



# Corporate Reorganisations

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Quick reference guide enabling side-by-side comparison of local insights, including into the legal and regulatory framework; rate of reorganisations; key preparatory, employment and financing and other issues; accounting and tax; necessary consents and approvals; treatment of assets; reorganisation formalities; and recent trends.

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# Table of contents

## LEGAL AND REGULATORY FRAMEWORK

- Types of transaction
- Rate of reorganisations
- Jurisdiction-specific drivers
- Structure
- Laws and regulations
- National authorities

## KEY ISSUES

- Preparation
- Employment issues
- Financial assistance
- Common problems

## ACCOUNTING AND TAX

- Accounting and valuation
- Tax issues

## CONSENT AND APPROVALS

- External consent and approvals
- Internal consent and approvals

## ASSETS

- Shared assets
- Transferring assets

## FORMALITIES

- Date of reorganisation
- Documentation
- Representations, warranties and indemnities
- Assets versus going concern
- Types of entity
- Post-reorganisation steps

## UPDATE AND TRENDS

**Hot topics**

## Contributors

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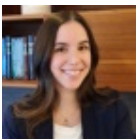
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## LEGAL AND REGULATORY FRAMEWORK

### Types of transaction

What types of transactions are classified as 'corporate reorganisations' in your jurisdiction?

Mexican law does not provide a formal definition or classification of corporate reorganisations. However, we can find references to the term of corporate reorganisations in a variety of laws. Additionally, the empiric classification includes the transfer of ownership or control (ie, mergers including consolidation and amalgamation; acquisitions including ongoing concerns and assets; spin-offs; joint ventures; and transformation of the type of company (eg, a corporation into a limited liability partnership)).

*Law stated - 19 January 2023*

### Rate of reorganisations

Has the number of corporate reorganisations in your jurisdiction increased or decreased this year compared with previous years? If so, why?

The number of corporate reorganisations in 2022 was lower than in 2021, considering that in 2021, there was a very high number of reorganisations and restructures derived from several amendments to Mexican laws, including the Mexican Constitution, and labour and tax laws, with the purpose of regulating the outsourcing of employees.

However, several entities continued their reorganisation process, and some others started to reorganise their input of services and the structure they had in place for the outsourcing of employees in 2022, in addition to reorganisations and restructures carried out for other reasons.

*Law stated - 19 January 2023*

### Jurisdiction-specific drivers

Are there any jurisdiction-specific drivers for undertaking a corporate reorganisation?

There are different things that may be drivers for carrying out a corporate reorganisation, including, among others, specific measures by the federal government; amendments in legislation and the economic environment; changes and the status (such as barriers to access) of a specific industry sector; global corporate movements in companies that belong to international groups; changes in management; inflation; and the merger and acquisition transactions that involve carve-outs and the sale of stock or assets.

*Law stated - 19 January 2023*

### Structure

How are corporate reorganisations typically structured in your jurisdiction?

The trend during 2021 comprised reorganisations documented by straight forward agreements and acts, such as mergers between related parties and spin-offs that required minimum negotiation. However, in general, corporate reorganisations are commonly structured as:

- transfers of stocks or assets;
- mergers;

- spin-offs;
- split-offs;
- divestures;
- joint ventures;
- buyouts; and
- transformations.

The alternative chosen by each entity depends on the effects sought, taking into consideration different factors such as tax, labour, administrative and corporate implications.

*Law stated - 19 January 2023*

## Laws and regulations

What are the key laws and regulations to consider when undertaking a corporate reorganisation?

The laws and regulations to be considered may vary depending on the type of transaction to be carried out and the industry sector of the relevant company. Notwithstanding this, the following are the main laws to be considered in a corporate reorganisation:

- the General Law of Business Organisations;
- the Securities Market Law, if the companies involved are publicly listed;
- the Federal Fiscal Code;
- the Income Tax Law;
- the Foreign Investment Law;
- the Federal Law on Economic Competition;
- the Commerce Code; and
- federal and local civil codes.

*Law stated - 19 January 2023*

## National authorities

What are the key national authorities to be conscious of when undertaking a corporate reorganisation?

Depending on the alternative chosen to carry out the corporate reorganisation, the authorities to be considered may vary.

In connection with the obligations derived from the General Law of Business Organisations, applicable to corporate transactions, amendments of by-laws, transfers of stock, mergers, spin-offs or any other similar operation, the relevant authorities to consider are the Ministry of Economy and the Public Registry of Commerce.

For operations involving companies with foreign investment in its equity, notices and filings must be submitted before the National Foreign Investments Registry. For reorganisations of companies involved in restricted sectors, certain acts may require the authorisation of the National Foreign Investments Commission.

If the company is publicly listed, or for financial institutions, different obligations will require notices to or authorisations from the National Banking and Securities Commission and, in some cases, from other regulators.

Operations involving the transfer of employees and amendment of labour benefit structures (such as housing and

pension plans), it is important to consider the obligations to be undertaken before labour authorities, including the Ministry of Labour and the Mexican Social Security Institute.

Operations involving the transfer of real estate normally require notices, certificates and registrations to be issued to and obtained from local Public Registries of Property.

Tax authorities in Mexico play an important role in corporate reorganisations. Depending on the type of transactions involved in a reorganisation, several obligations must be complied with before the Tax Administration Service and the National Taxpayers' Registry.

Finally, aside from other authorities to be considered depending on the corresponding industry sector, especially those that are highly regulated (ie, oil and gas, energy, telecommunications, transportation, healthcare), the Federal Law on Economic Competition sets forth different rules and thresholds for transactions that are considered 'concentrations' and that require prior authorisation from the Mexican Federal Antitrust Commission. Prior authorisation is required mainly for stock and asset transfers and mergers that surpass the economic thresholds provided in the aforementioned law. However, this law also provides for exceptions for the obtainment of the prior authorisation in certain types of transactions that qualify as 'reorganisations of a corporate group'. The rationale for this exception is that antitrust laws are aimed at preventing and sanctioning anticompetitive practices and operations that could have a negative impact on a certain market. Therefore, a reorganisation of companies within a same corporate group, not involving competitors or parties with different interests, is unlikely to have negative effects in the relevant market.

*Law stated - 19 January 2023*

## KEY ISSUES

### Preparation

What measures should be taken to best prepare for a corporate reorganisation?

Usual measures include reviewing the status of legal compliance of the entities that will be involved in the reorganisation, by carrying out the corresponding due diligence in preparation for the operation.

Prior to the reorganisation, it is important to confirm that the target companies are in compliance with corporate, labour and tax regulations, among others.

From a corporate point of view, it is necessary to review whether the company has its corporate books updated and complies with the notices that must be filed before the Ministry of Economy regarding its current shareholding structure and foreign investment, if applicable. Due diligence work should also focus on any notices or authorisations that must be given or requested, respectively, either internally, to third parties or to government authorities, prior to carrying out the reorganisation.

From a tax perspective, it is important to determine that the tax impacts of the reorganisation and notices will be delivered in due time, so that involved parties are able to duly comply with any tax obligations in connection thereof and avoid an unwanted tax impact.

If the reorganisation is between related parties, transfer pricing studies might be necessary to properly determine considerations to be paid at market value.

*Law stated - 19 January 2023*

### Employment issues

What are the main issues relating to employees and employment contracts to consider in a corporate reorganisation?



Whenever a corporate reorganisation involves, for instance, the transfer of employees from one entity to another, there are a number of issues to consider from an employment standpoint. In this respect, it is important to conduct an assessment at the outset as to how the corporate reorganisation may impact employment relationships and the labour structure of the company or group, including, among other things, how employees are hired, seniority, if they are unionised or not, compensation and benefits packages, pensions, under which modality they may be transferred from one entity to another and, primarily, the level of compliance of the employer with its labour and social security obligations. As an example, when it comes to the creation of a new company that will receive a workforce, it is paramount to ensure that this entity is able to qualify as an employer and hire workers (ie, having social security registration and a payroll system). Likewise, it is important to determine the level of compliance of both former and new employers with their labour and social security obligations, as a corporate reorganisation involving the transfer of employees could potentially trigger joint liability.

In addition to the foregoing, an assessment would have to be conducted to determine if a substituted employer would be required to pay compensation to the substitute employer because of an employer substitution or termination and the rehiring of employees, and the amount of any such compensation would have to be determined. This would be paramount to comply with transfer pricing rules and make sure that any payment made is effectively deductible for tax purposes.

*Law stated - 19 January 2023*

### What are the main issues relating to pensions and other benefits to consider in a corporate reorganisation?

Whenever a corporate reorganisation involves the transfer of employees from one entity to another, it is important to analyse affected employees' compensation and benefits package, along with the modality considered for this transfer, as the latter will trigger certain requirements with regards to the continuity of affected employees' employment terms and conditions. For example, when transferring employees through a process of employer substitution, as provided by the Federal Labour Law, employment relationships may not be affected in any way, meaning that any benefits to which the employees were entitled from their former employer must be respected and continue under the same terms with their new employer, which may also involve the need to harmonise benefits if the new employer already has workforce with different benefits. In the case of pension plans, and if funds must be transferred because of a corporate reorganisation, tax requirements must be reviewed to mitigate any impact, especially economical.

Likewise, it is important to take into consideration the administrative burdens that the transfer of benefits could result in because of a corporate reorganisation (eg, the transfer of contracts and, when applicable, termination processes).

*Law stated - 19 January 2023*

### Financial assistance

#### Is financial assistance prohibited or restricted in your jurisdiction?

Under Mexican law, companies are allowed to lend funds to the purchaser (within or outside the same group) to acquire shares or partnership interests.

Notwithstanding this, in terms of the General Law of Business Organisations, a company under a legal regime of a limited liability corporation is prohibited from acquiring its own shares, except via judicial adjudication. On the other hand, the Securities Market Law provides that an investment promotion corporation and a public stock corporation are allowed to acquire their own shares without any restriction.

*Law stated - 19 January 2023*

## Common problems

What are the most commonly overlooked issues or frequently asked questions in a corporate reorganisation?

Depending on the type of operations involved in the corporate reorganisation, there are indeed issues that are commonly overlooked or that may result in practical burdens. For example, the IT departments of companies play an important role in corporate transactions such as mergers or spin-offs, as they are fundamental to the time that proper migration of data, accounts and similar information takes when planning the timeline of the reorganisation.

In addition, the timing for completing registrations before the Public Registry of Commerce, where needed, is something that is out of the control of the parties and could result in relevant delays in the times expected for the transactions to be completed.

It is important to take into consideration the notices that must be filed before the tax authorities in most reorganisations and the timing for these filings, to avoid the imposition of fines, cancellation of digital invoicing seals and, in some cases, unwanted tax effects in reorganisations that should be considered tax neutral.

Also, the tax authorities will strictly verify that corporate reorganisations, such as mergers and spin-offs, have a justified business reason.

Further, it is important to bear in mind possible authorisations that must be requested before government authorities if applicable (eg, licenses, permits, concessions or bids), or before banks or insurance companies, as the financing agreements entered into with banks regularly include provisions that limit or prohibit the borrower from merging, splitting, carrying out changes of control, assigning the agreement, among other things, without prior authorisation from the lender.

From an intellectual property standpoint, it is important to review whether the intellectual property rights of the company to be merged are valued and recognised in the accounting of the company prior to the merger. Otherwise, as a result of the merger, the absorbing company will not be able to recognise the real value of these intellectual property rights in its accounting.

*Law stated - 19 January 2023*

## ACCOUNTING AND TAX

### Accounting and valuation

How will the corporate reorganisation be treated from an accounting perspective? How are target assets and businesses valued?

Generally, all assets and liabilities assumed from the acquired business are valued at their fair market value as of the acquisition date, and the business shall be valued considering the capital stock, profits and losses of the current and prior fiscal years. The accounting recognition of a reorganisation may be affected by the assets to be transferred and the conditions, prices and other legal considerations of the corporate reorganisation.

*Law stated - 19 January 2023*

## Tax issues

## What tax issues need to be considered? What are the tax implications of carrying out a corporate reorganisation?

A corporate reorganisation may be carried out through different types of transactions, and each of them would have specific tax implications to be considered on a case-by-case basis. However, generally, under Mexican tax legislation, a corporate reorganisation may be deemed as a taxable event for income and valued added tax purposes. Although, in certain cases, corporate restructures may be tax free provided that several requirements are met.

For example, a merger between Mexican entities is a taxable event where the surviving entity must determine the corresponding income tax and value added tax, if any, as a consequence of the transfer of assets to the surviving entity.

Nonetheless, Mexican tax provisions provide an exemption to the abovementioned regime to the extent that several formal requirements are met (such as filing notices before the Mexican tax authorities). Thus, if these requirements are fulfilled, a merger between Mexican entities will be considered as a non-taxable event. A similar alternative is provided for spin-offs of Mexican entities.

*Law stated - 19 January 2023*

## CONSENT AND APPROVALS

### External consent and approvals

#### What external consent and approvals will be required for the corporate reorganisation?

If the company is publicly listed, a prior authorisation from the National Banking and Securities Commission must be obtained by the company to carry out the reorganisation.

Pursuant to the Federal Economic Competition Law, the thresholds to request a prior authorisation from the Mexican Federal Antitrust Commission for certain transactions must be reviewed and assessed.

Consent from creditors or the elapse of certain periods may be mandatory for a corporate reorganisation in the event of a merger, spin-off or buyout, as creditors may oppose these reorganisations, and they could be suspended until the interests are secured. This consent may be obtained expressly or tacitly, by the expiration of statutory terms for creditors to oppose the intended transaction.

Finally, it is important to review the material agreements in which the parties participate to determine any restrictions or requirements to obtain authorisations for carrying out the reorganisation.

*Law stated - 19 January 2023*

### Internal consent and approvals

#### What internal corporate consent and approvals will be required for the corporate reorganisation?

Internal consent and approvals depend on the type of transactions that the reorganisation will consist of. Generally, subject to the specific rules set forth in the by-laws or shareholders' or partners' agreements of involved entities, the approval of the shareholders' or partners' meeting (depending on the type of entity) is usually necessary to carry out the reorganisation, taking into account the voting percentage needed to approve the reorganisation pursuant to the General Law of Business Organisations and the by-laws. Additional rules may apply depending on the companies' corporate governance and internal procedures (eg, approval by certain committees, assessment by an internal control body, or favourable opinion by compliance officers or external counsel).

**ASSETS****Shared assets**

How are shared assets and services used by the target company or business typically treated?

The assets and services will be treated differently depending on the reorganisation alternative to be carried out. For example, in the event of a merger, assets are transferred as a mere effect of this merger; however, certain assets require additional formalities such as real estate, which change of ownership must be registered in the public registry of property. Likewise, the service agreements entered into by the company are transferred as an effect of a merger to the surviving company but require, at least, a notice to the other party to the agreement.

In a spin-off, the splitting company must draft a pro forma balance sheet precisely stating the assets, liabilities and corporate capital that will be transferred to the spun-off company.

In addition, shared services between companies of the same corporate group have been impacted by the outsourcing amendments that took place in 2021, as it has become more relevant to indicate that shared services of this type are of an independent nature to avoid possible confusion with specialised services, which are now strictly regulated by the aforementioned amendments. In these cases, it is important to confirm that the main corporate purpose of the company providing the services includes these services to be provided and, on the other hand, that the corporate purpose of the party receiving the services does not include the performance of the services to be received.

*Law stated - 19 January 2023*

**Transferring assets**

Are there any restrictions on transferring assets to related companies?

Pursuant to Mexican law, there are no restrictions for the transfer of assets between related companies. However, if the transfer of assets shall happen between related parties, a transfer pricing study issued by a tax expert must be obtained to confirm that this transfer is completed pursuant to the market value of such assets.

*Law stated - 19 January 2023*

Can assets be transferred for less than their market value?

As a general rule, a purchaser and a buyer may agree to any price for an asset; however, if the transfer is made between related companies, a transfer pricing study issued by a tax expert will be required to ensure that the transfer is made pursuant to the market value of these assets in order to avoid potential tax contingencies.

*Law stated - 19 January 2023*

**FORMALITIES****Date of reorganisation**

Can a corporate reorganisation be backdated or deemed to have already taken place, for example, from the start of the financial year?

It is not advisable to backdate documents subject to Mexican law. However, the parties of a reorganisation may freely

determine the date of effects of the corporate acts required for the reorganisation as of the date of execution, subject to the specific provisions that applicable law provides in connection with the effects of operations. In that sense, corporate reorganisations may be effective as of two different moments: (1) between the parties, on the date agreed by them; and (2) before third parties, including authorities, the parties may determine that the reorganisation shall be effective as of a later date of its approval based on the provisions of applicable laws or the agreement of the parties, provided that certain limitations are observed.

In the event of a corporate reorganisation, it is important to consider that the transaction may have full force in different moments, as determined by the parties involved, as follows:

- A merger may have full force and effect between the parties, on the date agreed by the parties, and before third parties, three months after its registration in the Public Registry of Commerce. However, if the entities subject to the merger agree to pay all their liabilities to their creditors, obtain prior consent to the merger by their creditors or constitute a deposit to guarantee payment before a financial institution, the parties may agree that the merger will be effective on a specific date, once the merger agreement has been registered before the Public Registry of Commerce. For tax purposes, there are specific criteria and case law that states that unless otherwise agreed by the parties, the merger will be considered to be effective from the date of the merger resolution or agreement.
- In a spin-off, the transaction will have full force and effect 45 days after the spin-off resolution has been published and registered before the Public Registry of Commerce.

Under tax legislation, the definite date shall be required for some documents. For tax purposes, the 'definite date' means the actual verifiable date on which a legal act rendered effects, and this may be different from the date indicated in the documents of the transaction. The main purpose of this requirement is to avoid the simulation of legal acts through the backdating of contracts or documents. In practice, the definite date is given to operations by the formalisation of the relevant documents before a notary public.

*Law stated - 19 January 2023*

## Documentation

### What documentation is required in a corporate reorganisation?

Documentation may vary depending on the structure of the reorganisation. Most commonly, for a merger, the documents may include:

- shareholders' or partners' meeting minutes approving the merger of the companies involved;
- the merger agreement; the audited balance sheet of each company involved;
- merger notices to be published before the electronic system of the Ministry of Economy and to be given to the tax authority;
- creditors' consent to the merger, if any; and
- notarisation of the shareholders' or partners' meeting minutes approving the merger of the companies involved and its registration before the Public Registry of Commerce of the companies involved.

In the event of a stock or asset purchase, the documents may include:

- stock purchase agreement or asset transfer agreement;
- shareholders' or partners' meeting minutes of the company approving the stock or assets purchase, if applicable;
- additional internal approvals or consent pursuant to the by-laws or shareholders' or partners' agreements;

- registries and entries in corporate books; and
- endorsement of stock title certificates.

For a spin-off, the documents may include:

- shareholders' or partners' meeting minutes approving the spin-off;
- the audited balance sheet of the company stating the proportion of assets, liabilities and equity capital to be transferred to the spun-off company;
- the spin-off notice to be published before the electronic system of the Ministry of Economy;
- the creditors' consent to the spin-off, if any; and
- notarisation of the shareholders' or partners' meeting minutes approving the spin-off of the company and its registration before the Public Registry of Commerce.

For any kind of reorganisation that affects the capital equity structure, an entry to the Share Registry Book must be drafted and a notice to the Federal Taxpayers' Registry should be filed.

*Law stated - 19 January 2023*

## **Representations, warranties and indemnities**

Should representations, warranties or indemnities be given by the parties in a corporate reorganisation?

In Mexico, corporate reorganisations are generally carried out between companies of the same corporate group, so it is not common to include in the corresponding documents and agreements exhaustive representations and warranties or very aggressive indemnities, only the fundamental ones.

However, if, as a result of the reorganisation, transactions are or will be entered into with third parties, exhaustive representations, warranties and indemnities must be included to protect the parties from possible contingencies of a target company and to limit liability.

In addition, under Mexican Law the transferors are obliged to protect against lawful dispossession.

*Law stated - 19 January 2023*

## **Assets versus going concern**

Does it make any difference whether assets or a business as a going concern are transferred?

If the parties agree on a transfer of assets, the buyer can buy only the assets agreed between the parties. In this case, the parties may provide that certain liabilities in relation to the assets are transferred to the buyer or remain the sellers' liabilities. The benefit of this alternative is that most obligations and liabilities are not transferred to the buyer. In addition, through the purchase of assets, the employees are isolated from the transaction, and the parties would then need to separately negotiate a transfer of employees, if applicable.

On the other hand, if the parties choose to acquire a business as a going concern, this is generally done through a stock purchase, in which case, the buyer will be acquiring the business as a whole, including agreements in force, employees, clients, accounts payable and accounts receivable, as well as all tax, labour, corporate and legal liabilities of the company, among others.

Under Mexican tax law, in certain cases the acquisition of assets of a company could be considered an acquisition of the business as a going concern, which would trigger joint tax liability.

*Law stated - 19 January 2023*

### Types of entity

Explain any differences between public, private, government or non-profit entities to consider when undertaking a corporate reorganisation.

The main difference between reorganisations of public, private, government and non-profit entities is the applicable legislation for each of them, which, in turn, provide for different rights and obligations and specifics to be considered when undertaking a reorganisation. For example, government entities are subject to administrative legislation, commercial entities to the General Law of Business Organisations, publicly listed entities are regulated by the Securities Market Law, civil entities by the local Civil Codes and insurance corporations by the Insurance and Surety Institutions Law.

In the case of non-profit entities' reorganisations (especially those that are authorised as receivers of donations), several tax matters shall be considered, as these reorganisations may entail the revocation of permits granted by the government pursuant to the Federal Fiscal Code, the Income Tax Law and the Value Added Tax Law.

*Law stated - 19 January 2023*

### Post-reorganisation steps

Do any filings or other post-reorganisation steps need to be taken after the corporate reorganisation?

Yes, there are filings to be made before different authorities depending on the type of reorganisation and the parties involved. The most common procedures to be carried out are:

- cancellation before the Federal Taxpayers' Registry, if the company subject to the reorganisation disappears;
- registration before the Federal Taxpayers' Registry, if a new company has been created as a result of the reorganisation;
- notices in changes to the capital equity structure before the Ministry of Economy and the Federal Taxpayers' Registry;
- registration before the Public Registry of Property in the change of ownership of real estate, if applicable;
- notices before the National Registry of Foreign Investment, depending on the effects of the reorganisation; and
- notices before labour and social security authorities, if the reorganisation involves the transfer of employees.

*Law stated - 19 January 2023*

## UPDATE AND TRENDS

### Hot topics

What are your predictions for next year and how will these impact corporate reorganisations in your jurisdiction (for example, expected trends or pending legislation)?

For 2023, it is expected that the key specific drivers for corporate reorganisations in Mexico will be current global economic deceleration, nearshoring trends that are causing global groups to consider Mexico as a strategic investment

location for the North America market region, and social and political specific developments in Mexico, including developments of major legislative reforms that may impact strategic sectors.

*Law stated - 19 January 2023*



## Jurisdictions

	<b>Austria</b>	DLA Piper
	<b>Belgium</b>	DLA Piper
	<b>Egypt</b>	Soliman, Hashish & Partners
	<b>Germany</b>	DLA Piper
	<b>Greece</b>	PotamitisVekris
	<b>Ireland</b>	Matheson LLP
	<b>Japan</b>	TMI Associates
	<b>Mexico</b>	Chevez Ruiz Zamarripa
	<b>Romania</b>	CITR SPRL
	<b>Slovenia</b>	DLA Piper
	<b>Switzerland</b>	Walder Wyss Ltd
	<b>United Kingdom - England &amp; Wales</b>	Latham & Watkins LLP