
CHAMBERS GLOBAL PRACTICE GUIDES

Technology M&A 2025

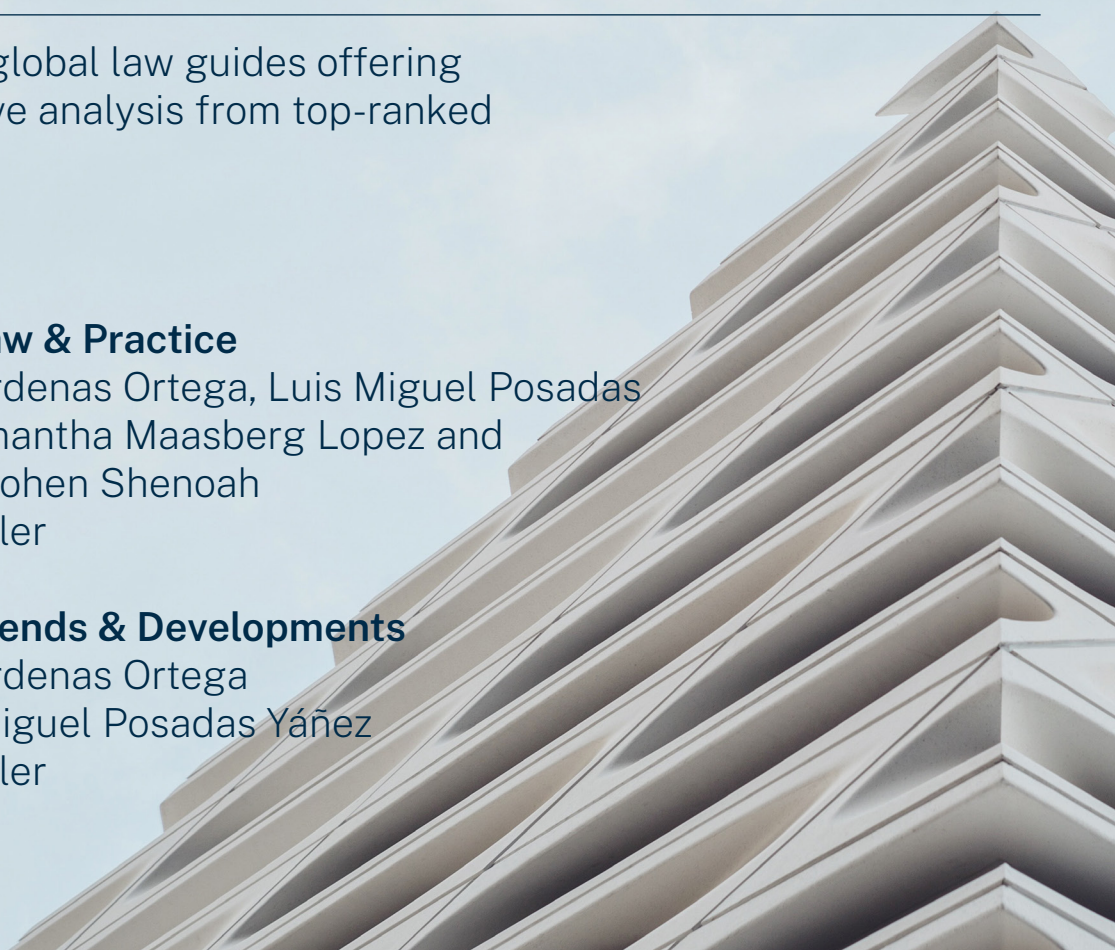
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Mexico: Law & Practice

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Mexico: Trends & Developments

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MEXICO



Law and Practice

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Ritch Mueller is a top-tier multidisciplinary transactional firm committed to offering high value-added legal advice to national and international clients with respect to their operations in Mexico. The firm advises buyers and sellers, including Mexican and international private equity funds and strategic corporate players, in mergers and acquisitions involving publicly traded and private companies in Mexico, as well as in the purchase and sale of cash flow-generating assets located in the country. The firm has structured and implemented transactions with varying degrees of complexity, including public takeover bids, corporate reorganisations and

leveraged buyouts, with respect to companies engaged in a wide range of activities, as well as different types of assets located throughout Mexico. The firm's services include both the negotiation of transactional documentation such as purchase and subscription agreements, governance documents such as shareholders and control agreements and project documentation, including, depending on the type of project, engineering and construction agreements, operating and management agreements, distribution, licensing agreements, and administrative services agreements.

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M U E L L E R

1. Market Trends

1.1 Technology M&A Market

The market has remained stable with a tendency toward strengthening. While local private equity activity has been lower, there has been increased participation from regional and international private equity firms as well as strategic investors.

1.2 Key Trends

Over the last year, there have not been major or distinct trends shaping the technology M&A market in Mexico.

tion process generally takes between two and four weeks; however, this depends on several factors. The incorporation itself can be quick if all the required beneficial owner information requested by the notary is available. Obtaining the e.firma (Tax ID), opening bank accounts, and securing an employer registration are also necessary to begin operations and may take an additional two and four weeks.

Mexican law does not require a minimum capitalisation for corporations, except in certain regulated industries.

2. Establishing a New Company, Early-Stage Financing and Venture Capital Financing of a New Technology Company

2.1 Establishing a New Company

Several factors influence the process of establishing a new company, including:

- the number of shareholders and potential shareholders (individuals v legal entities, nationality, funds, strategy, etc);
- the business to be undertaken (eg, technology v real estate);
- the jurisdictions where it will be conducted and managed; and
- liquidity options.

Typically, Mexican start-ups seeking venture capital resources are often incorporated outside of Mexico, using structures in the Cayman Islands and the United States.

When start-ups are incorporated in Mexico, they are generally incorporated as corporations. Corporations are required to be incorporated before a Mexican notary public. The incorpora-

2.2 Type of Entity

The corporation (*sociedad anónima*, SA) is the most commonly used type of entity for entrepreneur businesses in Mexico. The selection of one corporate form over another commonly responds to tax considerations of the founders and investors, as well as of the business and operations.

A variation of the SA is the *sociedad anónima promotora de inversión*, which is also a stock corporation, but has a regulation allowing more flexibility in relation to shareholder matters (particularly relating to minority shareholders).

Both corporate forms described above are generally suitable for conducting projects and have very similar characteristics from a business and managerial standpoint. A third option is the *sociedad de responsabilidad limitada*, which is typically only used when there is a tax reason.

The selection of one corporate form over another commonly responds to tax considerations of the sponsors and investors, as well as the business and operations.

2.3 Early-Stage Financing

Local investors typically provide early-stage financing to start-ups. The investment is documented through an investment agreement or a shareholders' meeting, depending on the specific commercial agreements. In Mexico, simple agreements for future equity (SAFEs) are not effective unless they are accompanied by a shareholders' meeting and certain necessary corporate actions. This is documented through a subscription agreement and a shareholders' agreement, the terms of which are incorporated into the company's by-laws, along with ancillary documents such as shareholder resolutions and other closing corporate documents.

Agreements related to corporate governance are documented in a shareholders' agreement and in the company's by-laws.

2.4 Venture Capital

The usual source of funding for venture capital in Mexico is private rather than public. As reported by 414 Capital – Rión in its October 2024 newsletter, in terms of cumulative transaction volume, 71 transactions have been reported, which is seven more than the previous year's 64. In terms of cumulative amount, there was a 30.4% increase, rising from USD348 million in 2023 to USD454 million in 2024.

They are funded by venture capital; although there are some local ones, the majority are international funds. Some strategic investors and family offices have a venture capital arm. Fondo de Fondos is a public investment vehicle of the federal government of Mexico. Its objective is to promote the venture capital industry in the country by investing in private equity funds, both regional and national.

2.5 Venture Capital Documentation

Unlike the United States, where the market benefits from established templates provided by the National Venture Capital Association (NVCA), Mexico lacks similar readily available templates. However, these US templates are sometimes used where applicable. It is crucial to understand that using them without appropriate legal counsel can lead to corporate governance issues.

2.6 Change of Corporate Form or Migration

The change of jurisdiction and the choice of jurisdiction should be analysed on a case-by-case basis. In the past, companies were incorporated in Mexico, and when they raised capital, they moved to the Cayman Islands, the United States, or a similar jurisdiction. Nowadays, it is more common for them to be incorporated abroad from the very beginning.

3. Initial Public Offering (IPO) as a Liquidity Event

3.1 IPO v Sale

Investors in start-ups in Mexico are more likely to favour a sale process over an IPO when seeking a liquidity event. This preference is due to certain factors such as the regulatory burden of traditional IPOs, the high costs involved in going public transactions, and the limited liquidity and size of the Mexican stock market. Whereas IPOs continue to be a feasible option for a liquidity event, in recent years the Mexican stock market has not seen many IPOs.

Regarding the dual-track process (simultaneously preparing for both a sale and an IPO), although possible, it is less common in the Mexican market than in more developed and liquid

capital markets. However, given the structural challenges in the Mexican IPO market, the dual-track approach is often less practical. Instead, investors tend to choose a sale process at the outset as the primary path for liquidity.

3.2 Choice of Listing

If investors consider an IPO as an exit strategy for a start-up, they would often explore the possibility of a dual listing – a listing in both Mexican and US exchanges – to increase the potential liquidity of the company's shares, thereby making exits easier once investment periods end. While equity listings by Mexican companies have been relatively rare in recent years, dual listings are less common since listing on a US exchange would subject the start-up, its directors, and its selling shareholders to US securities laws and regulations and higher transactional costs.

Although dual listings are not the norm, Mexican companies that pursue IPOs typically choose to list on a Mexican stock exchange while conducting a public offering in Mexico and a private offering to qualified and institutional investors in foreign markets. This strategy allows companies to reach a broader spectrum of investors, maintaining a presence in the Mexican market while expanding their reach internationally.

3.3 Impact of the Choice of Listing on Future M&A Transactions

In Mexico, if a company opts to list on a foreign exchange, it can impact the feasibility of future M&A transactions, especially regarding the treatment of minority shareholders in a sale scenario and the applicable tender offer rules.

For instance, if a company is only listed in Mexico and an investor seeks to acquire a controlling stake, Mexican tender offer rules and minority shareholder protections will apply. However, if

the company is listed in Mexico and a foreign exchange, the tender offer rules in such foreign jurisdiction are likely to apply as well, often requiring simultaneous tender offers to be carried out in both markets.

Although Mexican law provides certain provisions relating to minority shareholders, it does not include squeeze-out or freeze-out mechanisms to force minority shareholders to sell their shares by statute. Shareholders of private companies may agree to drag-along, put/call options, redemptions or similar provisions equalling a squeeze-out or similar result. These alternatives are generally not available for public companies in Mexico. Consequently, deciding to list in Mexico or abroad may have an important impact on future M&A transactions.

4. Sale as a Liquidity Event (Sale of a Privately Held Venture Capital-Financed Company)

4.1 Liquidity Event: Sale Process

Even though the sale of a company as a result of a liquidity event can be carried out through an auction or in a bilateral negotiation with a chosen buyer, the latter is more common in Mexico. The factors that typically influence this decision are based on two main reasons. Firstly, the Mexican market tends to prioritise confidentiality, which is more likely to be achieved in a bilateral negotiation process. This approach simplifies the control of confidential and/or sensitive information and allows for more personal interaction between the seller and buyer, fostering a sense of trust that is highly valued in Mexican business culture. Secondly, given that the participants in Mexico are generally small and medium-sized companies (and in most cases, family-owned or niche businesses) and, therefore, have lim-

ited resources, they benefit from a process that is less complex and, less expensive. That said, large transactions, corporate carve-outs and private equity exit sales, are usually conducted through auctions to maximise the sale price.

4.2 Liquidity Event: Transaction Structure

VC-held companies are typically sold entirely (as opposed to partially with a change of control). That said, it is also an alternative to get liquidity from new or incumbent investors, or even from the company, through repurchased or similar programmes.

Further, CD investors tend to prefer the sale of the entire company to ensure clear exits for VC investors.

4.3 Liquidity Event: Form of Consideration

In Mexico, it is more common for the consideration of the sale of a company to be paid in cash rather than stock-for-stock. The primary reasons for this form of consideration are that capital gains taxes are paid on shares even if there is no liquidity and that many funds need to provide cash to their investors and are unable to distribute assets in kind.

4.4 Liquidity Event: Certain Transaction Terms

Typically, in transactions that involve the sale of companies (particularly those that involve the sale of 100% of a company), it is almost assumed that the founders and VC investors will stand behind representations and warranties. Similarly, they are expected to be responsible for certain pre-closing liabilities, which generally translates into an indemnification mechanism. This is frequently implemented through an escrow or a holdback.

The concept of R&W insurance is still developing in Mexico. Although interest in R&W insurance is growing, there is still some resistance to it, mainly due to the cost of obtaining such insurance. Thus, traditional methods of managing transactions are more commonly implemented. R&W insurance is becoming increasingly important in VC or private equity exit sales, in which the VC or private equity fund is liquidating and therefore unable to assume any ongoing liabilities after the sale.

5. Spin-Offs

5.1 Trends: Spin-Offs

Spin-offs are not customary in the technology industry in Mexico.

5.2 Tax Consequences

Spin-offs can be structured as a tax-free transaction at the corporate level and shareholders' level if it is determined that there has not been a transfer of assets as a result of the spin-off. As a general rule, a transfer of assets is considered to occur when a spin-off is carried out. However, it will be considered that no transfer of assets has taken place in the spin-off if the following requirements are met:

- The shareholders holding at least 51% of the voting equity interest in both the spin-off company and the spun-off companies should remain the same for a period of three years as of the year immediately preceding the date on which the spin-off is carried out (shares considered placed among the general investing public will not be counted). During this period, shareholders holding at least 51% of the voting equity interest of the original company should maintain the same proportion of contributed capital in the spun-off companies as

they held in the original company before the spin-off, as well as in the original company itself, if it continues to exist.

- When a company ceases to exist as a result of a spin-off, the original company should indicate who will assume the obligation to file the tax returns for the tax year and the information returns corresponding to the original company. This designation should be made at the shareholders' meeting in which the spin-off is approved.

The above shall not apply in the following cases:

- when, as a result of the full or partial transmission of assets, liabilities, or equity, an item appears in the shareholders' equity of the original company, spun-off company, or spun-off companies, the amount of which was not recorded or recognised in any of the shareholders' equity accounts; and
- when the spin-off lacks a business purpose.

5.3 Spin-Off Followed by a Business Combination

From a corporate law perspective, under Mexican regulations, it is possible to carry out a merger following a spin-off provided that such spin-off had become fully effective. A spin-off becomes fully effective upon completion of registration in the Public Registry of Commerce of the shareholders' resolutions approving the merger and the payment of all debts of the merged company by the surviving entity.

5.4 Timing and Tax Authority Ruling

There is no prior tax notice required before completing a spin-off. However, there are formal requirements that should be met after the spin-off, such as the registration and cancellation in the Taxpayer Registry, as well as the submission of required reporting notices.

6. Acquisitions of Public (Exchange-Listed) Technology Companies

6.1 Stakebuilding

In Mexico, it is uncommon for investors to acquire a significant stake in a public company through a stake-building strategy prior to making a formal offer. Although it may occur when valuations are particularly favourable, this approach is rare due to several factors. Regularly, Mexican public companies have a controlling group, which reduces the likelihood of gaining a controlling interest. Additionally, the majority of public companies have adopted mechanisms to prevent a change of control and implemented board approval requirements for any change of control or acquisition of a relevant stake in the company, meaning that a potential investor may face restrictions on increasing their stake. As a result, investors typically prefer to secure necessary approvals, consents, and government authorisation upfront when seeking a significant or controlling interest.

Under the Mexican Securities Market Law and its regulations, any purchase of 10% or more (but less than 30%) of a public company's shares must be reported publicly the following business day after its execution. At this time, the buyer must disclose whether they intend to exert "significant influence" over the company. Under the Securities Market Law, "significant influence" is defined as the right to vote on at least 20% of the company's shares. Unless an entity is seeking to acquire 30% of the company's shares and launch a tender offer process, the buyer does not need to disclose any plans or intentions with respect to the company.

6.2 Mandatory Offer

Under Mexican law, the threshold that triggers a mandatory tender offer of the shares of a public company is the intention to acquire a direct or indirect stake of 30% or more of the company's shares. Any direct or indirect intended acquisition of a public company's shares that results in the buyer owning 30% or more of the public company's shares, but less than a percentage that would result in the buyer acquiring control of the public company, requires the buyer to make a mandatory tender offer for the greater of (i) the percentage of the share capital intended to be acquired, or (ii) 10% of the public company's outstanding capital stock.

Any acquisition of a public company's shares that is intended to obtain control requires the potential buyer to make a mandatory tender offer for 100% of the public company's shares, including both voting, limited voting and non-voting shares.

Mandatory tender offers are subject to the prior approval of the Mexican National Banking and Securities Commission (CNBV) and must comply with legal and regulatory requirements.

6.3 Transaction Structures

Unlike other jurisdictions where freeze-out or other mechanisms for the forced acquisition of minority shareholders are regulated or implemented through mergers, mergers are rarely used for the acquisition of public companies in Mexico. This is because there is no significant corporate benefit in using a merger to gain control of a public company. Instead, acquisitions of public companies are typically structured as cash transactions, stock-for-stock exchanges, or a combination of both, where the selling shareholders choose their preferred form of consideration.

6.4 Consideration and Minimum Price

As mentioned in 6.3 **Transaction Structures**, acquisitions of public companies, including those pertaining to the technology industry, are typically structured as cash transactions, stock-for-stock exchanges, or a combination of both, where the selling shareholders choose their preferred form of consideration.

Although not technically applicable to voluntary tender offers, the CNBV has usually taken the view, as a policy matter, that the price offered in exchange for the shares of the public company must be the higher of (i) the weighted average trading price of the shares, during 30 trading days, or (ii) the last book value per share reported in the applicable quarterly report to the applicable stock exchange, in both cases prior to the announcement of the tender offer.

Any tender offer must be made at the same price to all shareholders and across all share classes, irrespective of voting rights (whether voting, limited voting, or non-voting).

6.5 Common Conditions for a Takeover Offer/Tender Offer

Common conditions for a tender offer in Mexico from the potential buyer typically include a minimum acceptance percentage, regulatory approvals from the CNBV and, when applicable, from the Antitrust Commission or other relevant regulatory entities. A no material adverse changes condition is also frequently included.

In tender offer transactions involving a controlling group of the target, additional conditions may be negotiated, similar to those found in private transactions, such as fulfilment of representations.

The Mexican Securities Market Law does not impose specific restrictions on the types of conditions that can be included in a tender offer. However, all conditions must be clearly disclosed and comply with applicable regulations, including those governing market transparency. The Mexican regulatory framework provides flexibility regarding the conditions that may be included in a takeover offer, provided they adhere to these requirements.

6.6 Deal Documentation

In the context of tender offer transactions involving a controlling group of the target, it is customary to enter into a transaction agreement with such controlling group. In these cases, the selling shareholders generally agree to tender their shares and may provide representations and warranties. Target companies tend to enter into the transaction agreement and provide limited transactions. The obligations undertaken by target companies relate to the process (particularly regarding co-operation to obtain authorisations, disclosure to the investors and calls for shareholder meetings). The specific scope of these representations and indemnification obligations can vary, and they are often less extensive compared to private transactions.

Target companies are usually not parties to these types of agreements, whether a controlling group exists or not, since target companies may not independently agree to facilitate the tender offer.

6.7 Minimum Acceptance Conditions

As mentioned in 6.5 Common Conditions for a Takeover Offer/Tender Offer, minimum acceptance conditions are common in tender offers. In Mexico, these conditions vary depending on the bidder's objectives. These objectives typically include the offeror obtaining sufficient shares to

gain control of the target company, acquiring a majority of the outstanding shares, reaching the maximum shareholding limit permitted under foreign investment restrictions, or acquiring more than 95% of the outstanding shares in the context of a going-private transaction.

6.8 Squeeze-Out Mechanisms

In Mexico, there is currently no specific legal provision for a squeeze-out mechanism after a successful tender offer. However, there are some alternative mechanisms that have been used in practice to consolidate the ownership of a company after the tender offer is completed, particularly in cases where the bidder or majority shareholder has acquired a significant percentage of the company's shares.

These mechanisms, while commonly used, may be legally challenged and carry risks for both minority shareholders and controlling parties.

Currently, in Mexico, the thresholds for implementing a going private transaction require the acquisition of 95% of the target company's shares. This threshold is often considered the de facto standard for facilitating the delisting of its shares. Once 95% of shares approve the cancellation and delisting, the target company, subject to certain exceptions (including a de minimis exception), launches a second tender offer for any shares remaining in the public float subject to the following principal terms and conditions:

- The tender offer must be directed at shareholders that are not part of the controlling shareholder group.
- The tender offer must be made at a price that equals the greater of the book value of the stock (calculated based on the most recent quarterly financial statements reported to the CNBV and the applicable stock exchange),

the trading value of the stock (calculated based on the weighted average of the price of the stock for the most recent 30 days on which trades were effected during the immediately preceding six-month period), or the price offered in the initial tender offer.

- The company must create an escrow (through a delisting trust or
- *fideicomiso de desliste* structure) in which it would deposit an amount of funds necessary to purchase any stock not tendered under the delisting tender offer at the same price as the one used to conduct such tender offer.

Please note that in the context of cancellations and delistings resulting from transactions where a purchaser has previously conducted a tender offer, the CNBV has, in the past, waived the requirement for a second “delisting” tender offer to the extent the initial tender offer complied with the price requirements described above and the offeror agreed to create a Delisting Trust. The CNBV may limit such waiver to scenarios where there is a prior shareholders’ approval enabling the third-party purchaser to make such delisting tender offer.

Once an offeror acquires 95% or more of the shares in a company and has obtained the authorisation to become private, they may seek to use one of the above methods to buy out the remaining minority shareholders.

6.9 Requirement to Have Certain Funds/ Financing to Launch a Takeover Offer

In Mexico, “certain funds” – meaning executed financing documents with bank certification – are not typically required to launch a takeover offer. Even in a scenario where the tender offer will be carried out through a leveraged buy, it is the bidder, not the banks, that conducts the

tender offer. The bidder is not required to show proof of funding at the outset of the offer. However, the bidder must comply with disclosure requirements under the Mexican Securities Market Law and its regulations, which mandate that the bidder disclose the origin of the funds used to finance the tender offer. If the funds originate from financing, the bidder must disclose the main terms and conditions of such financing. Tender offers may be subject to conditions precedents, including securing financing to conduct the tender offer.

6.10 Types of Deal Protection Measures

In the context of a public company with a controlling group, where an agreement has been reached with such a group, deal protection measures can be implemented at the controlling group level. One common protection is the inclusion of termination fees. The target company itself is generally deemed restricted from granting these protections due to the duties that the board members have to the company (and not to a specific shareholder).

6.11 Additional Governance Rights

In Mexico, if a bidder cannot obtain 100% ownership of a target company through a takeover offer, they will not obtain any special governance right other than the rights granted by law to all shareholders depending on the stake they own in the company. Any special right they may be entitled to should be contained in the by-laws of the company.

6.12 Irrevocable Commitments

As mentioned in 6.10 Types of Deal Protection Measures, in Mexico, it is common for bidders to seek commitments from the controlling shareholders of the target company to tender their shares or support the transaction and to include deal protection measures such as termination

fees. These commitments are often used to provide the bidder with certainty that a significant portion of the target's shares will be tendered, thereby reducing the risk of competing bids or other disruptions. These agreements are highly negotiated and may or may not provide an out for the controlling shareholders if a better offer is made. However, doubts may arise regarding the enforceability of these provisions, as the mechanics of tender offers may allow selling shareholders to withdraw their commitment to tender at any point during the period offer.

6.13 Securities Regulator's or Stock Exchange Process

Tender offers in Mexico have to be approved by the CNBV. Bidders have to submit for review the tender offer prospectus (*folleto informativo*) containing the main terms of the tender offer, including, among others, the price or consideration to be paid, the timeline of the offer, the mechanics of the offer and information regarding the bidder. The minimum tender offer price is only required when conducting delisting tender offers, in which case it will be approved by the CNBV.

A tender offer authorisation may be obtained within a period of ten weeks. Depending on the complexity of the offer, the regulator may take more time to analyse the transaction. In the scenario of a competing concurrent tender offer, each offer will have its own timeline. Depending on the conditions set forth in each tender offer, the timeline may be extended. However, the CNBV may expedite the process of granting authorisations if there are competing offers.

6.14 Timing of the Takeover Offer

The minimum duration of tender offers in Mexico is 20 business days. A tender offer can be extended for any reasons clearly disclosed by

the bidder, including if regulatory or antitrust approvals are not obtained before the expiration of the offer period or if they imply better conditions for the shareholders of the target company. Any extension must comply with the terms and conditions outlined in the tender offer documents and must be informed to the shareholders. Additionally, the offeror is required to notify both the Mexican Stock Exchange and the CNBV of the extension. Any extension period should be of at least five business days.

Tender offers need to be approved by the CNBV before they are launched and are usually announced after they have been approved by the CNBV.

7. Overview of Regulatory Requirements

7.1 Regulations Applicable to a Technology Company

The requirements to set up and start a new company in Mexico will depend on the type of technology involved. For example, the fintech sector is subject to stringent regulations, and technology in the insurance sector can also be highly regulated. Ultimately, the mere fact that a company operates in the technology sector does not necessitate specific regulations in Mexico; instead, it is essential to analyse on a case-by-case basis to identify and outline its specific regulations.

7.2 Primary Securities Market Regulators

The CNBV is responsible for overseeing and regulating the securities markets in Mexico. While the CNBV supervises and approves filings related to tender offers that involve an M&A transaction, its primary role is to ensure compliance with the Mexican Securities Market Law

and the protection of the interests of the market. The CNBV's functions as securities market regulator are focused on the securities market and not in the M&A market itself.

7.3 Restrictions on Foreign Investments

While the technology sector itself does not have restrictions on foreign investment in Mexico, there are several sectors where foreign investment is restricted or limited. Therefore, a technology company with foreign investment involved in such sectors may need to obtain prior foreign investment approval. Foreign investment approval, when needed, is mandatory and suspensory.

7.4 National Security Review/Export Control

Other than foreign investment and antitrust, there is no national security review of acquisitions in Mexico. However, additional reviews or authorisations may be required depending on the industry. This is common in regulated industries such as finance (fintech), insurance, and telecommunications, among others.

In Mexico, several lists are maintained to regulate and control the specific restrictions/considerations for investors/buyers based in a particular part of the world. These lists are both domestic (ie, the national security list of sanctioned countries, the Financial Intelligence Unit (*Unidad de Inteligencia Financiera*, UIF) list, among others) and international (ie, the United Nations Sanctions list, the OFAC Sanctions list, among others).

Regarding export control regulations in Mexico, certain goods and technologies are subject to strict controls to prevent their illegal use. The above includes, but is not limited to, military

goods and technologies, dual-use goods and technologies, and sensitive technologies.

7.5 Antitrust Regulations

A transaction would require antitrust approval in Mexico based on the following thresholds:

- if the value of the transaction exceeds approximately USD96,554,347.82;
- if the accumulation of 35% or more of the assets or shares of any of the economic agents exceeds approximately USD96,554,347.82; or
- when the transaction involves an accumulation of assets or capital in Mexico that exceeds approximately USD45,058,695.65, and the concentration involves two or more economic agents whose combined assets and/or annual sales generated in Mexico exceed approximately USD257,478,260.86.

The parties must file, along with the transaction documents, information on each of the economic agents, their participation in the relevant sector, and supporting information in case of overlaps in the conduct of their business.

7.6 Labour Law Regulations

Pertaining to the technology sector, there are no specific labour law regulations that acquirers primarily should be concerned about in Mexico, nor is there any particular consultation required with a works council for such purposes. Further, it is important to note that Mexican labour laws are highly protective of employees.

That said, acquirers must make sure that the company they are purchasing is generally compliant with labour law, particularly in relation to the relevant reforms of the applicable labour law in Mexico, which introduced strict regulations on outsourcing and subcontracting.

In Mexico, it is unclear in the gig economy (particularly for technology companies) whether participants should be considered employees. Thus, Mexico is beginning a process of potential reform of the relevant law for such purposes.

7.7 Currency Control/Central Bank Approval

Except for very specific M&A transactions in the financial sector, there are no currency control regulations in Mexico, nor approval requirements from the central bank.

8. Recent Legal Developments

8.1 Significant Court Decisions or Legal Developments

Although there have been no significant court decisions in Mexico specifically related to technology M&A in the past years, various legal developments have taken place that directly or indirectly affect the technology M&A market. The above includes, but is not limited to:

- the implementation of stringent requirements for the handling and protection of personal data;
- enforcement by antitrust authorities to prevent monopolistic practices and promote fair competition;
- the implementation of the Fintech Law, which was enacted in 2018 and has undergone significant regulatory updates to establish a clear regulatory framework;
- a growing emphasis on ESG considerations;
- the implementation of the Industrial Property Law, which was amended in 2020 to modernise and bolster intellectual property rights, fostering innovation; and
- the establishment of the Digital Tax Platform, an online system developed by tax authorities

to streamline tax compliance and management for taxpayers.

9. Due Diligence/Data Privacy

9.1 Technology Company Due Diligence

In general, the information that can be shared is only public information. If any other information is shared, it is considered material non-public information and must be disclosed to everyone. In fact, before an offering, there must be a broad dissemination of this information to ensure it is also accessible to the investing public. These restrictions do not apply to private companies.

9.2 Data Privacy

There are no specific restrictions for technology companies; however, Mexico's data protection regulation is applicable to private parties (both individuals and legal entities) that collect, use, store, disclose or transfer personal data, and to individuals or legal entities that process personal data on behalf of the data controller. The Mexican data protection regulations apply to the processing of private data of individuals:

- when an establishment of the data controller is located in Mexico;
- if the processing is carried out by a data processor (irrespective of its location), on behalf of a data controller established within Mexico;
- if the data controller is not established within Mexico but is otherwise subject to Mexican law pursuant to the terms of an agreement or international law; or
- where the data controller is based outside of Mexico but uses equipment located in Mexico (other than for transit purposes that do not involve processing).

Non-disclosure agreements (NDAs) or other confidentiality agreements in place with clients, partners, or employees may limit the disclosure of sensitive contractual or operational details during due diligence.

Regarding fintech, if the technology company operates in the financial technology space, it is subject to the Fintech Law (*Ley para Regular las Instituciones de Tecnología Financiera*). Specific operational or user data may be classified as confidential under regulatory standards.

Regarding telecommunications and data processing, if the company operates in these sectors, additional licensing or regulatory frameworks may restrict access to certain technical or customer data.

10. Disclosure

10.1 Making a Bid Public

Under the Mexican Securities Market Law and the regulations thereunder, the tender offer memorandum and other tender offer documentation can remain confidential during the CNBV approval process. However, once the offer is officially launched, the tender offer memorandum and related offering notices must be made public. This disclosure must occur on the launch date of the tender offer and is required to be published on the websites of the CNBV and the relevant stock exchange, ensuring that all shareholders and the market have access to the relevant information. Bids with respect to private companies may remain confidential and do not need to be made public.

10.2 Prospectus Requirements

In case of a stock-for-stock tender offer, a short-form prospectus (*folleto informativo*) should be prepared.

The principal information that must be included in a short-form prospectus for any type of tender offer is:

- by-laws and related information of the applicant (in this case, the offeror);
- general information about the offeror and its ultimate controlling entity (business description, main customers, name of shareholders and directors, material litigation);
- financial information about the offeror (and, possibly, its ultimate controlling entity), which basically consists of summary financial information for the last three fiscal years;
- relationship between the offeror and the target, which consists of a description of the type of relationship and any relevant transactions (current or previous);
- characteristics of the tender offer, including number of shares to be purchased, offer price, offer period, description of the mechanics of the offer, settlement date, among others;
- conditions to which the tender offer is subject, which conditions typically include (i) minimum percentage of shares to be acquired; (ii) governmental orders; and (iii) material adverse changes affecting target;
- agreements in effect entered into prior to or in connection with the tender offer, between the offeror and shareholders or board members of the target or the target itself (if agreements are verbal, the principal characteristics of the agreements must be disclosed);
- reasons for the tender offer; and
- sources of funds.

The shares offered by the bidder as consideration in a stock-for-stock tender offer must be registered in the National Registry of Securities and listed on a stock exchange in Mexico for the settlement of the tender offer to proceed.

In the case of a private company, applicable law does not require the preparation of a prospectus or any disclosure materials.

10.3 Producing Financial Statements

In Mexico, there is no specific requirement for financial statements to be produced as part of the short-form prospectus in a tender offer process, whether it is a cash or stock-for-stock offer. However, the financial information of the bidder must be included in the tender offer documents.

In the case of a private company, applicable law does not require the preparation of a prospectus or any disclosure materials containing financial information.

10.4 Disclosure of Transaction Documents

In Mexico, bidders involved in a tender offer transaction are generally required to file certain transaction documents with the CNBV and disclose them to the public through the Mexican Stock Exchange. The purpose of these filings is to ensure transparency and allow shareholders to make informed decisions, as well as to comply with regulatory requirements.

In the case of a private company, it is not necessary to file any copies of the transaction documents.

11. Duties of Directors

11.1 Principal Directors' Duties

Directors must carry out their duties for the benefit of the company, without favouring a specific shareholder or group of shareholders. The duties of the directors are owed only to the company.

The main legal duties of members of the board of public companies or privately held companies incorporated as SAPIs are a duty of loyalty and a duty of diligence.

Based on provisions included in various Mexican laws, including the Securities Market Law, and although there is no case law that has developed what constitutes duties of care and loyalty, these duties can be summarised as follows:

Duty of Care

Under this duty, each director or board member (or member of a committee) of a company must:

- attend board of directors (or committee) meetings held periodically;
- request all information reasonably necessary for the performance of their duties (including any information related to matters submitted for approval);
- request the presence of any officer or specialist necessary to make a decision; and
- postpone decisions until they are fully informed.

Duty of Loyalty

Under this duty, each director or board member (or member of a committee) of the company must:

- preserve the confidentiality of all information disclosed in a board or committee meeting, whether or not it is classified as confidential;

- act without conflicts of interest, with the understanding that if a conflict of interest arises, the relevant director or board member (or committee member) must disclose it and refrain from participating in the related discussion and decision;
- not exploit any of the company's business opportunities, either for their own benefit or for the benefit of a third party (and not misuse the company's assets);
- disclose or not disclose, as appropriate, relevant non-public information;
- ensure that such relevant information is either not disclosed, when required, or not disclosed improperly; and
- as applicable, conduct transactions involving securities using relevant non-public information or disclose such information obtained in board or committee sessions.

Additionally, the Corporations Law (*Ley General de Sociedades Mercantiles*) establishes that a director or board member (which can be extended to committee members) who has an interest opposed to that of the company in any transaction must disclose it to the other directors or board members (or relevant committee members) and refrain from participating in any deliberation or resolution regarding the matter. A director, board member, or committee member who violates this provision will be liable to the company for any damages and losses caused by such non-compliance.

11.2 Special or Ad Hoc Committees

While not a common practice, boards of directors in Mexico may establish special or ad hoc committees, particularly in situations involving a conflict of interest. When such committees are formed, they typically consist of the independent board members.

11.3 Board's Role

The involvement of the board depends on each transaction and whether the company is public or private. In private companies, the role of the board is secondary or non-existent; however, in public companies it is common for the board to recommend transactions and, depending on the content of the by-laws of the company, to implement any defence mechanisms. The board's role is limited to recommending for or against the proposed transaction, depending on what is established in the by-laws of the company.

It is not common to have shareholder litigation challenging the board's decision to recommend an M&A transaction, but there have been some cases.

11.4 Independent Outside Advice

Outside legal and financial advisers are commonly hired in takeover transactions and business combinations in Mexico. A fairness opinion is a requirement of the CPS. Bankers typically hire financial advisers to provide a fairness opinion.

Trends and Developments

Contributed by:

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Ritch Mueller

Ritch Mueller is a top-tier multidisciplinary transactional firm committed to offering high value-added legal advice to national and international clients with respect to their operations in Mexico. The firm advises buyers and sellers, including Mexican and international private equity funds and strategic corporate players, in mergers and acquisitions involving publicly traded and private companies in Mexico, as well as in the purchase and sale of cash flow-generating assets located in the country. The firm has structured and implemented transactions with varying degrees of complexity, including public takeover bids, corporate reorganisations and

leveraged buyouts, with respect to companies engaged in a wide range of activities, as well as different types of assets located throughout Mexico. The firm's services include both the negotiation of transactional documentation such as purchase and subscription agreements, governance documents such as shareholders and control agreements and project documentation, including, depending on the type of project, engineering and construction agreements, operating and management agreements, distribution, licensing agreements, and administrative services agreements.

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The Role of AI Regulation in Mexico

Introduction

The technology sector has long been a catalyst for global economic growth, with mergers and acquisitions (M&A) constantly serving as pivotal mechanisms for innovation and market consolidation. In recent years, artificial intelligence (AI) has emerged as a transformative force within this sector, attracting substantial investment and reshaping business paradigms. Mexico, recognising the profound potential of AI, is actively developing a comprehensive regulatory framework that seeks to profit from its benefits while mitigating associated risks. This article examines the intersection of the incoming AI regulation and M&A activity in Mexico's technology sector. These emerging regulatory developments may stimulate investments and M&A activity in the tech sector.

The rising trend of AI in the M&A landscape

Globally, AI's capacity to revolutionise industries – from healthcare to logistics – has precipitated a surge in M&A activity. Investors are increasingly funding AI-focused start-ups to secure competitive advantages. In Latin America, Mexico continues to be a relevant player for technological innovation, bolstered by its strategic location and substantial domestic market.

Despite these advantages, Mexico's AI sector remains in its infancy. start-ups worldwide are making notable progress in areas such as natural language, data processing, and predictive analytics. However, challenges, including limited funding and an underdeveloped regulatory environment have constrained the sector's full potential in Mexico. The establishment of clear and supportive AI regulations is poised to be a pivotal development, fostering an environment conducive to increased investment and ultimately M&A activity in the tech sector in Mexico.

In the initial stages of AI investment while the regulation starts developing, there is likely to be widespread, dispersed investment activity as companies test and adopt AI solutions across industries. This phase may mirror patterns seen in the fintech and software-as-a-service markets, where early unco-ordinated growth eventually led to market consolidation. Such consolidation typically manifests itself through M&A activity, as larger players acquire smaller start-ups to integrate technologies and streamline operations. Mexico's AI sector is expected to follow a similar trajectory, with regulation serving as a catalyst for this evolution.

Mexico's regulatory initiatives in AI

Mexico's legislative agenda reflects a concerted effort to regulate AI responsibly. The Framework of the Ordinary Commission for Analysis, Monitoring and Evaluation on the Application and Development of Artificial Intelligence (*Plan de Trabajo de la Comisión Ordinaria de Análisis, Seguimiento y Evaluación sobre la Aplicación y Desarrollo de la Inteligencia Artificial*) outlines key regulatory objectives aimed at fundamentally shaping the new AI ecosystem in Mexico. Central to these efforts is the establishment of a clear legal definition of AI, encompassing a broad spectrum of technologies, from basic algorithms to advanced deep-learning systems. This clarity is essential to ensure that laws remain applicable to evolving technologies, particularly in sensitive areas such as autonomous vehicles and financial technologies.

Transparency is another cornerstone of the proposed framework. Legislators emphasise the necessity for “algorithmic accountability”, mandating that entities utilising AI disclose the functioning of their algorithms, potential biases, and decision-making processes. Such measures are essential not only for building public trust and ensuring the ethical deployment of AI but also for clarifying the assignment of responsibilities and liabilities in the event of disputes or harm. To further mitigate risks, Mexico's proposed framework advocates for the periodic auditing of AI systems. These audits are designed to systematically assess algorithms for bias, identify discriminatory patterns, and implement corrective measures where necessary. Unlike static regulatory models, periodic audits provide a dynamic approach that enables AI systems to adapt to evolving societal norms and data landscapes.

This commitment to ongoing evaluation reflects Mexico's dedication to fostering equitable, trans-

parent, and ethical AI practices. However, one of the key challenges in achieving these goals lies in balancing the need for transparency with the constraint to protect companies' trade secrets and competitive advantages. Policymakers must design regulations that ensure accountability and transparency without requiring the disclosure of proprietary information that could compromise a firm's market position. The transparency measures and auditing that the current framework contemplates can also help mitigate the challenges posed by AI-washing, which involves overstating or misrepresenting AI capabilities. A robust framework requiring entities to substantiate their AI claims through periodic audits and algorithmic evaluations can curtail such practices.

The question of liability in AI-related harm introduces complex challenges, especially in cases involving autonomous decision-making systems. Mexico's legislative efforts aim to establish clear guidelines for assigning liability among developers, operators, and data providers. Civil liability provisions will ensure that victims of AI-induced harm receive adequate compensation, while criminal liability will address cases of wilful negligence or misconduct.

The framework also underscores the importance of safe, ethical, and just AI development, focusing on principles of non-discrimination, privacy protection, and sustainability. This includes:

- establishing standards to prevent algorithmic bias and discrimination in areas like hiring, credit scoring, and public services;
- strengthening privacy protections, particularly in data-intensive industries such as health-care and retail; and
- incorporating sustainability criteria to mitigate the environmental impact of AI systems,

including their water and energy consumption.

To foster innovation and collaboration, Mexico's proposed regulations under the proposed framework will aim to facilitate partnerships among the government, academia, and the private sector. Initiatives will include incentives for research and development (R&D) in AI, public-private partnerships to develop AI-driven solutions for national challenges like healthcare disparities, climate change, and education, and support for start-ups and small businesses through grants, subsidies, and tax incentives.

Recognising that AI systems rely heavily on data, robust data protection mechanisms are deemed essential. Regulators are working to update the Federal Law of Personal Data Protection (*Ley Federal de Protección de Datos Personales*) to address the complexities of big data and automated decision-making, and to introduce a "Digital Rights Charter" that safeguards individuals from abuses such as unauthorised surveillance and manipulative advertising – a task that may be particularly challenging in light of the recently approved constitutional reform that abolished the autonomous entity in charge of personal data protection.

Pursuant to the framework, the establishment of independent supervisory bodies will be under discussion to monitor compliance with AI regulations, assess the social and economic impacts of AI, and ensure adherence to ethical guidelines by both public and private sector actors. Additionally, the legislative framework shall prioritise inclusivity, aiming to bridge the digital separation and ensure that AI technologies benefit marginalised communities. This shall include promoting connectivity in rural areas and supporting

AI applications that address social issues like education and healthcare access.

Finally, the framework allows us to identify a clear influence of the European Union regulation emphasis on ethical considerations; however, it will be important for the legislative power to address the regional challenges faced by Mexico, such as the lack of infrastructure and uneven digital literacy. By tailoring regulations to local needs while adopting global best practices, Mexico can ensure that its AI policies are both progressive and practical.

Regulation as a catalyst for investment

Regulation often acts as a double-edged sword in the tech industry. While it can impose compliance costs, it also provides clarity and stability, which are crucial for attracting investment and sustained growth. Mexico's approach to AI regulation appears to aim for a balance, fostering innovation while addressing ethical and societal concerns. Investors and corporations typically seek jurisdictions with well-defined regulatory frameworks to mitigate risks associated with technological and legal uncertainties. Mexico's proactive stance on AI regulation signals to global investors that the country is committed to leveraging technology responsibly. By aiming to establish a regulatory environment that promotes accountability, transparency, and fairness, Mexico may eventually position itself as a desirable destination for AI-driven M&A activity. This, in turn, could spur cross-border M&A activity, with foreign companies acquiring or partnering with Mexican tech firms to capitalise on the growing market.

Implications for the M&A landscape

The development of AI regulations in Mexico could have several implications for the M&A market in the tech sector. Regulatory clarity may lead to higher valuations for Mexican AI

start-ups, as investors recognise their potential for growth within a structured legal framework. Foreign investors, particularly from regions with mature AI industries, may seek to acquire Mexican tech companies to gain access to Latin America's untapped markets. Industries such as fintech, healthtech, and edtech could experience heightened M&A activity as companies integrate AI-driven solutions to enhance their offerings. A robust regulatory environment could also attract more private equity and venture capital funds to Mexico, further fuelling the M&A ecosystem.

Challenges and considerations

Despite the potential benefits, implementing AI regulations poses significant challenges. Excessive compliance burdens could stifle innovation and deter firms from adopting AI, ultimately impacting the M&A landscape in the tech sector; therefore, regulators must craft flexible laws to adapt to technological advances while ensuring accountability.

Additionally, investments are critical, therefore Mexico must invest in digital infrastructure and workforce training to support the adoption and implementation of AI across industries. Without reliable digital infrastructure and a skilled workforce, the full potential of AI cannot be realised. Policymakers must address these foundational issues to support the effective implementation of AI regulations.

Another challenge lies in aligning domestic regulations with international standards. As AI transcends borders, inconsistent policies could hinder cross-border collaboration and investment. Mexico must prioritise harmonisation with global frameworks, ensuring that its AI ecosystem remains competitive and interconnected.

While Mexico's framework shares the EU's emphasis on ethical considerations, it must also address regional challenges, such as the lack of infrastructure and uneven digital literacy. By tailoring regulations to local needs while adopting global best practices, Mexico can ensure that its AI policies are both progressive and practical.

Conclusion

Mexico's efforts to regulate AI may represent a pivotal moment for the country's technology sector. By fostering an environment of innovation and ethical development, these regulations have the potential to catalyse investment and bolster M&A activity in the tech sector. For investors and companies alike, the intersection of AI regulation and M&A activity in Mexico offers a compelling opportunity to drive growth and harness the transformative power of technology.

As Mexico continues to define its regulatory framework, it must remain vigilant in balancing the demands of compliance with the need to stimulate innovation. Aligning these efforts with international standards will not only enhance Mexico's competitiveness but also position the country as a regional leader in the burgeoning AI market. The proactive development of AI regulations may not only attract investment but also create a ripple effect across Latin America, reinforcing the region's relevance in the global technology landscape.

Ultimately, Mexico's commitment to thoughtful AI regulation could pave the way for a more inclusive, sustainable, and equitable technological future, strengthening its position as a hub for innovation and a driver of progress in the M&A market. The interplay between AI regulation and economic growth may well provide Mexico with the foundation to achieve that most delicate of balances: harmonising innovation with responsible governance.

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