareholders representing 25% of the company's equity may bring a liability action against any member of the board of directors (*including the sole administrator*) and statutory auditor, and (vi) Judicial Challenge to Shareholders' Meeting Resolutions. Shareholders representing 25% of the company's capital have the right to challenge shareholders' meeting resolutions in court, provided they voted against or did not vote on such resolutions.

ii. Securities Market Law. The Securities Market Law (*Ley de Mercado de Valores*), which regulates corporations and public entities, provides among other rights, as follows (i) Call for a Shareholders' Meeting. Shareholders representing 10% of the corporation's equity may call for a shareholders' meeting, (ii) Appointment of Board Members. Shareholders representing 10% of the corporation's equity have the right to appoint one board member (*provided there are at least three board members*), (iii) Appointment of Statutory Auditor. Shareholders of corporations (*e., SAPIs*) representing 10% of the corporation's equity have the right to appoint a statutory auditor, (iv) Postpone a Shareholders' Meeting. Shareholders representing 10% of the corporation´s equity have the right to postpone a meeting for three days if they do not have the necessary information to vote, (v) Civil Liability Against Directors. Shareholders of corporations (*i.e., SAPIs*) representing 15% of the corporation's equity may bring a civil liability action against a member of the board of directors, and (vi) Judicial Challenge to Shareholders' Meeting Resolutions. Shareholders representing 20% of the corporation's capital have the right to challenge shareholders' meeting resolutions in court, provided they voted against or did not vote on such resolutions.

28. Is a mechanism available to compulsorily acquire minority stakes?

Pursuant to Mexican law there is no legal provision requiring minority shareholders to sell their stakes in a company. Nevertheless, the General Corporations Act (*Ley General de Sociedades Mercantiles*), allows shareholders to agree among themselves rights and obligations for the purchase and sale of stock, including, among others, the following: (i) drag along, (ii) tag along, (iii) put options, and (iv) call options.

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