

Cross Border M & A: Mexico

Produced by the Alliance of M&A Advisors



Cross-Border M&A can be intimidating at best. At worst, it can be laden with foreign regulations, unfamiliar customs, and countless opportunities for miscommunication and failure. Until now, there has been little in the way of reference for those undertaking such a task. With this in mind, The Alliance of M&A Advisors has called on experts around the world to develop a helpful guide for cross border M&A in their country.

These guides are replete with information on local government regulations, labor laws, tips on compliance, and much more. Each paper includes strategies for navigating local customs; such as making introductions, communicating, and showing respect to your foreign business partners. The Alliance believes that peer to peer sharing of information is our greatest resource. With the information and resources in this paper, we aim to shed light on Cross Border M&A in Mexico and to provide the tools necessary to launch a successful deal.



The Premier International Organization serving the educational and transactional support needs of middle market M&A professionals nationwide.

Cross Border M&A: Mexico



Members of the Alliance of M&A Advisors provided the research and context for the Cross Border M&A white papers. At the Alliance, we know that our members are among the best in their field. We are excited to facilitate this peer to peer sharing of knowledge. *Luis de la Prida, Emilio Carrillo and John Colter* drew on years of specialized experience with cross border M&A in order to provide the insight in this paper. If you are interested in contributing to a Cross Border paper, please contact the Alliance of M&A Advisors at:

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Background:

The United States is Mexico's leading trade partner, ahead of China, while Mexico is the third largest for the U.S., behind China and Canada. The US and Mexico have strong economic ties through the North American Free Trade Agreement (NAFTA). Much of the trade between the two countries revolves around production sharing. As a result there is a network of vertical supply relationships, especially across the U.S.-Mexico border. Many U.S. manufacturing industries rely on Mexican manufacturers. The two countries cooperate in setting standards on issues such as safety. Mexico's economy is closely linked to the U.S. economy due to strong trade and investment ties. Recent government reform measures in Mexico are expected to stimulate economic growth.

Population:

[Roughly 122 million](#)¹ people live in Mexico.

¹ <https://www.cia.gov/library/publications/the-world-factbook/geos/mx.html>

Size of the lower middle market:

Approximately US\$10 million to US \$25 million

Positive aspects of conducting business in Mexico:

Mexico represents an attractive, untapped market for the U. S with a large population of young people. Advantages to both parties include both geographic proximity and economic ties. There is a win-win aspect as U.S. companies seek diversity and Mexican companies seek growth.

Local businesspeople are generally hospitable and helpful, and visitors are welcomed like family. Since entering the North American Free Trade Agreement (NAFTA), Mexican business customs have become very similar to those of the United States and Canada.

Long distance communication:

Modern standards of Internet and telecom services exist in major cities. Telecom is improving nationwide. While it is common to hold video or teleconferences in the main urban areas, in-person communications are always preferable, with telephone voice communication being the second choice. Emails are best left for day-to-day and follow up matters.

Business introductions:

Introductions should never be made through email. They should always be made through a third party, ideally in person.

Culture:

Mexican society and businesses place high value on relationships and respect for hierarchy. Family and loyalty are very important. Mexico has a hard-working labor force; however, people may easily change from one job to another if offered better economic compensation or more opportunity. There is a strong contingent of English-speaking managers.

Americans, who are used to direct responses, may encounter issues with non-committal responses. Many Mexicans believe saying “no” is rude. If someone is not interested in a deal they may be unwilling to tell you directly. Instead, they will eventually stop taking calls, and may send a polite but non-committing letter. This often causes business meetings to be unnecessarily and unintentionally long.

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Avoiding misunderstandings due to different business norms or different management styles:

Cultural due diligence and integration should be done early in the process to avoid any issues. This is harder if no one on the U.S. side speaks Spanish.

With few exceptions, the further south you go, the more family-run businesses you encounter, and the more personal business becomes. It takes time to get to know your Mexican counterparty, and, ideally, this should be done in non-business situations. Mexicans particularly enjoy long lunches, but do not like long dinners.

Mexicans are highly sensitive to authority. It is rare for a subordinate to have an opinion contrary to that of his/her boss, and even more unusual for him/her to express it publicly, even if encouraged. To alleviate this situation, cultural training is recommended for parties on both sides of the deal. At the onset of a deal, you may want to convene with all senior managers from both parties to relay expectations, after which subordinates may have an easier time acting autonomously. A meeting with subordinates will be more successful in an informal setting outside of the office, as long as senior management has given permission.

Government and Legal Issues

Government:

Mexico is a federal republic, composed of 32 independent States (31 plus the capital), very much like the United States of America.

Executive Branch: The federal government is headed by the President and each State government is headed by a governor. Presidential and gubernatorial terms consist of 6 years, with no possibility of reelection.

Legislative Branch: Mexico's federal legislative branch is composed of two houses. The Chamber of Representatives consists of 500 representatives elected for 3 year terms. Those elected in 2018 may be re-elected for up to four additional and consecutive 3 year terms. The Senate consists of 128 senators elected for 6 year terms. Those elected in 2018 may be re-elected for up to two additional and consecutive 6 year terms).

Each Mexican State has its own local congress, composed of one Chamber of Representatives. The number of representatives varies from state to state. At this time, the representatives elected to local congresses have 3 year terms and cannot be reelected for consecutive terms. The president appoints Supreme Court magistrates for life. They can only be removed by impeachment and a guilty verdict. The Supreme Court magistrates appoint other justices for six year terms. The Supreme Court has both original and appellate jurisdiction in four divisions: civil, administrative, penal and labor. Appeals from the district courts are heard by circuit courts.²

Corporate Governance:

In general, public companies, and more frequently private companies, have been revising their Corporate Governance strategies. Historically speaking, a member of the Board of Directors would be the only person to follow up on the operational matters of a company. Except for publicly-listed corporations, Corporate Governance was practically non-existent. The best

² <http://www.nationsencyclopedia.com/Americas/Mexico-JUDICIAL-SYSTEM.html>

positions were usually destined to family members or trusted friends. Boards of Directors (except for those of publicly-listed corporations) are rarely composed of independent members.

However, trends are shifting to be more inclusive of outside influence. Outside people are more frequently appointed to Boards of Directors. As such, the boards have increased in importance, improved business practices, and boosted the appearance of professionalism for their companies.

Labor Laws:

“Employees are highly protected under Mexico’s Federal Labor Law and also under Mexico’s new labor law amendments. For example, while there are special provisions which allow for third party employment such as outsourcing, provisions are stringent and implementation is difficult. “

Labor law in Mexico is a federal, rather than a state, matter. From the perspective of a business owner, compliance may seem difficult and expensive. It is all too easy to underestimate or misunderstand liabilities.

For example, it remains very expensive to terminate an employee, despite recent reforms. Severance payment obligations in cases where an employee is terminated without legal cause are close to three months salary plus 12 days for every year of employment.

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While salaries in Mexico are lower than in other countries, which may represent a competitive advantage, social security contributions are high

Both local and federal labor courts utilize complicated procedures. Because of this, most Mexican labor suits are settled out of court. We recommend hiring a local expert who will be able to analyze specific situations and ascertain any labor situations where a company might be liable. But beware—there are many people who call themselves labor specialists and operate with varying levels of integrity and ability.

Regulatory Compliance:

Mexico has federal, state and local laws and regulators. At times there are competing jurisdictions which makes it difficult and expensive to comply with all applicable laws. While efforts are being made to simplify these matters, much work remains to be done.

Adjustments to public policies are required to increase competitiveness, and for such purposes, Mexico’s federal government incorporated structural reforms on certain legislations. These areas include, but are not limited to, labor, communications, fiscal, energy, and financial, and help to streamline the economy and boost productivity.

The states attracting the most foreign and local investment are those where all governing bodies have reached agreements to [cooperate](#)³. A downloadable spreadsheet of investment by Mexican state is at <http://www.cefp.gob.mx/intr/bancosdeinformacion/estatales/indicadore socioeconomicos/is020.Xls>. It is also attached as an appendix at the end of this paper.

For foreign investment, we also recommend:

<http://www.state.gov/documents/organization/241873.pdf>

Factors that trigger cross border mergers and acquisitions in the middle market:

Strong demographics, ongoing structural reforms, good fiscal management at the government level, and a stable economic environment are all indicators of a market ready for cross border M&A. Close proximity to the U.S. has historically contributed to good business relationships, while trade agreements have also continued to attract interest from Japan and China.

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Other factors include a heightened influence from federal regulators and courts compared to local and state courts. Federal courts tend to be better prepared and are more foreign investor-friendly. Large infrastructure investments announced by the federal government, a strong contingent of English-speaking managers, and a reduced (yet still considerable) influence of militant unions also contribute.

In several situations, company acquisitions abroad trigger the acquisition of their Mexican subsidiaries, most of which are middle market companies. As a result, foreign investments from all over the world serve to trigger further M&A activity within Mexico. In the early 2000’s, there was an increase of foreign investment start-ups in almost every state within Mexico, many of which came about in this manner.

What is the ideal framework for success in cross-border acquisitions?

While there are trends in some countries that indicate the highest potential in cross border happens when the firms tend to share similar or complementary operations in production, technology, or marketing, this trend is not necessarily true in Mexico. Often, this is due to a disparity of resources. Foreign companies might invest US\$50 million or more in a transaction in their home countries; yet very few local companies can do the same in Mexico. There are, however, niche opportunities in several industries. Prospectors should be careful when choosing the region in Mexico where they would like to grow or buy.

³ <http://www.cofemer.gob.mx/contenido.aspx?contenido=298>

There are strong regional differences between the northern and southern states, and between the eastern and western states. Generally speaking, northern states focus on manufacturing (Maquiladora) for heavy and energy-related industries; the eastern states are focused on the energy and chemical sectors; the central states on the automotive, agricultural and aerospace sectors; and the western states on the agricultural and software programming industries. Services, telecommunications and financial industries concentrate in Mexico's three major cities (Mexico City, Monterrey and Guadalajara). Unfortunately, the southern states have yet to develop significant industries other than hospitality and oil extraction.

Current Opportunities

Opportunities exist in the following industries:

- Telecom (particularly non-traditional media such as video streaming and internet music services)
- Mid-size health services providers (US\$50 million or less)
- Consumer goods
- Manufacturing (particularly automotive)
- Energy (pipeline engineering and construction and all related components, storage facilities design and operation and their components)
- Real estate (especially regarding apartment or office buildings for rent)
- Finance (non-bank banks which provide consumer finance but do not take deposits)
- Generic pharmaceutical manufacturing.

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Suggestions for building successful post-integration strategies in the cross border environment:

Post-merger integration should be considered and acted on before the deal is concluded. Senior managers need to lead the effort, clearly defining the strategy and assigning leaders prior to execution. It is important to address legal/regulatory, staff development, communication, and cultural issues in cross-border situations.

Specialists should be hired in order to analyze and articulate the target company’s regulatory environment, ranging from its status as an employer to its environmental compliance expectations at the deal’s completion. Non-Mexican managers should familiarize themselves quickly with such regulatory and otherwise informal environments. It is recommended that an experienced Mexican manager should head the operation at the onset in order to facilitate the above.

It is also recommended that experienced (and good-standing) Mexican partners at the target company’s board level be involved quickly to avoid most pitfalls that local Mexican companies encounter (i. e. , non-independent or inexperienced board members). Best-practice governance

matters should be adopted promptly, and board members should be vested with a sense of accountability from the onset of their appointment. It is also recommended that a party from the foreign country be appointed to serve as liaison between the two companies, as it is difficult for a Board-level executive to involve himself/herself in the day-to-day affairs of the company.

Appendix: **Foreign Direct Investment by Mexican State**

(millions of dollars)

State	2015*		2015 (1 st half)*
	I	II	III
National Total	8,330.7	5,419.0	13,749.7
Aguascalientes	325.1	63.2	388.3
Baja California	270.5	222.7	493.2
Baja California Sur	53.3	52.5	105.8
Campeche	113.5	-8.1	105.5
Chiapas	73.3	16.1	89.3
Chihuahua	292.9	372.3	665.1
Coahuila	244.8	90.2	335.0
Colima	22.8	23.3	46.1
Distrito Federal	2,120.3	1,014.0	3,134.3
Durango	22.8	41.3	64.2
Estado de México	821.9	1,119.8	1,941.7
Guanajuato	286.2	111.6	397.8
Guerrero	65.1	35.5	100.5
Hidalgo	158.6	75.6	234.3
Jalisco	1,065.0	285.9	1,351.0
Michoacán	126.1	43.0	169.1
Morelos	195.3	55.8	251.1
Nayarit	21.6	19.0	40.7
Nuevo León	844.5	374.2	1,218.7
Oaxaca	-157.1	27.0	-130.1
Puebla	115.6	172.0	287.5
Querétaro	95.6	129.9	225.5
Quintana Roo	52.2	-15.9	36.3
San Luis Potosí	220.2	507.4	727.6
Sinaloa	93.9	70.9	164.8
Sonora	269.9	110.0	379.9
Tabasco	70.8	19.0	89.8
Tamaulipas	150.7	145.3	296.1
Tlaxcala	17.0	13.8	30.8
Veracruz	354.5	123.6	478.1
Yucatán	49.8	31.3	81.1
Zacatecas	-125.9	76.4	-49.5

*1 A new method was applied beginning in the first quarter of 2015 that considers the operational presence with FDI in each entity. The information is obtained through new questionnaires which combine the national register of foreign investment companies with FDI and analysis of operational distribution. The Secretariat of the Economy is revising figures for 1999 -2014 to the same standard so comparisons can be made.

*2 Information between January 1 and June 30, 2015

Source: Prepared by the Center for the Study of Public Finance with data from the General Directorate of foreign investment of the Economic Ministry.

Our Contributors



Luis de la Prida (MBA, CM&AA) is a Business Intermediary at Strategic Merger & Acquisition Advisors, where he works closely with clients to help them navigate the complexities of acquiring or selling a business, Exit Planning, and Business Valuation. During his 25-plus year career, Luis has been a trusted advisor to Fortune 500 and Small and Mid-sized firms in the financial, health care, real estate, and professional services industries. Luis gained valuable international experience in various financial roles at J.P. Morgan and Credit Suisse First Boston and as a financial correspondent for Worldly Investor.

Emilio Carrilo *(photo and biography to come)*



John Robert Colter-Carswell is the Director and managing partner of Colter Carswell & Associates, S.C., has been practicing law in Mexico for more than 25 years. He has been the inside Legal Counsel for Mexican conglomerates, involved in domestic and international legal issues involving business transactions, international trade, due diligence and mergers & acquisitions related to Mexican abroad. He is well known, among legal, corporate, and government institutions and associations throughout the region.