



# The Guide to Mergers & Acquisitions - Fifth Edition

**Introduction**

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Published by Latin Lawyer and LACCA, edited by Paola Lozano and Daniel Hernández of Skadden, Arps, Slate, Meagher & Flom LLP, this fifth edition of The Guide to Mergers and Acquisitions provides guidance that will benefit all practitioners acting in Latin American mergers and acquisitions.


M&A activity in Latin America has grown significantly in recent decades, and deals are increasingly complex. This guide draws on the expertise of highly sophisticated practitioners to provide an overview of the main elements of dealmaking in a region shaped by its cyclical economies and an often volatile political landscape. Its aim is to be a valuable resource for business people, investors and their advisers as they embark on M&A transactions.

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 **LATIN LAWYER**

Explore on 

# Introduction

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**Summary**

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M&A activity, comprising transactions involving mergers, acquisitions, dispositions and other corporate arrangements that entail the combination or consolidation of two or more businesses or the transfer of interests in a business, is a global industry worth trillions of dollars annually worldwide and billions of dollars annually in Latin America. In the region, deal volumes and values have followed a path of exponential increase in the past 30 years, despite the cyclical nature of M&A and the volatility of the political, social and macroeconomic environments in many Latin American countries. With increasing deal volumes and a broader range of market participants, the sophistication of legal counsel, business persons, bankers and other advisers has also increased significantly.

M&A in the region is constantly evolving and requires all participants to monitor current topics, new trends and a complex and changing environment. Advisers are required to stay abreast of recent developments, in addition to providing deep substantive knowledge of technical legal matters, to add value to their clients. New challenges resulting from a dynamic, ever-changing landscape demand rigorous attention to the many variables that may impact an M&A transaction. These variables include, in addition to the proposed terms of a particular deal, market conditions, regulatory and legal changes, relevant case law and arbitral precedents, and newly implemented structures and technical contractual features developed by seasoned parties and advisers around the world, especially in deeper, more developed M&A markets.

This guide is designed to provide an overview of certain critical aspects of current M&A dealmaking from the perspective of a highly qualified and diverse group of experts in their field throughout the larger markets in Latin America, as well as from the United States. This guide is not meant to be an academic description of applicable laws or contract terms and conditions typically included in M&A agreements. Instead, we have selected current topics of interest in areas of recent and expected continued evolution, as well as certain factors that we believe may drive increased M&A activity in the years to come, with the aim of creating a valuable resource for executives, board members, investors and attorneys (both in private practice and in-house counsel) as they embark on an M&A transaction.

The challenging economic, political and social conditions and widened conflicts impacting the globe at large, and Latin America in particular in recent years, are expected to remain and potentially intensify for some time. M&A practitioners must adapt as governments and markets respond to inflationary trends, deep fluctuations of local currencies against the US dollar, the continued economic and geopolitical implications of the Russia–Ukraine conflict, the escalation of military activities in the Middle East involving various actors, continued worldwide polarisation and the rise of populist movements to power.

For this fifth edition of the guide, we have updated existing content and have incorporated new contributors that will offer a fresh perspective on new subject matters. We have arranged for the staggered release of new content in the following months.

Coming soon, Part I of this guide will include an edited transcript of a roundtable discussion to be held at Skadden's offices in New York on 4 November 2024. The panel will be moderated by Paola Lozano of Skadden in New York and will feature leading M&A practitioners from several jurisdictions in the region, who will provide their practical, experience-based views on hot topics, trends and insights relevant to M&A dealmaking in Latin America in the current environment.

Part II, included in this release, examines Latin American M&A transactions from the perspective of various types of market participants and how their involvement deeply impacts the nature of the process and the terms of the transactions.

Senior Latin American M&A investment banker Nicolas Camacho, head of Latin America M&A at Deutsche Bank in New York, provides an overview of the critical role of investment bankers in assessing, structuring, organising and conducting an M&A transaction, particularly in the context of international sell-side-auctions of Latin American businesses.

Peter A Furci, Andrew M Levine, David Grosgold and Sergio Torres of Deveboise & Plimpton in New York address M&A transactions involving private equity funds and other institutional investors, including the intrinsic challenges thereof and recommended protections in partial acquisitions.

Isabela Martins Xavier of Araújo e Policastro Advogados in Brazil provides a practical overview of M&A deals involving family-owned businesses, and the many particularities and complexities involved in these transactions, including the need to ascertain early on the power structure and the alignment of interests and objectives within the family group, the entanglement between business and family assets, and specific issues relating to due diligence on family-owned businesses.

Lina Uribe García and Juan Pablo Caicedo De Castro of Gómez-Pinzón in Colombia discuss the challenges faced when undertaking M&A transactions involving governments or government-owned entities, including a comprehensive overview of the regulatory intricacies of privatisations in Colombia. As noted by the authors, the current political and economic landscape and the fiscal deficit facing governments across the region will likely be responsible for an increase in the number of privatisations in the years to come, despite the recent rise to power of left-leaning governments in various countries in the region.

Coming soon in subsequent instalments for the fifth edition:

- Ronald Paz, Fernando Ziziotti and Uldarico Ossio of Brookfield will discuss private equity fund partnerships and joint bidding efforts;
- Manuel Quinche, Alfonso Ugarte, Juan Felipe Vera and Felipe Mariño of Cuatrecasas in Colombia and Chile will discuss the impact of multilatinas in dealmaking in the region;
- Alberto Rebaza of Rebaza Alcázar & de las Casas Abogados in Peru will discuss minority investors and key protections thereof; and
- Eduardo Patricio Bonis, Mauricio Oropeza, Ricardo Güell, José Francisco Iturrizaga, and Diego Valdés of Deloitte in Argentina, Costa Rica, Mexico and Peru will discuss the role of financial and accounting advisers in undertaking financial and accounting diligence and the impact thereof in the transaction documents.

Part III covers select topics critical to M&A dealmaking, types of transactions and evolving trends that are fairly new to Latin America and that we expect will continue to increase in volume, size and importance, potentially becoming a helpful driver of the resurgence of M&A in post-pandemic times.

Hans Peter Goebel Caviedes and Carlos Rodolfo Ríos Armillas of Nader, Hayaux & Goebel in Mexico discuss public company M&A, public offerings and dual listings, hostile takeovers and shareholder activism from the perspective of the Mexican market. The chapter provides

a comprehensive overview of relevant regulation in Mexico and underscores the larger size and depth of the Mexican and Brazilian capital markets, compared to other jurisdictions in Latin America, and highlights the potential for the development of additional types of M&A transactions that are common in developed markets but nascent in Latin America, such as hostile takeovers.

Pablo Mijares and Patricio Trad of Mijares, Angoitia, Cortés y Fuentes in Mexico provide their views on the negotiation and execution of preliminary legal documents. This chapter addresses important issues such as the preliminary nature and non-binding effect of letters of intent, memoranda of understanding and term sheets with respect to a transaction, and the binding effect of certain provisions often included in these documents. The chapter also provides an insightful overview of the main issues revolving around confidentiality agreements, exclusivity agreements and cost-sharing agreements.

Francisco Javier Garibay Güémez and Raúl Fernández-Briseño of Mayer Brown address acquisition finance for M&A deals in Latin America, including an overview of current trends, factors impacting the structuring of an acquisition finance, the main acquisition finance documents and agreements and perspectives from each party thereto, as well as matters to be addressed that are specific to Latin America.

Coming soon in subsequent instalments for the fifth edition:

- Diego Krischcautzky, Barbara Ramperti, Pablo Gayol and Luciano Ojea of Marval O'Farrell Mairal in Argentina will discuss current trends with respect to environmental, social and governance in M&A dealmaking in Latin America;
- Jaime Robledo Vásquez, Ángela García Páez, María Acelas Celis and Santiago Negret Garrido of Brigard Urrutia in Colombia will discuss purchase-price adjustments in deals involving Latin American targets;
- Daniel Moncaleano, Simone Bonnet and Allan Stierleo of WTW will discuss the negotiation of representations and warranties insurance policies in the Latin American market and deal points thereof;
- Ricardo Rendón, Humberto Pérez-Rocha and Rodrigo Vázquez of Chevez Ruiz Zamarripa in Mexico will discuss transaction structuring for M&A deals in Latin America; and
- Paola Lozano and Daniel Hernández of Skadden, Arps, Slate, Meagher & Flom in New York will discuss carve-out M&A deals in Latin America.

We enjoyed the topic selection process and took great pride in reviewing each chapter of this guide. We thank each contributor for their time and we appreciate the enriching exchange with each of the authors and collaborators. We hope the diverse experience and authoritative views captured in the guide will be very interesting and useful to attorneys, business persons and advisers in planning and preparing for their M&A transactions in Latin America.

The opinions expressed in this guide are those of the authors and not necessarily of their respective firms. The views expressed in this guide do not constitute legal advice. Each transaction is unique and any analysis thereof is necessarily impacted by the specific facts, circumstances and deal terms, as well as applicable law, which, among many other variables, may result in issues and conclusions that may significantly depart from certain general statements contained in this guide.

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**ENDNOTES**

<sup>1</sup> Paola Lozano is a partner and Daniel Hernández is an associate at Skadden, Arps, Slate, Meagher & Flom LLP.



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