



# Mergers & Acquisitions

# 2018

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**Michael E. Hatchard & Scott V. Simpson**

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# Mexico

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## Overview

During a time of uncertainty in Mexico, where the North American Free Trade Agreement (NAFTA) is being renegotiated with the U.S., where there will be presidential elections mid-year, where the Mexican peso's value has declined over the past three years, and where relations are tense with President Donald Trump, Mexico continues to maintain its fair share of local, international and cross-border M&A transactions. As we will review below, M&A during the years 2016 and 2017 have varied, and factors such as reforms to certain industry regulations have contributed to such variations.

M&A in Mexico is mainly regulated under the following laws:

- The General Business Organizations Law (*Ley General de Sociedades Mercantiles*).
- The General Law of Negotiable Instruments and Credit Operations (*Ley de Títulos y Operaciones de Crédito*).
- The Foreign Investment Law (*Ley de Inversión Extranjera*).
- The Code of Commerce (*Código de Comercio*).
- The Federal Civil Code (*Código Civil Federal*).
- The Securities Exchange Law (*Ley del Mercado de Valores*).
- The Federal Antitrust Law (*Ley Federal de Competencia Económica*).

In addition to the foregoing, there are other industry-specific laws and regulations that can be applicable to M&A in Mexico, depending on the type of transaction.

The typical forms of M&A seen in Mexico are asset sales, stock sales, public tender offers, and mergers/consolidations. At some point in the past, the most active industries for M&A were real estate, consumer products and finance; however, during recent years, M&A activity has grown significantly in the energy, telecommunications, industrial, financial services and agriculture sectors.

During the year 2016, approximately 266 M&A transactions were completed in Mexico, with an aggregate approximate total value of US\$17.3 billion. The industries which saw the most M&A activity were real estate, consumer products and industrial, with other industries such as mining, finance and energy falling close behind.

In 2017, approximately 220 M&A transactions were completed in Mexico, with an approximate total value of US\$20.9 billion. Compared to 2016, the number of transactions decreased by 17%, but the overall value of such transactions increased by 21%. The industries which saw the most M&A activity during 2017 were financial, energy, consumer products, insurance, infrastructure and mining.

The decrease in M&A transactions from 2016 to 2017 can mainly be attributed to investors, banks, companies, etc. being more cautious as to the investment and destination of their funds, considering that in early 2017, the value of the Mexican peso was at an all-time low, and that President Trump took office with his unfortunate series of threats towards Mexico and international relations between the two countries. However, we must keep in mind that the overall value of the transactions completed in 2017 showed a considerable increase over the value of those reported in 2016.

So far, during the first quarter of 2018, the aggregate amount of M&A transactions completed in Mexico is approximately 51, with an approximate total value of US\$2.5 billion, involving real estate, infrastructure and energy as key sectors.

### Significant deals and highlights

The most notable and highest-value M&A deals in Mexico during the year 2017 were the following, as selected by Seale & Associates, Inc.:

- **Grupo Financiero Banorte, S.A.B. de C.V.**, a banking and financial services institution in Mexico, acquired **Grupo Financiero Interacciones, S.A. de C.V.**, also a financial services provider, for approximately US\$1.4 billion (October 2017).
- **Caisse de dépôt et placement du Québec** and **CKD Infraestructura México, S.A. de C.V.** acquired a portfolio of 1.7Gw renewable energy facilities from **Enel Green Power**, for approximately US\$1.3 billion (October 2017).
- **Actis, LLP**, a private equity fund, acquired the remaining 50% of **Energía Sierra Juárez, S. de R.L. de C.V.**, a developer and operator of windfarms, as well as an asset portfolio from **InterGen Services, Inc.**, a global energy developer and generator, for approximately US\$1.2 billion (December 2017).
- **OHL Concesiones, S.A.**, together with **IFM Global Infrastructure Fund**, acquired 43% of the capital of **OHL México, S.A.B. de C.V.**, a company specialised in the design, operation and construction of road infrastructure, for US\$737 million, representing a multiple company value of  $7.1 \times$  sales and  $9.6 \times$  EBITDA (June 2017).
- **Infraestructura Energética Nova, S.A.B. de C.V.**, a company specialising in the operation of energy infrastructure, acquired **Ductos Energéticos del Norte, S. de R.L. de C.V.**, an oil and gas duct operating company, from **Gasoductos de Chihuahua, S. de R.L. de C.V.**, for US\$547 million (October 2017).

### Key developments

There have been no relevant changes or reforms in the laws and regulations governing M&A in Mexico in the last year, and none are expected to occur during 2018. However, past reforms to laws and regulations affecting M&A have generally been well received and have been beneficial to all industries in Mexico.

Notwithstanding the fact that no recent M&A regulatory reforms have occurred, potential investors seeking to participate in the Mexican M&A market should keep in mind that the role of the Mexican Federal Antitrust Commission (*Comisión Federal de Competencia Económica*) has, in recent years, evolved into that of a much more active regulator in M&A transactions, given that it has forged a new path in establishing criteria when analysing merger control, and has set new criteria for the review process and eventual authorisation of M&A deals.

## Industry sector focus

For the time being, the most active sectors for M&A in Mexico are:

- energy;
- infrastructure;
- real estate;
- consumer products; and
- health.

As discussed, M&A activity within industries such as energy; and the telecommunications industries, has increased as a result of certain legal reforms which now permit larger investments by foreign entities in these sectors, and which has already attracted a large number of foreign leaders in these industries to invest in Mexico. M&A activity in other industries such as real estate, infrastructure and consumer products has continued to grow as a result of consistent market conditions allowing for continued interest in these sectors over the years.

Regarding the balance of inbound and domestic M&A transactions, inbound M&A transactions have always been largely predominant over domestic M&A transactions.

Mexico is nowadays considered to have one of the most attractive business environments in Latin America for inbound investment, considering major constitutional and other regulatory reforms which have recently encouraged and allowed foreign investment in certain industries which were formerly restricted to investment opportunities.

As to friendly vs. hostile takeovers, although hostile bids are permitted under Mexican law, specifically the Securities Exchange Law (*Ley del Mercado de Valores*), there is no specific regulation dealing with hostile takeovers. Thus, it is not common to see hostile takeovers in Mexico, and the majority of M&A transactions are friendly.

## The year ahead

There are two main concerns for the year ahead. The first is the renegotiation of NAFTA, which could significantly affect cross-border transactions between Mexico and the U.S., and foreign investment in Mexico in general, as well as create higher tariffs on certain Mexican industries, such as manufacturing and agriculture. The second is the presidential elections in Mexico to take place in July of this year, which not only imply a change of the President and quite possibly a change in the currently ruling political party, but which also contemplate the possibility of a left-wing candidate winning the elections – who threatens to, if elected, modify some of the legal reforms made in past years by the current administration, which have proven to be very beneficial for our country. Even though the probability of any legal reforms being modified is in reality low, the campaign carried out by this left wing-candidate has made a lot of noise both locally and internationally, and has alerted potential investors to tread with caution until election time.

Regardless of the foregoing, certain industries such as the energy; and telecommunications industries, should see an increase in M&A activity. The Trump administration has stated that it wishes to reinforce the hydrocarbon industry and fossil fuel production, over the renewable energy industry. With this, given that Mexico has a thriving supply of these assets, investment by the U.S. in Mexico's energy industry looks positive, and could very well see an increase this coming year. Also, foreign investment in the telecommunications industry should continue to grow as a result of this industry's legal reforms some years ago which eliminated foreign investment restrictions. Other industries which will maintain

strong activity in M&A are the services, consumer, infrastructure, health, mining and real estate industries.

In general, experts forecast a continuance and steady increase of both domestic and foreign M&A transactions in Mexico. 2017 initially saw uncertainty, with investors not sure of how relations between the U.S. and Mexico would progress; however, the country was able to maintain a strong amount of both local and foreign transactions, closing the year with a 21% increase in the overall value of M&A transactions as compared to 2016. The fact that by the end of 2017, the industries involved in M&A transactions in Mexico had not been significantly affected by the political tensions with the U.S., proved that many of the fears existing in early 2017 were unnecessary, and that investments made in Mexico would continue to provide returns for their investors. Thus, even though the first half of 2018 may see a more cautious approach by investors in Mexico, it is expected for 2018 to see the culmination of multiple M&A transactions, with another increase in overall value vs. 2017.

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Erika Olguín has been a member of the firm since 1999. She is a transactional lawyer with a developed practice in the areas of mergers and acquisitions, joint ventures and strategic alliances, real estate, corporate law and private equity. She has participated in a wide range of transactions involving local and foreign clients, rendering legal services to companies and individuals in such practice areas, representing clients in stock acquisitions, asset purchases, mergers, joint ventures and commercial transactions in general.

She counsels clients in domestic and cross-border transactions involving corporate structures for investments, mergers and acquisitions, strategic alliances, stock purchase and sale, corporate restructures, guarantee mechanisms, shareholder disputes and foreign investment; leading cross-border transactions with private equity funds with investments in Mexico.

Moreover, Ms. Olguín assists clients in the purchase and sale of real estate properties and portfolios, project finance thereof, real estate guarantees and structuring of joint ventures for the development and construction of real estate projects in Mexico, leasing agreements in general and with all types of operating agreements related to the real estate sector.

Ms. Olguín is an active member of Abogadas MX, a non-profit leadership and professional development organisation, created to promote women's career advancement in the legal profession, and has had an active participation in the Mentoring Program of this organisation for the past two years and other related activities. She has also developed and supported an internal initiative at the firm, focused on the development, mentoring and talent retention of women lawyers.

Regarding *pro bono* work, she actively collaborates with Fundación González Calvillo in related activities.

Erika Olguín obtained her law degree (J.D. equivalent) from the Universidad Iberoamericana, Mexico City, Mexico and a Master of Laws degree (LL.M.) from Northwestern University, Chicago, Illinois, United States.

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