Global Public M&A Guide - Mexico

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*This content was last reviewed around June 2022.*

# Overview

## 1. Overview

[Last updated: 1 June 2022, unless otherwise noted]

There are two securities exchanges in Mexico: the Mexican Stock Exchange (*Bolsa Mexicana de Valores*; [www.bmv.com.mx](http://www.bmv.com.mx) and, as of 25 July 2018, the Institutional Stock Exchange (*Bolsa Institucional de Valores*; [www.biva.mx](http://www.biva.mx)). Securities of both Mexican and foreign issuers can be listed and traded on both Stock Exchanges. The Mexican equity market is highly concentrated and the top five companies by market value make up approximately 49% of the index. The index is weighted heavily in favor of export companies as exports account for approximately one-third of Mexico’s gross domestic product.

Recently public M&A activity has slowed and only one hostile takeover has been attempted, which failed after a Supreme Court of Justice case. This was the proposed acquisition of control by Grupo Mexico of Grupo del Pacífico in which the Supreme Court of Justice ruled that publicly listed companies may adopt necessary – albeit not absolute – corporate measures to deter hostile takeovers.

# General Legal Framework

## 2. General Legal Framework

[Last updated: 1 June 2022, unless otherwise noted]

**2.1 Key regulatory bodies**

The main regulatory body of the Mexican securities market is the National Banking and Securities Commission (*Comisión Nacional Bancaria y de Valores*; or the “CNBV”). The CNBV must approve a public M&A transaction and has the powers and authority to enforce the regulatory framework applicable to takeover bids, including the imposition of fines. In addition, commercial litigation may be pursued by affected parties and criminal penalties may be imposed by the courts.

Depending on the value, antitrust or sector considerations, takeovers and M&A transactions in the Mexican securities market will also be subject to scrutiny by other regulatory bodies. For example, if the transaction exceeds the antitrust thresholds or is suspected of having anticompetitive effects, the Mexican Antitrust Commission’s (*Comisión Federal de Competencia Económica*) prior clearance will be required; if the transaction is in a specifically regulated sector, such as telecommunications, antitrust clearance would be required from the Federal Telecommunications Commission (*Comisión Federal de Telecomunicaciones*); and if the transaction entails an investment in excess of the yearly threshold defined for such purposes, or is effected in a sector of the economy which has not yet been liberalized, then approval by the Foreign Investment Commission (*Comisión Nacional de Inversiones Extranjeras*) will be required.

**2.2 Legislation and rules**

Pursuant to Mexican law, the regulation of securities issuers and markets, including public M&A transactions, is a reserved matter which may only be regulated by the federal legislature and, consequently, state legislatures cannot legislate on the subject.

The regulatory framework applicable to public M&A transactions (both voluntary and hostile) is as follows:

The Securities Market Law (*Ley del Mercado de Valores*).

The National Banking and Securities Commission Law (*Ley de la Comisión Nacional Bancaria y de Valores*).

General rules applicable to the issuers of traded securities and other participants in the securities market (*Disposiciones de carácter general aplicables a las emisoras de valores y a otros participantes del mercado de valores*), issued by the CNBV.

General rules applicable to the entities and issuers supervised by the CNBV that contract external audit services of basic financial statements (*Disposiciones de carácter general aplicables a las entidades y emisoras supervisadas por la Comisión Nacional Bancaria y de Valores que contraten servicios de auditoría externa de estados financieros básicos*).

Internal rules of the Mexican Stock Exchange (*Reglamento interior de la Bolsa Mexicana de Valores*) and the Institutional Stock Exchange (*Bolsa Institucional de Valores*).

Federal commercial and civil legislation, such as the General Law on Business Entities (*Ley General de Sociedades Mercantiles), securities and commercial market practices (usos bursátiles y mercantiles*) and the Federal Civil Code (Código Civil Federal).

The Commerce Code (*Código de Comercio*).

The General Law of Negotiable Instruments and Credit Operations (*Ley General de Títulos y Operaciones de Crédito*).

Other specialized laws may apply to the transaction, such as the Federal Antitrust law (*Ley Federal de Competencia Económica*).

**2.3 General principles**

Equal treatment: all security holders must be treated equally, regardless of the class or series of securities they hold.

Continuity of minority protection rights: minority security holders are afforded a number of statutory minority protection rights (further discussed below) in connection with the appointment of directors, call for shareholders’ meetings, opposition and deferral of adoption of resolutions and responsibility of administrators. Additionally, the by-laws of the issuer can provide for additional rights. The statutory minority protection rights are not affected by a bid.

Disclosure and information: all security holders must be equally and sufficiently informed in a timely fashion in order to make an educated decision on the bid, and are entitled to receive the offering memorandum, information related to previous arrangements or understandings, the board of directors’ opinion, the independent advisor’s opinion and any other information containing material terms and conditions of the offeror’s bid.

Board and officers duty of loyalty and diligence: the members of the board of directors, those individuals appointed to participate in any of the committees of an issuer and the officers of the issuer have an absolute duty of loyalty and care, and shall act in the best interest of the issuer and its equity holders as a whole.

Mandatory cash-out or squeeze-out: minority shareholders cannot be forced to sell their securities in the target company, even if the intent of the bidder is to acquire the control or the totality of the securities of the target.

**2.4 Foreign investments**

Foreign investments are not restricted in Mexico and are only subject to reporting upon completion (as opposed to prior authorization), unless they relate to certain specific activities.

The purchase by a foreign investor of a direct or indirect controlling interest in a Mexican public company conducting sensitive activities (as set out below),requires the prior approval of the Ministry of Economy and the National Commission of Foreign Investment, i.e., before final completion of the transaction. In relation to non-Mexican investors incorporated in Mexico, the requirement for prior approval is triggered by crossing a certain percentage threshold of the share capital or voting rights. The following are the foreign investment threshold percentages per sensitive activity:

Up to 10% in cooperative production companies.

Up to 49% in (i) companies that manufacture and commercialize or distribute explosives, firearms, cartridges, ammunitions and fireworks, not including the acquisition and use of explosives for industrial and extraction activities nor the preparation of explosive compounds for use in said activities; (ii) printing of newspapers for circulation solely throughout Mexico; (iii) series “T” shares in companies owning agricultural, ranching and forestry lands; (iv) fresh water, coastal and exclusive economic zone fishing not including fisheries; (v) integral port administration; (vi) port pilot services for inland navigation under the terms of the law governing the matter; (vii) shipping companies engaged in commercial exploitation of ships for inland and coastal navigation, excluding tourism cruises and exploitation of marine dredges and devices for port construction, conservation and operation; (viii) supply of fuel and lubricants for ships, airplanes and railway equipment; (ix) broadcasting (this maximum foreign investment will be subject to the reciprocity between each jurisdiction where the investor or economic agent who exercises control is from, directly or indirectly); and (x) regular and non-regular national air transport service, international air transport service, non-regular air taxi mode and specialized air transport service.

Foreign investment participation limits in the activities and companies mentioned above may not be exceeded directly nor through trusts, contracts, partnerships or by-law agreements, pyramid schemes or other mechanisms granting any control or a higher participation than the limit stated.

Foreign investment participation greater than 49% in port services in order to allow ships to conduct inland navigation operation, such as towing, mooring and barging; shipping companies engaged in the exploitation of ships solely for high-seas traffic; concessionaire or permissioned companies of air fields for public service; private education services for pre-school, elementary, middle school, high school, college or any combination; legal services; construction, operation and exploitation of general railways and provision of public railway transportation services are activities that require prior authorization from the National Commission of Foreign Investment.

The following the activities are reserved for the Mexican government: (i) exploration and extraction of oil and other hydrocarbons; notwithstanding the foregoing, the Federal Government through the National Hydrocarbons Commission (also known as CNH) is authorized to award and execute agreements with private entities for the exploration and extraction of hydrocarbons; (ii) planning and control of the national electric system, as well as the public services of transmission and distribution of electricity; (iii) generation of nuclear energy; (iv) radioactive minerals; (v) telegraph; (vi) radiotelegraphy; (vii) postal service; (viii) bank note issuing; (ix) mining of coins; (xi) control, supervision and surveillance of ports, airports and heliports; and (xii) any others as expressly provided by applicable law.

The following activities are reserved for Mexicans or Mexican companies with a foreigners’ exclusion clause: (i) domestic land transportation for passengers, tourism and freight, not including messenger or courier services; (ii) development banks; and (iii) rendering of professional and technical services as prescribed by applicable legal provisions.

Foreign investors may not participate directly in the activities and companies mentioned above nor through trusts, contracts, partnerships or by-law agreements, pyramid schemes or other mechanisms granting any control or participation.

# Before a Public Takeover Bid

## 3. Before a Public Takeover Bid

[Last updated: 1 June 2022, unless otherwise noted]

**3.1 Shareholders’ rights in publicly traded companies**

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| **Shareholding** | **Rights** |
| One share of the capital stock of the publicly traded company (the “Company”) | * In the absence of the minimum number of members of the audit committee and when the board of directors has not appointed any interim members according to the provisions of Article 24 of the Mexican Securities Law, any shareholder may request the chairperson of the board to call, within a term of three calendar days, a general shareholders’ meeting which shall make the corresponding appointment. In the event the call is not made within this period, any shareholder may appear before the judicial authority of the Company’s legal domicile to request such court to call the shareholders’ meeting. In the event that the meeting cannot be convened or, if convened, the appointment is not made, the judicial authority of the Company’s legal domicile, upon request and proposal by any shareholder, shall appoint the corresponding directors, who shall hold office until the general shareholders’ meeting makes the final appointment.
* To call for a general shareholders’ meeting when (i) none have been held during the last 2 preceding tax years, or (ii) when the ones held during such period have not discussed the matters set forth in Article 181 of the General Business Entities Law.
* To attend and vote at general shareholders’ meetings, except in those cases when the CNBV has authorized the Company to issue limited-voting rights shares, restricted-voting shares or non-voting shares (i) not exceeding 25% of the outstanding capital of the Company or such higher percentage authorized by the CNBV and provided that such shares shall be converted into ordinary shares within 5 years after placement, or (ii) in excess of 25% of the outstanding capital of the Company on the basis of the holder’s nationality.
* To have access, at the Company’s offices, to the information and documents related to each of the items included in the agenda of the relevant shareholders’ meeting, free of charge and at least 15 calendar days before the date of the meeting.
* To prevent the general shareholders’ meeting from considering any issues submitted in the agenda under the heading of general issues or another analogous concept.
* To be represented at the shareholders’ meetings, by persons who evidence their representation by means of proxy forms prepared by the Company and made available to such shareholders through stock exchange intermediaries or at the Company, at least 15 calendar days before such meeting.
* To enter into shareholders’ agreements, as provided in Article 16 of the Securities Market Law.
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| 5% or more (at a general shareholders’ meeting) | To veto a resolution approving measures intended to prevent the acquisition of shares that will transfer the control of the Company to third parties or to the existing shareholders, whether directly or indirectly (poison pill actions). |
| 5% or more of the capital stock of the Company (with or without voting rights) | The filing of any liability action resulting from acts or omissions of management or the members of the surveillance committees of the Company. |
| For each 10% of the capital stock of the Company | * To appoint and revoke the appointment of a member of the board of directors at a shareholders’ meeting.
* To request, from the chairperson of the board of directors or of the audit and corporate practices committees, the calling of a general shareholders’ meeting.
* To request the deferment of the vote on any issue with respect to which they consider themselves insufficiently informed. The deferment will be in place for three calendar days and will not require the issuance of a subsequent call notice for the meeting to be reconvened.
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| 20% or more of the capital stock of the Company | To oppose in court, individually or in the aggregate, the resolutions of the general shareholders’ meetings with respect to which they have voting rights, including those with limited or restricted voting rights. |
| 75% or more of the capital stock of the Company | Constitutes quorum to hold an extraordinary shareholders’ meeting whereby any of the following resolutions, among others, may be adopted pursuant to the affirmative vote of 50% or more of the capital stock of the Company: change in the corporate purpose; transformation; merger; and split-off. |
| 95% or more of the capital stock of the Company | To request the cancellation of the registration of the securities of the Company in the National Securities Registry. |

**3.2 Use of NDAs and due diligence**

Publicly traded companies have continuing disclosure obligations and, therefore, the following information must be made available to the general public:

Reports concerning corporate actions.

Quarterly reports, including financial statements, and the observations and analysis of the administration regarding the operations’ results and the financial condition of the Company.

Annual audited financial statements. The opinion of the independent auditors must comply with international audit norms. For foreign issuers the opinion must comply with audit norms of their home country).

Annual reports regarding the activities of the audit committee and the corporate practices committee.

Reports concerning mergers, split-offs, acquisitions or sales of assets.

Reports of relevant events.

Reports concerning policies and operations.

Reports about the positions maintained by the Company in derivatives.

Any other information determined by the CNBV.

Additional documentation or information may be requested and must be delivered to the offeror in a public M&A transaction, provided it does not entail the disclosure of non-public material information breaching the restrictions established under the Securities Market Law. It is common practice to execute a non-disclosure agreement prior to the delivery of information to an offeror.

**3.3 Investor rights and restrictions**

See 3.1.

**3.4 Method of acquisition**

As further discussed in 4 (Effecting a Takeover), a publicly traded company may be acquired via a public tender offer, whereby the totality or a part of the stock of the publicly traded company is acquired by the offeror, either through a friendly takeover or a hostile takeover. Hostile takeovers are extremely rare in Mexico.

Friendly takeovers are either voluntary or mandatory public tender offers, recommended by the board of directors of the publicly traded company. The minimum term of any public tender offer shall be 20 business days. The offer must be allocated proportionally, regardless of the time of acceptance. The offeror may change the terms of its offer before its completion if the new terms are more favorable for the offerees or if it was so established in the corresponding brochure. If the CNBV considers the amendments to the terms of the offer to be significant, the term for the offer must be extended for an additional period of at least five business days. In any case, the public must be informed of such amendments to the offer through the same means pursuant to which the offer was originally made. The offerees that had accepted the offer shall have the right to decline in the event of significant amendments.

The procedure and requirements for mandatory tender offers must be followed when the offeror intends to acquire or attain, directly or indirectly, 30% or more of the common stock of a publicly traded company, through one or several simultaneous or successive transactions. In such event, the following rules apply:

The offer shall be extended to the different series of shares of the Company, including those with limited or restricted voting rights and non-voting shares.

The consideration offered must be the same, regardless of the class or type of shares.

The offer shall be made for (i) the percentage of the capital stock of the Company equivalent to the proportion of common stock intended to be acquired, with respect to the total number of shares or for 10% of such capital, whichever is greater, provided that the acquisition does not imply the offeror taking control; or (ii) 100% of the capital stock when the buyer intends to acquire control (unless the CNBV has authorized a smaller percentage).

The buyer shall indicate the maximum number of shares the offer covers and, if applicable, the minimum number on which such acquisition is conditioned.

For the purposes of the Securities Market Law, “control” means the capacity of one person or a group of persons to carry out any of the following:

To impose, directly or indirectly, any decision at a general shareholders’ meeting (or equivalent body) or to appoint or remove the majority of the directors (or their equivalent).

To hold ownership rights allowing a person to directly or indirectly exercise voting rights in excess of 50% of the capital stock of a Company.

To dictate, directly or indirectly, the management, strategy or principal policies of a Company, either through the ownership of securities, by virtue of an agreement or otherwise.

Any acquisitions contravening these requirements shall be null and void and the persons involved shall be liable vis-à-vis the other shareholders, who may be indemnified for losses and damages.

**3.5 Insider dealing rules**

See 6.1.

**3.6 Disclosure of shareholdings**

Initial disclosure threshold: any person or group of persons acquiring, directly or indirectly, in the stock exchange or over the counter, through one or several transactions, simultaneously or successively, shares of a publicly traded company resulting in an ownership interest equal to or greater than 10% (but not exceeding 30%), must disclose such circumstance to the investing public the next business day following the acquisition. Furthermore, such person or group of persons shall inform of its intention of whether or not to acquire a significant influence in the publicly traded company.

Subsequent disclosure thresholds

Related parties of publicly traded companies who directly or indirectly increase or decrease their capital interest by 5% through one or several simultaneous or successive transactions must disclose such circumstance to the investing public the next business day following the acquisition, as well as their intent to acquire or not a significant influence (or increasing it) in such publicly traded companies.

Any person or group of persons who, directly or indirectly, own 10% or more of the shares of a publicly traded company, as well as the members of the board of directors and relevant executive officers of such persons, must inform the CNBV, and the investing public when applicable, of the acquisitions or sales made of such securities.

Aggregation of interests of “concert group”

“Group of persons” as used under the Securities Market Law, means those individuals or legal entities having an agreement amongst each other to aggregate their interests to take decisions in concert. It is presumed, unless otherwise demonstrated, that the following constitute a “group of persons”:

Any individuals related either by blood, marriage or civil kinship up to the fourth degree, the spouse and concubine.

Entities belonging to the same consortium (group of entities linked by one individual or a group of persons having control over the same) or corporate group (group of entities organized under direct or indirect capital stock participation structures, in which the same company maintains control over such entities), and the persons having control over such entities.

**3.7 Minority shareholders’ rights**

The Securities Market Law establishes minimum percentages as to minority shareholders’ rights. These minimum percentages may be further decreased in the Company’s by-laws, thereby broadening these protections to holders of fewer shares.

Please refer to the table in 3.1 for further information on minority shareholders’ rights provisions under the Mexican Securities Law.

**3.8 Mandatory offer threshold**

When an offeror intends to acquire or attain, directly or indirectly, 30% or more of the common stock of a Company, a mandatory tender offer must be carried out and the offer shall be made for the percentage of the capital stock of the Company equivalent to the proportion of common stock intended to be acquired, with respect to the total number of shares or for 10% of such capital, whichever is greater, provided that the acquisition does not imply the offeror taking control.

When the offeror intends to acquire or attain, directly or indirectly, control, a mandatory tender offer must be carried out and the offer shall be made for 100% of the capital stock (unless the CNBV authorizes a smaller percentage).

# Effecting a Takeover

## 4. Effecting a Takeover

[Last updated: 1 June 2022, unless otherwise noted]

This section addresses a scenario where the offeror intends to maintain the listing of the public company after completion of the transaction. See 8 (Delisting) for information on the privatization process where a delisting is contemplated.

There are two main forms of tender offer in Mexico:

a voluntary tender offer, in which an offeror voluntarily makes an offer for all the voting securities issued by the Company; and

a mandatory tender offer, which an offeror is required to make if, as a result of an acquisition of securities, it surpasses a 30% threshold of the voting securities of the target.

An offeror that intends to launch a tender offer must include a draft prospectus and offer notice with its notification to the CNBV, among other transaction documents.

**4.1 Voluntary tender offer**

As discussed in 3.4, the offeror is free to make the tender offer subject to prior approval from the CNBV. The offeror is free to determine the price and the form of consideration offered to the target shareholders:

The minimum term of the offer must be 20 business days.

The allocation of the offer must be pro rata among shareholders, regardless of the acceptance term.

The offer may be amended at any time prior to its conclusion, as long as the amendments improve the conditions originally offered to the shareholders. The offer may be extended for a minimum of five additional business days if the aforementioned amendments are deemed relevant by the CNBV. Any persons who accepted the offer before the amendments were made may revoke their acceptance without any liability.

The offeror is forbidden from executing, directly or indirectly, any transaction with the securities that are subject to the offer, from the time the offer was made until its conclusion.

**4.2 Mandatory tender offers**

As discussed in 3.4, a mandatory tender offer is triggered as soon as a person or group of persons acting in concert as a result of an acquisition of voting securities, holds (directly or indirectly) more than 30% of the (actual outstanding) voting securities of the target company. In addition to those requirements applicable to voluntary tender offers, the following apply:

the offer will have to be made to all series of shares of the target company, including those with limited voting or without voting rights;

the consideration offered must be the same for all securities;

(1) in the event the offeror intends to limit its ownership interest to a percentage that does not imply control of the target company, the offer shall consist of an offer to purchase (i) the percentage of the shares which equals the proportion of shares intended to be acquired regarding the total amount of the shares or (ii) 10% of the capital stock of the target company, whichever is greater; and

(2) in the event the offeror intends to acquire control of the target company, the offer shall consist of an offer to purchase 100% of the shares issued by the issuer, provided that the CNBV may grant certain exceptions for a lower percentage of shares offered while considering the rights of the minority shareholders. The request filed before the CNBV must include an approval from the target company’s board of directors;

the offer must include the maximum number of shares offered and the condition of minimum shares to be acquired. If all of the shares of the Company are acquired, the offeror must make sure that the target company has two remaining shareholders, as required under the General Law on Business Entities;

the offeror is not allowed to offer any additional consideration, premium or surcharge to the recipients of the offer that may be deemed excessive and could be seen as an inducement, provided that consideration paid as a result of agreements related to the offer (which contain certain affirmative or negative covenants favoring the target company), which have been previously approved by the target company’s board of directors and disclosed to the public, are allowed; and

in the event the individual or group of persons that has placed an offer regarding an target company also holds at least 30% of the shares issued by another public company such individual or group of persons will not need to carry out a mandatory tender offer regarding the shares of the issuer when the offer represents less than 50% of the consolidated assets of the issuer for which the offer was placed. Notwithstanding the foregoing, the CNBV may allow the following transactions without having to authorize a mandatory tender offer:

Acquisitions at market price resulting from a redistribution of shares of common stock among members of a same group of individuals or legal entities, whether or not such group prevails, provided that the acquiring parties have been shareholders of the Company for more than 5 years and that the group of individuals or legal entities who maintain control as a result of the acquisition had held a significant percentage of the capital stock during such term.

Capital stock decreases pursuant to which the equity interest of an individual or legal entity, or group of individuals or legal entities, results in 30% or more of the total shares of common stock.

When the feasibility of the issuer as a going concern is at risk and the shares of common stock are acquired as a consequence of capital increases or corporate restructurings such as mergers, purchases and sales of assets and liabilities, and capitalization, provided that there is a favorable opinion from the issuer’s board of directors, previously approved by the corporate practices committee.

An attachment and distribution of collateral on shares, whether in or out of court, resulting from a past-due debt in which collateral is granted in favor of financial entities, even when such entities acted as trustees.

Acquisitions by inheritance, bequest or donation, of a spouse, concubine or male concubine, as well as from individuals related by blood, marriage or civil kinship up to the fourth degree.

Transactions that are consistent with the protection of the interests of the minority shareholders of the issuer.

# Timeline

## 5. Timeline

[Last updated: 1 June 2022, unless otherwise noted]

As a general rule, a takeover tender offer process for a mandatory tender offer is similar to the process that applies to the voluntary tender offer, with certain exceptions. The table below contains an overview of the main steps of a typical voluntary tender offer process under Mexican law.

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| **Steps and Timeline** |
| 1. Preparatory stage:* Preparation of the tender offer (study, due diligence, financing, draft prospectus and offer notice).
* The offeror approaches the target and/or its key shareholders.
* Negotiations with the target and/or its key shareholders.
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| 2. The offeror files the offer with the CNBV. The filing can be public or confidential. |
| 3. Review and approval of prospectus of the offeror by the CNBV.Approval: Four to eight weeks. |
| 4. Publication of the prospectus after approval by the CNBV. |
| 5. Launch of the acceptance period. Duration: not less than 20 business days. |
| 6. Opinion from the board of directors, regarding (i) the price of the offer; and (ii) any conflict of interests, must be filed within 10 business days from the date the offer is launched. The term may be increased or decreased by the CNBV. |
| 7. Publication of results: one business day after the end of the offer period. |
| 8. Payment of the offered consideration by the offeror: One business day after the end of the offer period. |
| 9. Squeeze-out or sell-out: Tender offer for a period of 180 days upon request from the CNBV. |
| 10. Publication of results: One business day after the end of the offer period. |
| 11. Payment of the offered consideration by the offeror: One business day after the end of the offer period. |

Set out below is an overview of the main steps for a voluntary tender offer in Mexico.

**5.1 Indicative timeline of a voluntary tender offer**

Click here to view diagram for [Mexico](https://resourcehub.bakermckenzie.com/en/-/media/global-public-ma-handbook/images/timelines/mexico.png)

# Takeover Tactics

## 6. Takeover Tactics

[Last updated: 1 June 2022, unless otherwise noted]

**6.1 Insider dealing**

For the purposes of the Securities Market Law, it is deemed that certain individuals of the Company have access to insider information. The burden of proof is on such individuals. Such individuals shall not:

enter into or instruct the execution of transactions, directly or indirectly, in relation to any kind of securities issued by the Company or any negotiable instruments representing any such securities (including options or derivatives having, as underlying, the aforementioned securities or instruments, all of which are hereinafter referred to as “shares” or “securities”), the quotation or price of which may be influenced by such information, as long as it is classified as inside information;

provide or disclose the information to any third party, except when by reason of employment, position or commission, the individual to whom it is provided or transferred must know such information; or

make recommendations concerning any kind of securities issued by the Company, the quotation or price of which may be influenced by such information, as long as it is classified as inside information.

The restricted individuals are:

the members and the secretary of the board of directors, the examiners, the chief executive officer and other relevant officers, as well as the managing directors and the external auditors of the Company or entities controlled by it;

the individuals who directly or indirectly hold 10% or more of the shares representing the capital stock of the Company;

the members and the secretary of the board of directors, examiners, the chief executive officer and other relevant officers, the managing directors and external auditors, or any persons equivalent to the foregoing, of any entities that directly or indirectly hold 10% or more of the capital stock of the Company;

the members and secretary of the board of directors, examiners, the chief executive officer and other officers immediately below the latter, the statutory comptroller, managing director and agents, or any persons equivalent to the foregoing, of stock exchange intermediaries or of any individuals or legal entities providing independent or personal subordinated services to the Company, in any relevant event constituting privileged information, as well as of the legal entity, which may or may not have the nature of an issuer, that had some relation or financial, administrative, operational, economic or legal link with the Company to which the relevant event in question is attributed to, or to those who participated in any nature with the act, event, or happening relative to said event;

the shareholders who directly or indirectly hold 5% or more of the capital stock of financial entities, when these act as issuers;

the shareholders who directly or indirectly hold 5% or more of the capital stock of the holding companies of financial groups, as well as those who directly or indirectly hold 10% or more of the capital stock of other financial entities, when all of them are members of the same financial group and at least one of the members of the group is the issuer;

the members and the secretary of the board of directors, the chief executive officer and other officers immediately below the latter, the statutory comptroller and the managing directors of any holding companies of financial entities mentioned in the preceding paragraph;

the individual or group of individuals who have a significant influence on the issuer and, as the case may be, on the companies composing the corporate group or consortium to which the issuer belongs;

the individuals that have decision-making powers over the issuer; and

the individuals or legal entities that trade securities deviating from their historical market investment patterns and who reasonably could have had access to inside information through any of the individuals mentioned above. The individuals who have reasonable access to insider information are, in general, certain family members, partners, associates and co-owners, as well as any person who had contact with any of the referenced individuals.

Most of such restricted individuals are, in general, not allowed to acquire, directly or indirectly, any securities issued by an issuer to whom they are “related”, during a term of three months from the last transaction executed on the Company’s securities.

Publicly traded companies are required to establish guidelines, policies and control mechanisms in connection with transactions carried out by their directors, executive officers and employees who, by virtue of their employment, position or commission, have or may have access to insider or confidential information related to any processes for the registration of securities with the National Securities’ Registry, public offerings, acquisition or transfer of shares held by the same issuers, or transactions ordered by the investing public.

Anyone who, being under legal or contractual obligation of confidentiality, reserve or secrecy, provides or transfers insider information to a third party, may be subject to administrative, civil and criminal liability, which carries an imprisonment term of 3-15 years.

**6.2 Information to be disclosed**

Publicly traded companies must disclose, to the CNBV and the stock exchange, certain information regarding the operations of the Company, including, without limitation, corporate and financial information. See 3.2.

**6.3 Due diligence and market abuse rules**

In Mexico, there is no obligation to provide due diligence information to a potential offeror. Thus, this situation could be used by a target company to delay or inhibit a takeover. However, the common practice is for the target company to provide due diligence information to a potential bidder if the proposed transaction is friendly. If the proposed transaction is hostile, the offeror will have to rely on the Company’s publicly available information.

Furthermore, the Securities Market Law establishes provisions to prevent abuse practices dealing with privileged information. See 6.1.

**6.4 Anti-takeover defense mechanisms**

Hostile public M&A transactions are permitted in Mexico. However, in practice, such acquisitions are uncommon. Furthermore, in the proposed recent hostile acquisition of control by Grupo Mexico of Grupo Aeroportuario del Pacífico, the Supreme Court of Justice ruled that publicly listed companies may adopt necessary albeit not absolute corporate measures to deter hostile takeovers as long as such measures do not create an obstacle to friendly takeovers. This sets a non-binding court precedent that may impact the viability of hostile takeovers.

The most effective and most used anti-takeover defense mechanisms are found in the by-laws of publicly traded companies and by means of measures similar to “poison pills” through a capital increase. However, it is not permissible to establish a provision that completely deters the acquisition of a target company. In this regard, the principal provisions that cannot be established in the by-laws of a publicly traded company are the following:

Restrictions of any nature on the transfer of the shares of a target company. As an exception, it is possible to require the pre-approval of the board of directors for the acquisition of securities of a Company over and above a certain percentage. For these purposes, the criteria that should be followed by such board of directors to issue a resolution shall be included, along with the term for the issuance of such resolution, which shall not exceed three months.

Provisions that establish causes for the exclusion of a shareholder or restrictions on the exercise of the rights of a shareholder to be excluded from the Company.

Provisions that increase or decrease the economic rights of a shareholder.

Provisions that restrict friendly takeovers.

**6.5 Deal protection methods**

In Mexico, it is common for parties of a friendly acquisition transaction to agree penalty clauses in the event the deal is not closed or terminated by either party due to breach of an exclusivity covenant.

# Squeeze-out of Minority Shareholders after Completion of the Takeover

## 7. Squeeze-out of Minority Shareholders after Completion of the Takeover

[Last updated: 1 June 2022, unless otherwise noted]

**7.1 Squeeze-out**

Minority shareholders of a publicly traded company cannot be obligated to sell their securities. A squeeze-out is, therefore, voluntary on the part of the minority shareholders who may elect, or decide not to elect, to sell their shares in the Company.

In the event there is a shareholders’ resolution adopted by at least 95% of the shares that form the corporate capital of the Company to approve an offer aimed to implement a squeeze-out of minority shareholders, regardless of the type of security they hold, the Company will then make a public offer pursuant to the following:

The offer must be exclusively addressed to the shareholders or to the holders of instruments representing the issuer’s shares, which are not part of the group of individuals or legal entities in control of the issuer at the time of the application filed with the CNBV.

The offer must be made at least at the highest value between the quotation value and the book value of the shares (in this latter case, according to the last quarterly report submitted to the CNBV and the stock exchange before the beginning of the offer), adjusted, when such value has been modified, according to criteria applicable for the determination of relevant information, in which case the most recent financial information that the issuer has must be considered and a certification from an authorized executive officer of the issuer must be submitted with respect to the determination of the book value.

The stock market quotation value shall be the weighted average price per trading volume during the last 30 days in which the shares were traded, before the start of the offering, during a term not to exceed six months. In case the number of days when the aforesaid shares were traded during the established term was less than 30, the actual days in which they were in fact traded shall be considered. If there was no trading during such period, then the book value shall be considered.

In the event that the issuer has more than one series of shares listed, the average mentioned in the preceding paragraph shall be calculated for each series that is intended to be cancelled, and the average that turns out to be greater shall be considered as the quotation value for all series.

The Company must transfer the necessary funds to acquire the minority shares to a special purpose trust, during a period of six months.

The individual or legal entity, or group of individuals or legal entities, who have control over the issuer at the time when the CNBV required the issuer to launch the offer, shall be jointly liable with the issuer for the consummation of the transaction.

The CNBV may order, at the expense of the issuer, that a valuation be carried out by an independent expert to determine the price of the offer when this is considered essential to protect the interests of the general public.

**7.2 Sell-out**

If, as a result of a mandatory or voluntary tender offer for less than 100% of the shares, less than 12% of the shares are held by the general public, the offeror will be forced to extend the offer for the remaining shares or, within 30 days, launch a second offer for 100% of the shares in the same conditions as the first offer. As stated above, the minority shareholders are not required to sell their securities.

**7.3 Squeeze-out followed by a merger**

If the squeeze-out is carried out with a view to subsequently carrying out a corporate merger through which the offeror absorbs the target company, the 95% threshold referred to in 7.1 is required.

# Delisting

## 8. Delisting

[Last updated: 1 June 2022, unless otherwise noted]

As a general rule, the CNBV must approve a delisting of a Company that is listed on the Mexican Stock Exchange or the Institutional Stock Exchange.

The CNBV will customarily not allow a delisting of a Mexican issuer (even if the issuer no longer has a relevant float) unless a squeeze-out or sell- out has been carried out, pursuant to the rules set forth herein. In the event an issuer is up to date with its reporting obligations and 95% of the outstanding securities issued by the issuer approve a delisting, the CNBV will authorize it pursuant to a tender offer as set forth in 7.1. above, and considering the following:

The number of investors that would have participated in the offer.

The percentage of the capital owned by such investors.

The particularities of investors that did not participate in the offer and, the circumstances of why they abstained from accepting the offer.

The CNBV may provide certain exemptions to the obligations set forth above when it is justified by the reduced number of securities held by the general public. In any case, the trust mentioned in 7.1(e) above must be created.

# Contacts

## 9. Contacts within Baker McKenzie

Jorge Ruiz in the Juarez office and Gaspar Gutiérrez Centeno, Lorenzo Ruiz de Velasco and Alejandro Pérez-Serrano in the Mexico City office are the most appropriate contacts within Baker McKenzie for inquiries about public M&A in Mexico.

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