COUNTRY COMPARATIVE GUIDES 2021

The Legal 500 Country Comparative Guides

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

In Mexico, the transfer of shares/equity quotas of private commercial companies is regulated under the General Law of Business Organizations (*Ley General de Sociedades Mercantiles* "**GLBO**") and the Code of Commerce (*Código de Comercio*); likewise, the transfer of assets is regulated under the Code of Commerce (*Código de Comercio*) and the Federal Civil Code (*Código Civil Federal*) (or local Civil Codes), accordingly. Other secondary legislations are also applicable, depending on the type of transaction, the participation of foreign investments, or the particular industry. M&A transactions are also regulated by the Federal Law on Economic Competition (*Ley Federal de Competencia Económica*), the Foreign Investment Law (*Ley de Inversión Extranjera*), and by special laws regulating different matters and industries (e.g. the Federal Law on Telecommunications and Broadcasting (*Ley Federal de Telecomunicaciones y Radiodifusión*), the Law on Credit Institutions (*Ley de Instituciones de Crédito*), *inter alia*).

The main regulatory authority for M&A transactions is the Mexican Federal Antitrust Commission (*Comisión Federal de Competencia Económica* **"COFECE"**), which enforces merger control. Transactions whereby companies or the so called "economic agents" merge, acquire portions of other companies, or associate or carry out operations that unites them are considered "concentrations". Those concentrations must be reported to COFECE whenever certain economic thresholds are surpassed, so that COFECE can assess the impact of the transaction on the market and any potential risks for competition. As a result, COFECE may authorize, deny or condition the execution of transactions.

The acquisition of public companies is regulated under different legal provisions and authorities, such as the Securities Market Law (*Ley del Mercado de Valores*), the rules and regulations issued by the National Banking and Securities Commission (*Comisión Nacional Bancaria y de Valores*), the Ministry of Treasury and Public Credit (*Secretaría de Hacienda y Crédito Público*), the Mexican stock exchanges, and the GLBO.

It is important to consider that certain activities are restricted as to the participation of foreign investment, as provided under the Foreign Investment Law, by forbidding or limiting the percentage of participation that a foreign investor may hold in a Mexican company. Therefore, when allowed by such law, foreign investors must obtain an authorization issued by the Mexican National Foreign Investments Commission (*Comisión Nacional de Inversiones Extranjeras*) to participate (i.e. by means of an acquisition) in a Mexican company. Additionally, authorization by such National Foreign Investments Commission (*Comisión Nacional de Inversiones Extranjeras*) must be obtained for those transactions in which foreign investment will participate in a percentage over 49% of a Mexican company, only in those cases where the value of the total assets of the target company surpasses the amount that the aforementioned Commission sets on a yearly basis. For 2020, such amount was set on $20,184,671,346.26 Mexican Pesos.

Finally, other authorities may be involved in M&A transactions. For example, the Mexican Social Security Institute (*Instituto Mexicano del Seguro Social*), which is the main authority regulating public health, social security and benefits, as well as pensions, would be involved in those asset deals that involve a transfer of employees; also, certain corporate acts to be carried out through an M&A transaction must be recorded at the Public Registry of Commerce (*Registro Público de Comercio*); the transfer of title of real estate assets must be registered before the Public Registry of Property (*Registro Público de la Propiedad*), and certain guarantees (such as non-possessory pledges, leasing agreements, ownership retention provisions in contracts, among others) must be registered before the Registry of Movable Guarantees (*Registro Único de Garantías Mobiliarias*).

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2. What is the current state of the market?

The M&A market is going through a difficult phase derived from the current international financial crisis, and the obvious challenges derived from the COVID-19 pandemic. However, there are signs of recovery and certain industries and sectors have been active.

According to public sources, the reported deal value in the Mexican M&A market for 2020 had a loss of 26.4% against 2019 figures. Unsurprisingly, 2020 had fewer transaction than the past recent years, though numbers have been recovering since the end of 2020 and the beginning of 2021, especially in connection with restructuring, asset and business consolidation, and refinancing transactions.

Moreover, certain sectors where not negatively impacted by the COVID-19 pandemic and its consequent financial crisis and have been active in M&A transactions, such as e-commerce, micro-financing, fintech, and SAAS (Software-as-a-Service).

Additionally, the entrance into force of the USMCA on July 1 is expected to increase investments in Mexico from the U.S. and Canada. Notwithstanding that investments from the U.S. and Canada have been steady in the last years, there was a mild uncertainty in the investors' environment prior to the entrance into force of the USMCA, which took place on July 1, 2020. Now, investments from those countries are expected to increase.

A relevant aspect to look at are the mid-term elections scheduled to happen in Mexico in June 2021, and which undoubtedly will impact the markets, especially in connection with those industries that might potentially experience regulatory reforms and that are very reactive to the country's political climate.

3. Which market sectors have been particularly active recently?

We have seen an increase in restructuring operations in the financial market in all kind of industries, including fintech, SAAS (Software-as-a-Service), and e-commerce. Food and product delivery platforms, and the health and sanitary sectors – key for the fulfillment of needs that have raised and grown since the COVID-19 spread – are other sectors that have been active.

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

Among the most significant factors, we can consider: (i) the market and lifestyle disruptions derived from the COVID-19 pandemic; (ii) the regulatory changes that many sectors in the Mexican economy are experiencing, due to the nationalist and state-oriented approach of the current federal administration; and (iii) business consolidation and restructuring derived from the international and national financial crisis.

Within the foregoing, there are different aspects and factors to consider: the COVID-19 pandemic has changed and will continue changing working and lifestyle preferences and habits. The process of digitalization of business has accelerated and as a result, work, economic activity and residences are likely to move away from centralized systems and big urban centers, directly affecting several sectors, such as real estate.

Also, business and consolidation, debt restructuring, corporate restructures, the acquisition of distressed entities, the search for efficiencies and the need to raise capital and issue debt instruments are factors derived from the global financial crisis that should be followed closely.

Finally, the current federal government has been active in issuing new laws and unraveling existing ones with the purpose of moving towards a protectionist and state-oriented approach for certain industries, such as the energy, electricity, renewables, education, telecommunications, oil and gas, and infrastructure sectors. Additionally, a major reform to labor laws is under discussion in the Mexican congress, aiming at regulating and sanctioning practices of unjustified subcontracting of work. Such reform has risen concerns for many companies which have moved towards restructuring efforts (including mergers, spin-offs, consolidation and sale of business units) to address the potential impacts of the foregoing.

In contrast to the economic and financial distress that the global pandemic brought unto many industries, technology is one of the few that has been benefitted. The benefits and growth experienced by the tech industry have brought and favored the development of new forms of technology, that have helped develop new business opportunities for businesses that had never considered the importance of a technological platform and technological features, nor had considered them as an important part of budget allocation. Therefore, acquisition of software development will play a crucial role over the next two years, putting technology at the center of many M&A transactions in its different variations and innovative aspects (e.g.) fintech, SAAS

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(Software-as-a-Service) and e-commerce.

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

In addition to the legislation mentioned in question 1 above, the acquisition of a publicly traded company must be carried out in accordance with the Securities Market Law (*Ley de Mercado de Valores*) (LMV), the General Guidelines Applicable to Publicly Traded Companies (*Disposiciones de carácter general aplicables a las emisoras de valores y a otros participantes del mercado de valores*) and secondary regulations issued by the National Securities and Banking Commission (*Comisión Nacional Bancaria y de Valores*) (CNBV) and the Mexican stock exchanges. Such acquisitions may be either voluntary or mandatory.

Both voluntary and mandatory offers must be approved by the National Securities and Banking Commission (*Comisión Nacional Bancaria y de Valores*) (CNBV) and shall (i) remain open for at least 20 (twenty) business days, (ii) the allotment of the offer must be made on a proportional basis, and (iii) during the term of the offer, it may only be modified to the extent that it benefits the sellers or if the modification was previously agreed to in the offering memorandum, in such case, the offer may be extended by at least five additional business days if the bid is materially modified.

6. What information relating to a target company will be publicly available and to what extent is a target company obliged to disclose diligence related information to a potential acquirer?

As a general rule in Mexico, publicly available information is limited to that provided by public registries, like the Public Registry of Commerce (*Registro Público de Comercio*) and the Public Registry of Property (*Registro Público de la Propiedad*), information related to litigation can be obtained through the lists containing provisions agreed upon by the judicial system, but in a due diligence context, those are not a clear indication to confirm if a target company and/or its shareholders/partners have any pending litigation in Mexico. There is no law or legal provision that forces a certain level of disclosure from a target private company, so it is necessary for the due diligence process to look for any evidence that could point to the existence of any potential significant risk for buyers.

Regarding publicly traded companies, applicable regulation issued by the National Securities and Banking Commission (*Comisión Nacional Bancaria y de Valores*) (CNBV) and the Mexican stock exchanges provides that such companies must disclose certain corporate and financial information to the public on an annual, bi-annual and quarterly basis, in addition to any relevant information that must be disclosed to the public in accordance with such regulation.

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

Depending on the type of transaction, due diligence in private acquisitions is generally performed at two main levels: high level and detailed full-fledged reviews. Usually, the amount of publicly available information of private companies is very limited, so due diligence is a key factor for obtaining information on targets.

On one hand, high level diligence, focused only on highlighting most relevant red flags is common in deals with tight timeframes for closing, transactions where buyers do not foresee major risks and whenever resources and budget for diligence are limited.

On the other hand, sophisticated and high-value transactions normally involve a detailed due diligence process, aimed at identifying risks and opportunities to determine and negotiate purchase prices, set forth the need for sellers' representations, warranties and indemnities, determine the contents of disclosure schedules and the need to obtain third party authorizations, and include conditions precedent for closing or that may even result in the buyers walking away from the deal.

Customarily, due diligence is undertaken regarding target information in connection with organization, corporate books and records; corporate governance; equity transfers; loans and guarantees; real estate; machinery, equipment and inventory, liens and litigation; material agreements; bonds and insurance; tax; labor and employment; social security; transactions with related parties; intellectual and industrial property; compliance; environmental and administrative matters; regulatory and operational licenses and permits; and data privacy, to name some.

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

The supreme decision-making body of a company in Mexico is its Shareholders' or Partners' Meeting (depending on the type of company). Such Meeting entrusts the management of the company to a Board of

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Directors/Managers or to a Sole Director/Manager. Both organs play a key role during M&A transactions, considering that it is customary that corporate authorizations are required for closing (depending on the type of entity, transactions and contents of the involved companies' bylaws, in addition to requirements set forth by applicable law).

As a general rule, in a limited liability corporation (*sociedad anónima*), (i) shareholders do not require the approval of other shareholders in order to transfer their shares; (ii) the sale of assets may be performed by a company's representative with sufficient capacity (acts of ownership); and (iii) mergers, spin-offs and similar operations are authorized by the Shareholders' Meeting. All of the above may also be subject to further requirements, approvals and rules as determined by the company's bylaws. Conversely, for a limited liability commercial partnership (*sociedad de responsabilidad limitada*), the assignment of equity quotas and the admission of new partners are always subject to the Partners' Meeting approval.

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

Under the GLBO, the Board of Directors/Managers or Sole Director/Manager of private companies are required to, *inter alia,* (i) conduct their actions with the prudence and care that they would entrust to their own business, (ii) keep confidentiality regarding the information and matters entrusted to them, (iii) inform in case they have an interest opposed to that of the company's in a certain transaction. Directors are jointly liable with the company in connection with (iv) the truthfulness of the contributions made by the shareholders, (v) compliance with legal and statutory requirements for the payment of dividends to shareholders, (vi) the existence and maintenance of the accounting and other books and records required by applicable law, and (vii) the fulfilment of the resolutions adopted by the shareholders' meeting.

The Securities Market Law (*Ley del Mercado de Valores*) expressly requires the board of directors of public companies to (i) act in good faith and in the best interest of the company (duty of care), (ii) keep confidentiality regarding the information and matters entrusted to them (duty of loyalty), and (iii) to avoid conflicts of interest. It is important to highlight that these duties are included to expressly bind the board of directors with a duty towards the company, and not towards a specific shareholder, series or class of shareholders.

Controlling shareholders, as part of the shareholders' meeting (supreme organ of companies) must observe the rights of minority shareholders as provided by law and/or the company's bylaws.

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

There is no requirement whereby the Shareholder's/Partner's Meeting or Board of Directors/Managers of a company must obtain the approval of employees for a transaction, except for those cases where an employee or other stakeholder own stock in the target. However, if a transaction involves an employer substitution, then the target company is required to give notice of such substitution to its employees, so that the employees become aware of the substitution and the six month period during which the substituted employer remains as joint obligor starts in compliance with law.

Other stakeholders might have a say on the closing of a transaction, depending on whether the target has entered into agreements, commitments, financing deals or assumed obligations that grant those stakeholders certain rights over their assets or stock. Those agreements and third party rights may require prior notice to be given to such third parties and/or the obtainment of prior authorizations or waivers by them. Failure to obtain those authorizations might result in the nullity of a transaction (i.e. in case of sale of assets performed in detriment of creditors during a reorganization or bankruptcy process) or in the payment of damages, losses and indemnities.

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

Conditionality is a standard market feature. Obligations undertaken through an M&A transaction or even the closing and legal effects thereof may be subject to the fulfillment of certain conditions precedent, milestones or obligations. Therefore, it is a usual practice to distinguish between the signing and closing dates of an M&A transaction, being the closing subject to the fulfilment of a condition precedent. Noteworthy to mention, under civil legislation, conditions precedent for rendering legal effects of an agreed transactions shall not depend on the exclusive will of the party obliged under the condition precedent, inasmuch as such condition would be deemed as null and void. Therefore, conditions normally refer to certain acts carried out by a third party, or the existence of certain circumstances or facts, which do not

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depend on the parties (such as regulatory authorizations, obtainment of licenses, execution of certain agreement, etc.).

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

The execution of non-disclosure exclusivity agreements, letters of intention or memorandums of understanding executed by engaging parties are the most common vehicles to secure deal exclusivity.

It is also customary that the parties include penalties (liquidated damages) consisting in a monetary compensation for breach of deal exclusivity provisions. These types of measures aim at protecting the parties' (more often the buyers') interests, efforts and investments undertaken on negotiations, preparation of offers, documents and diligence work.

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

Deal protection and cost coverage mechanisms respond to the need to ensure that an M&A deal is closed, in whatever way and level possible, and may take the form of (i) indemnity provisions, (ii) break-up fees, and/or (iii) no-shop provisions, which are often included in the letters of intent and/or memorandums of understanding executed by the parties but can also be separate and individual agreements.

Indemnity provisions are included in case the deal falls through and may be in favor of both parties and/or in favor of one of the parties in case the other party walks away from the transaction before execution, which will include the coverage of legal, due diligence and other applicable fees incurred in by the parties.

The use of no-shop provisions binds a target company, for a fixed and limited time, to deal exclusivity. Thus, the target company undertakes not to seek, request, facilitate or enter into negotiations with third parties, during the agreed period; breach of the undertaken obligation can include the payment of damages or a set out amount by the target company.

Despite the fact that the mechanisms described above are usually implemented for protection of buyers, sellers should also consider those protection mechanisms considering the high incidence of buyers backing out of transactions.

Finally, and in addition to the above, under Mexican law, binding preliminary agreements provide the non-breaching party with the right to request mandatory compliance of the agreement.

14. Which forms of consideration are most commonly used?

The most commonly used consideration is the payment of cash through wire transfer. Nonetheless, other types of consideration are payments in kind through the issuance and delivery of stock of buyer or buyer's affiliated entities, transfer of assets, accounts set-off, provision of services, earn outs, cash/stock mix, rolled equity, payable notes, etc.

It is a common practice for parties to agree for a portion of the consideration to be paid through an earn out mechanism, whereby an additional and future compensation would be paid to sellers, after closing, conditioned to the fulfillment of specific terms, performance metrics and/or value achieved. Often, earnouts are agreed upon whenever the parties fail to agree on a final purchase price, so such mechanism serves the purpose of getting positions closer in connection with a target's value. By these means, buyers agree to pay a higher price subject to having more certainty as to the value or performance of a business and returns of investment.

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

In transaction involving private entities, neither buyers nor targets have a general obligation to publicly disclose a potential deal or negotiations relating thereto, with the exceptions of those transactions that require pre-merger clearance by COFECE. When private acquisitions take place, the potential buyer of a target company usually does not reveal any ownership level neither publicly nor to the target company, unless the acquisition requires clearance or authorization by COFECE, in which case it will be required to disclose ownership of the potential buyer (together with sales, assets and other economic information), until the level in which natural persons (individuals) are identified.

Pursuant to the Securities Market Law, the following must be disclosed to the public on the business day following an acquisition or sale of shares of a publicly traded company: (i) a person or group of persons that intends to acquire more than 10% (ten percent) but less than 30% (thirty percent) of the publicly traded

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company's capital stock; (ii) any person considered as a related party of a publicly traded company that intends to acquire or sell 5% (five percent) of their capital stock ownership, stating their intention or not to acquire control of the company; and (iii) any purchase or sale of shares by a person that has 10% (ten percent) or more of the publicly traded company's capital stock and by members of the board of directors and relevant directors with share ownership. The acquisition of more than 30% (thirty percent) requires complying with applicable regulation on mandatory or compulsory offers.

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

No public disclosure is required or customary during negotiations of transactions involving private entities, with exception of disclosure of information to regulatory authorities, such as COFECE (which may be done under confidential basis), when prior approval or clearance is required under applicable law. In certain cases, public disclosure (such as merger resolutions and agreements and transfer of shares) is required upon closing through the filing of the corresponding notices before the Public Registry of Commerce, the tax authority, or other applicable registries. Shareholding disclosure and general filing obligations are applicable to public companies in Mexico, however information on the negotiations of transactions is not required until an offer is approved by the National Securities and Banking Commission (*Comisión Nacional Bancaria y de Valores*) (CNBV) and announced to the public pursuant to applicable law.

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

There are no restrictions under Mexican law with respect to timing and depth of due diligence for M&A deals.

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

There is no requirement for a minimum price to be set when acquiring the shares of a private company. However, tax implications and effects should always be analyzed. Furthermore, transfer pricing rules must be observed in transactions involving related parties.

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

Yes. There are financial strategies that may be structured for this purpose, where a combination of debt and equity is established to acquire a target company (sellers' finance). A leveraged buyout (LBO) is a commonly used financial structure, whereby a portion of the agreed consideration is financed with debt, payable through resources obtained and cash flow generated by the target company itself. The buyer's and target's assets are used as collateral for the required funding. In structured loans, funding is obtained through a syndicated loan, provided by financial institutions.

20. Which governing law is customarily used on acquisitions?

As a general rule, in Mexico M&A deals involving commercial companies are regulated at a Federal level and Federal laws apply. Nonetheless, whenever a transaction involves the transfer of assets (such as real estate), there are rules to be followed in order to determine the applicable law. The Federal Civil Code provides the following rules to determine the applicable law for a certain transaction: (i) the applicable law will be the one of the place where assets are located, (ii) legal acts will be governed by the laws of the place where they are executed, (iii) the effects/consequences resulting from a legal act, will be governed by the law of the place where they are to be enforced; all of the aforementioned, subject to the agreements that may be reached by the parties to determine the governing law of a transaction.

In cross border transactions, the parties may determine the governing law depending on where the acquired assets are located, or where it will be easier for either party to enforce its rights against the other party.

It is common for M&A transactions to include Alternative Dispute Resolution provisions, such as mediation and arbitration. Arbitration provisions in the corresponding agreement must determine the applicable law to the agreement, the rules governing the arbitration process, the place of the arbitration, the number of arbitrators and the language of the arbitration procedures, among other rules.

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

An interested buyer must obtain authorization from the National Securities and Banking Commission (Comisión

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Nacional Bancaria y de Valores) (CNBV) to acquire shares in a publicly traded company. The authorization request must include the following information:

An offering memorandum (*folleto informativo*) containing several relevant information such as general provisions regarding the offer (including, number of shares to be acquired, price, terms and conditions), information about the buyer (including business, corporate and financial information), relationship between the buyer and the target company or its management, plans after the acquisition, among others.

Documents evidencing the authority of the attorney in fact, and if applicable, a certificate issued by the secretary of the board of directors or its equivalent attesting that the powers granted are sufficient to make the offer and that the powers of attorney have not been revoked, modified, or limited;

Certificate issued by the secretary of the board of directors evidencing the shareholders or board of directors' resolutions approving the offer;

Any agreements or understandings entered into in connection with the acquisition of the shares; and

Any other documents required by the National Securities and Banking Commission (*Comisión Nacional Bancaria y de Valores*) (CNBV) on a case by case basis.

The memorandum will become public once the offer is approved by the National Securities and Banking Commission (*Comisión Nacional Bancaria y de Valores*) (CNBV).

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

The formalities required to transfer the participation of a partner or shareholder in a company depend on the type of entity involved (whether a *sociedad anónima* or a *sociedad de responsabilidad limitada*, which are the most common types of commercial entities in Mexico). Shareholders of a *sociedad anónima* may transfer their shares by endorsement of the stock titles and/or the execution of a share purchase agreement without the need of an authorization from other shareholders. On the other hand, the partners of a *sociedad de responsabilidad limitada* must obtain prior authorization from the partners' meeting to transfer their equity to a third party and must grant a preemptive right to each of the other partners.

The execution of a share purchase agreement or assignment agreement is customary for formalizing the transfer of shares or equity of a commercial company.

Once any such agreement has been executed, the corresponding entry must be included in the targets' Shareholders' or Partners' Registry Book, registering the transfer of stock and the information of the new shareholder or partner.

According to the GLBO, a confidential notice must be submitted to the to the Ministry of Economy's electronic system for publications of commercial companies, informing of the change of the composition of the shareholding structure of the target; additionally, a notice must be submitted to the Federal Taxpayer's Registry (*Registro Federal de Contribuyentes*), and, if applicable, a closing notice must be submitted to COFECE. Other registrations may apply depending on the specific type and value of the transaction and the industry or sector of the target (e.g. notice to the Energy Regulatory Commission (*Comisión Reguladora de Energía*), the Federal Telecommunications Institute (*Instituto Federal de Telecomunicaciones*), the Ministry of Communications and Transports (*Secretaría de Comunicaciones y Transportes*, or to the National Foreign Investment Registry (*Registro Nacional de Inversión Extranjera*) if the target has foreign investment), as provided by the corresponding special laws.

In addition to the above, the parties are subject to the payment of taxes related to the transaction. Under the applicable tax provisions in Mexico, upon inclusion of the entry related to the transfer of equity in the corresponding registry book of the target, the target becomes jointly liable in connection with the payment of the corresponding income tax related to the consideration.

23. Are hostile acquisitions a common feature?

Hostile takeovers may be carried out through a tender offer in accordance with the Securities Market Law, however, they are not very common in Mexico. The Mexican market has few publicly traded companies and a high shareholder concentration which tends to discourage hostile takeovers.

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

The publicly traded company's board of directors must be neutral regarding any offer received by the company,

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having to issue an opinion or statement on the offer price and, if applicable, any conflicts of interest.

Notwithstanding the foregoing, the by-laws of a publicly traded company may include special provisions or mechanisms to prevent the acquisition of shares that would give control to a buyer, as long as such provisions (i) are approved by the shareholders in an extraordinary shareholder meeting in which shareholders with an ownership of no more than 5% (five percent) of the capital stock of the company voted against such proposal, (ii) do not exclude any shareholder (other than the buyer) of any economic benefits that may arise out of the offer, (iii) do not fully restrict taking control of the company, and (iv) do not contravene any applicable laws. As an example, some provisions may be requiring authorization from any corporate governance body to acquire shares or establishing minimum percentages to be acquired.

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

Cases where a buyer is obliged to make a mandatory or compulsory offer for a target company are limited. The Securities Market Law (*Ley del Mercado de Valores*) regulates mandatory offers to be made in specific scenarios of transactions relating to public M&A transactions. Mandatory offers apply when a person or group of persons has the intention to acquire 30% (thirty percent) or more of a publicly traded company, whether directly or indirectly; in that case, they must make the offer extensive, on the same terms, to all types of shares, even those with limited, restricted, or non-voting rights. These offers must be made to acquire (i) the percentage of capital stock of the target equivalent to the portion of shares the buyer wishes to acquire, or 10% of the capital stock, whichever is higher, provided that it does not result in the buyer having control of the company; or (ii) 100% of the company if the buyer wishes to have control over the company.

M&A implementation steps will vary, but typically, an execution of a letter of intent or memorandum of understanding will initiate the process. Cases where this first step is made in the form of binding-agreements are to be examined, as they may represent the risk of translating into an obligation from the buyer to make a mandatory or compulsory offer if the seller wishes to proceed with the transaction.

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

Minority rights of private companies' shareholders under the GLBO include rights to postpone the voting of a resolutions (shareholders holding 25% of the company's equity may exercise this right), civil liability action against the Board of Directors or Sole Manager (shareholders holding 25% of the company's equity may exercise this right), appointing or removing a member of the Board of Directors or an Examiner (shareholders holding 25% of the company's equity may exercise this right), the right to call to a Shareholders' Meeting (shareholders holding 33% of the company's equity may exercise this right), the right to object to a spin-off (shareholders holding 20% of the company's equity may exercise this right). Other rights may be granted to minority shareholders as agreed upon in the company's bylaws, such as the establishment of supermajority or unanimous matters that may only be resolved by the affirmative vote of all shareholders or by shareholders holding a specific percentage, which would include minority shareholders (this could be applicable for certain key decisions, such as the sale of the company, change of control, change of corporate name, dissolution, transformation, amendment of bylaws, *inter alia*).

In addition to the aforementioned, the Securities Market Law (*Ley del Mercado de Valores*) provides for additional minority shareholders rights for *Sociedades Anónimas* that adopt the form of investment promotion entities (A*sociedades Anónimas Promotoras de Inversion*). Those minority shareholders' rights include lower percentages of shareholding required for making certain decisions or exercising certain rights, such as appointing or removing a member of the Board of Directors, an Examiner, postponing the voting of a certain matter, calling for a Shareholders' Meeting (shareholders holding 10% of the company's equity may exercise this right), or exercising a civil liability action against the Board of Directors (shareholders holding 15% of the company's equity may exercise such right).

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

There is no provision contained in Mexican law for compulsory acquisition of minority stakes; however, tag-along and drag-along rights and other mechanisms may be agreed upon by shareholders in a company's bylaws.

Additionally, parties involved in an M&A transaction can agree to put and call options, where the buyer may reserve the right to buy or the seller may reserve the

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right to sell, an underlying asset or a certain stock amount that was not originally sold, on or before a certain condition or future obligation is met, for a set price or setting a specific valuation method beforehand.

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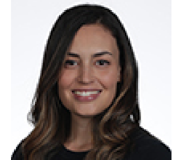

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