iclg

Private Equity 2025

11th Edition

Contributing Editors:

Ryan Miske and Adam Rosenthal

Faegre Drinker Biddle and Reath LLP

bvca
Invested in a better future

glg Global Legal Group

Mexico


Luis González


Fernando Eraña


Alberto Díaz de León


Marshall Watson

Pérez Correa González

1.1 What are the most common types of private equity transactions in your jurisdiction? What is the current state of the market for these transactions?

According to the Mexican Association of Private Equity's (AMEXCAP) *Brief Perspective of the Mexican Private Equity Industry 2025*: "private equity funds invested more than US$6 billion in Mexican companies, through more than 230 deals. The 2024 investment was largely driven by investment in infrastructure and energy, as around 50% of the investment was through this strategy, Debt and Venture Capital, which contributed 25% and 16%, respectively".

1.2 What are the most significant factors currently encouraging or inhibiting private equity transactions in your jurisdiction?

The current situation concerning commercial policy in the United States has inhibited the Mexican transactions market in general.

1.3 Are you seeing any types of investors other than traditional private equity firms executing private equity-style transactions in your jurisdiction? If so, please explain which investors, and briefly identify any significant points of difference between the deal terms offered, or approach taken, by this type of investor and that of traditional private equity firms.

Family offices have been executing private equity-style transactions, with similar terms to private equity funds.

2.1 What are the most common acquisition structures adopted for private equity transactions in your jurisdiction?

In our experience, the most common types of acquisition structure are convertible debt and equity investment (some transactions involve common stock with minority protections, whilst others use preferred stock).

2.2 What are the main drivers for these acquisition structures?

The main driver of the acquisition structure is the investment strategy of each private equity fund.

2.3 How is the equity commonly structured in private equity transactions in your jurisdiction (including institutional, management and carried interests)?

Equity is structured in a very similar way to transactions in the United States, though this depends on the type of transaction. In cases of growth, a management team typically holds a carry between 8–15% after covering a preferred return (usually 8%) for the equity raised. All terms will usually be in U.S. dollars; private equity funds have traditional 2/20 terms. Board seats and other governance levers are also requested.

2.4 If a private equity investor is taking a minority position, are there different structuring considerations?

Yes, valuation tends to differ (control tends to be more expensive). It will depend on each fund's investment strategy but, in substance, they are very similar and include (depending on the actual percentage of equity that is being taken): a seat at the Board of Directors (in minority positions, this is not always granted); information rights; drag- and tag-along rights; right of refusal/right of first offer; and the requirement of an affirmative vote from the fund, in the case of material decisions concerning the target or the business.

2.5 In relation to management equity, what is the typical range of equity allocated to the management, and what are the typical vesting and compulsory acquisition provisions?

This will depend on each fund's investment strategy, but a pool of 8–15% is typical. Vesting will be based on a combination of time (with a cliff) and milestones (e.g., performance, usually with an internal rate of return (IRR) above 20%). The company will have the right to acquire the vested shares and terminate the vesting if the employee is terminated with cause or leaves the company before their mandatory term.

2.6 For what reasons is a management equity holder usually treated as a good leaver or a bad leaver in your jurisdiction?

The law on this matter is very similar to that of the United States. If the equity holder is terminated with cause, or before their committed term, they will be considered a bad leaver.

3.1 What are the typical governance arrangements for private equity portfolio companies? Are such arrangements required to be made publicly available in your jurisdiction?

Typical governance arrangements are a minority position (which can be as high as 49%) with minority protection rights, voting rights, information rights and the right to appoint a director. These arrangements are not required to be publicly available.

3.2 Do private equity investors and/or their director nominees typically enjoy veto rights over major corporate actions (such as acquisitions and disposals, business plans, related party transactions, etc.)? If a private equity investor takes a minority position, what veto rights would they typically enjoy?

Veto rights are not typical but are sometimes negotiated. It is more common to have a qualified vote (which includes private equity investors, or affirmative rights where the approval of certain corporate resolutions requires an affirmative vote of the minority) in respect of any material action that may affect the position or the return in investment of the private equity fund, such as amendment to the company's bylaws, incurring in debt, related-party transactions, acquisitions and disposals, decree and payment of dividends, among others.

3.3 Are there any limitations on the effectiveness of veto arrangements: (i) at the shareholder level; and (ii) at the director nominee level? If so, how are these typically addressed?

A veto by the Board of Directors can be overruled by a shareholders' meeting; therefore, any veto arrangement should be embedded in both the rules governing the Board of Directors (e.g., that such resolution is approved by the director appointed by the private equity fund or that such director can veto the resolution within a certain amount of time upon approval) and the rules governing the shareholders' meeting (e.g., that such resolution is approved by the minority shareholder or that such minority shareholder can veto the resolution within a certain amount of time upon approval).

3.4 Are there any duties owed by a private equity investor to minority shareholders such as management shareholders (or *vice versa*)? If so, how are these typically addressed?

No, there are not.

3.5 Are there any limitations or restrictions on the contents or enforceability of shareholder agreements (including (i) governing law and jurisdiction, and (ii) non-compete and non-solicit provisions)?

Corporate governance provisions contained in the shareholders' agreement should be included in the company's bylaws (which require notarisation by a Notary Public and registration with the Public Registry of Commerce) to be enforceable. Non-compete provisions should be carefully drafted and make specific reference to the consideration that the party subject to them will receive limited territory (i.e. no greater than the territory where the company conducts business) and scope (typically three years).

3.6 Are there any legal restrictions or other requirements that a private equity investor should be aware of in appointing its nominees to boards of portfolio companies? What are the key potential risks and liabilities for (i) directors nominated by private equity investors to portfolio company boards, and (ii) private equity investors that nominate directors to boards of portfolio companies?

No restrictions or other requirements apply. There is a potential risk of personal liability for any director (including nominees of a private equity fund to a portfolio company), which would arise as a result of their actions. The General Law of Commercial Companies (*Ley General de Sociedades Mercantiles*) provides a list of scenarios, in which a director may be held jointly and severally liable with the company for the following: (i) unpaid contributions by the shareholders registered as paid; (ii) compliance of legal requirements applicable to the payment of dividends; (iii) the existence and maintenance of the company's accounting, control, registry, archive or information systems required under law; and (iv) due fulfilment of the shareholders' resolutions.

3.7 How do directors nominated by private equity investors deal with actual and potential conflicts of interest arising from (i) their relationship with the party nominating them, and (ii) positions as directors of other portfolio companies?

This is dealt with on a case-by-case basis by each private equity fund. In the case of Mexico, most funds tend to be fairly agnostic, so it is difficult to encounter a conflict of interest. Notwithstanding, any potential conflict of interest must be disclosed prior to the nomination. When a resolution is being taken that will result in a conflict of interest for a director, then such director must refrain from participating in the decision-making and refrain from voting.

4.1 What are the major issues impacting the timetable for transactions in your jurisdiction, including antitrust, foreign direct investment and other regulatory approval requirements, disclosure obligations and financing issues?

Typically, antitrust will have a major impact on the timetable of transactions in Mexico. Foreign investment faces no major restrictions in Mexico (excluding a very specific list of activities that are either reserved to the State or to Mexican nationals).

4.2 Have there been any discernible trends in transaction terms over recent years (i.e. trends in terms of regulatory approval)?

There have been no recent trends.

5.1 What particular features and/or challenges apply to private equity investors involved in public-to-private transactions (and their financing) and how are these commonly dealt with?

The regulations applicable to public acquisitions and investment do not distinguish between private equity investors and non-private equity investors. The requirements for public-to-private transactions vary depending on the project (e.g., hospitals would have different requirements to prisons) but not in respect of whether or not the bidder is a private equity investor.

5.2 What deal protections are available to private equity investors in your jurisdiction in relation to public acquisitions?

The deal protections available to investors range from constitutional provisions to administrative or judicial procedures; these are the same for both private equity investors and non-private equity investors.

6.1 What consideration structures are typically preferred by private equity investors (i) on the sell-side, and (ii) on the buy-side, in your jurisdiction?

Regulations and circumstances have changed, of which private equity investors and market players are aware. *Asociaciones en Participación* (a type of joint venture) and trusts seem to be the most favoured structures – both the sell-side buy-side are in the same boat.

6.2 What is the typical package of warranties / indemnities offered by (i) a private equity seller, and (ii) the management team to a buyer?

Transaction documents typically include a general indemnity clause detailing indemnity events and indemnified parties. This clause will include, among others, the buyer, its shareholders, affiliates, officers, directors and the management team.

6.3 What is the typical scope of other covenants, undertakings and indemnities provided by a private equity seller and its management team to a buyer?

Covenants, undertakings and indemnities provided by a seller will usually provide an obligation to hold the buyer and its management team free/protected from any actions and claims of third parties in connection with the private equity investment. These are secured with escrow or deferred payments contingent on outlined items in the share purchase agreement (e.g., in the case of a breach, the deferred payment will be not made or indemnities will be deducted).

6.4 To what extent is representation & warranty insurance used in your jurisdiction? If so, what are the typical (i) excesses / policy limits, and (ii) carve-outs / exclusions from such insurance policies, and what is the typical cost of such insurance?

Representations & warranties (R&W) insurance is still relatively uncommon in Mexico. When used, terms and conditions (including costs) vary on a case-by-case basis.

6.5 What limitations will typically apply to the liability of a private equity seller and management team under warranties, covenants, indemnities and undertakings?

Indemnity and liability provisions tend to be granted to the fullest extent of the law and are limited to bad faith and wilful misconduct, which cannot be waived.

6.6 Do (i) private equity sellers provide security (e.g., escrow accounts) for any warranties / liabilities, and (ii) private equity buyers insist on any security for warranties / liabilities (including any obtained from the management team)?

Escrow accounts are the most common form of security granted by sellers and requested by buyers.

6.7 How do private equity buyers typically provide comfort as to the availability of (i) debt finance, and (ii) equity finance? What rights of enforcement do sellers typically obtain in the absence of compliance by the buyer (e.g., equity underwrite of debt funding, right to specific performance of obligations under an equity commitment letter, damages, etc.)?

In cases of debt finance, obligations are typically secured with the assets of the company. In the case of equity finance, in the absence of compliance, the parties can agree to conventional penalties or damages and losses.

6.8 Are reverse break fees prevalent in private equity transactions to limit private equity buyers' exposure? If so, what terms are typical?

Yes; the amount varies but is typically approximately 5% of the transaction price. Reverse break fees usually occur during the binding Letter of Intent phase.

7.1 What particular features and/or challenges should a private equity seller be aware of in considering an IPO exit?

There have been no initial public offerings (IPOs) in Mexico since 2020; on the contrary, there has been a trend to delist publicly traded companies from the Mexican stock exchange.

7.2 What customary lock-ups would be imposed on private equity sellers on an IPO exit?

See question 7.1 above.

7.3 Do private equity sellers generally pursue a dual-track exit process? If so, (i) how late in the process are private equity sellers continuing to run the dual-track, and (ii) were more dual-track deals ultimately realised through a sale or IPO?

See question 7.1 above.

8.1 Please outline the most common sources of debt finance used to fund private equity transactions in your jurisdiction and provide an overview of the current state of the finance market in your jurisdiction for such debt (including the syndicated loan market, private credit market and the high-yield bond market).

This information is not publicly available.

8.2 Are there any relevant legal requirements or restrictions impacting the nature or structure of the debt financing (or any particular type of debt financing) of private equity transactions?

No, there are no requirements or restrictions that have such impact on debt financing.

8.3 What recent trends have there been in the debt-financing market in your jurisdiction?

According to AMEXCAP, during 2024, 26% of all private equity transactions involved debt and 2% consisted of leveraged buyouts.

9.1 How prevalent is the use of continuation fund vehicles or GP-led secondary transactions as a deal type in your jurisdiction?

Secondary transactions as a deal type (follow-on investments) are common in Mexico. However, it should be noted that information on such types of transactions is not publicly available and actual numbers cannot be provided.

9.2 Are there any particular legal requirements or restrictions impacting their use?

No, there are no legal requirements or restrictions that impact the use of continuation funds or GP-led secondaries.

10.1 What are the key tax considerations for private equity investors and transactions in your jurisdiction? Are off-shore structures common?

In Mexico, private equity investors must consider income tax on capital gains from the source of wealth. However, exceptions apply to foreign entities under Double Taxation Avoidance Agreements (DTAs) and Tax Information Exchange Agreements (TIEAs), provided that they meet specific requirements.

Although offshore structures are common, strict compliance with transparency and anti-avoidance rules is required.

10.2 What are the key tax-efficient arrangements that are typically considered by management teams in private equity acquisitions (such as growth shares, incentive shares, deferred / vesting arrangements)?

Deferral and accrual agreements (also known as escrow agreements) are essential tools for private equity transactions in Mexico. They provide financial and tax security, protect acquirers from unforeseen risks, ensure compliance with tax regulations, and optimise transaction structures.

10.3 What are the key tax considerations for management teams that are selling and/or rolling over part of their investment into a new acquisition structure?

Management teams selling or transferring private equity investments should prioritise tax compliance by providing comprehensive reports and, if applicable, tax opinions. They should also consider the income tax impact of transfers, including applicable withholding taxes and possible exemptions under international treaties.

10.4 Have there been any significant changes in tax legislation or the practices of tax authorities (including in relation to tax rulings or clearances) impacting private equity investors, management teams or private equity transactions and are any anticipated?

Recent changes, such as the incorporation of articles regulating income obtained by foreign residents through transparent entities or vehicles, identification obligations for ultimate beneficial owners, reporting requirements for reportable schemes, and the designation of joint and several registered tax representatives for foreign tax residents, have increased transparency and tax compliance in private equity transactions in Mexico.

11.1 Have there been any significant legal and/or regulatory developments over recent years impacting private equity investors or transactions and are any anticipated?

There have been no recent developments impacting private equity investors and transactions.

11.2 Are private equity investors or particular transactions subject to enhanced regulatory scrutiny in your jurisdiction (e.g., on national security grounds)?

No, they are not.

11.3 Are impact investments subject to any additional legal or regulatory requirements?

No, they are not.

11.4 How detailed is the legal due diligence (including compliance) conducted by private equity investors prior to any acquisitions (e.g., typical timeframes, materiality, scope, etc.)?

This depends on the individual case and varies with each fund – venture capital transactions tend to require less intrusive due diligence processes than larger, private equity transactions. Timeframes will also vary but generally tend to last between one and three months. Each due diligence procedure tends to focus on material issues that might impair the transaction or create a material legal contingency for the company.

11.5 Has anti-bribery or anti-corruption legislation impacted private equity investment and/or investors' approach to private equity transactions (e.g., diligence, contractual protection, etc.)?

No, although the recent categorisation of Mexican drug cartels as terrorist organisations by the U.S. Government has raised awareness in the market of the need for conducting a strong due diligence process and solid compliance programmes.

11.6 Are there any circumstances in which: (i) a private equity investor may be held liable for the liabilities of the underlying portfolio companies (including due to breach of applicable laws by the portfolio companies); and (ii) one portfolio company may be held liable for the liabilities of another portfolio company?

No, there are not.

12.1 What other factors commonly give rise to concerns for private equity investors in your jurisdiction or should such investors otherwise be aware of in considering an investment in your jurisdiction?

There are no relevant factors that are a cause for concern or of which investors should be aware, other than those already discussed in the sections above.

Luis González has over 30 years of experience. His practice focuses on Private Equity, Venture Capital and Public, Foreign Investment, Mergers & Acquisitions and Corporate matters, with an emphasis on Real Estate transactions. He was a pioneer in Private Equity & Venture Capital, representing equity funds in transactional matters, and an advisor to NAFIN's Entrepreneurship Trust. Currently, he is chair of the Cross-Border Real Estate Committee (American Bar Association (ABA)), senior advisor of the International Corporate Counsel Committee (ABA), former president and advisor of the International Private Equity & Venture Capital Committee (ABA), an active mentor of Endeavor Mexico, a member of the Diversity & Inclusion Council (International Bar Association (IBA)), a member of the Steering Group of the International M&A and Joint Venture Committee (International Law Section – ABA), as well as treasurer of the Georgetown Club in Mexico. Luis is recognised by *Chambers and Partners*, *The Legal 500*, *IFLR1000*, *LACCA Approved* and *Best Lawyers*.

Pérez Correa González
Citi Center Building | Insurgentes Sur 1602
11th Floor – Suite 1102, Crédito Constructor, Benito Juárez
03940, Mexico City, Mexico

Tel: +52 55 5062 0056
Email: lgonzalez@pcga.mx
LinkedIn: www.linkedin.com/in/luisgonzaleznieves

Fernando Eraña is a partner at Pérez Correa González with over 20 years of experience, focusing his practice on Mergers & Acquisitions and Banking & Finance (with an emphasis on Private Equity & Venture Capital transactions, Technology, Startups and Cross-Border Financing) and serving a broad portfolio of clients including investment funds, financial technology companies, non-bank financial institutions and public and private companies. He is currently chair of the North American Regional Forum of the IBA, vice chair of the Private Equity and Venture Capital Committee of the ABA. During 2007, he was a Foreign Associate at O'Melveny & Myers in Los Angeles, California. He is highly regarded by *Chambers and Partners*, *The Legal 500*, *IFLR1000* and *Best Lawyers*.

Pérez Correa González
Citi Center Building | Insurgentes Sur 1602
11th Floor – Suite 1102, Crédito Constructor, Benito Juárez
03940, Mexico City, Mexico

Tel: +52 55 5062 0054
Email: ferana@pcga.mx
LinkedIn: www.linkedin.com/in/fernando-era%C3%B1a-5aa6ab1

Alberto Díaz de León has over 20 years of experience in the Tax Law area, working as an official of the Tax Administration Service (SAT), as well as providing his services to several national and foreign companies in PricewaterhouseCoopers (PwC) Mexico. At the SAT, he had the opportunity to participate in the analysis of tax evasion schemes, audit reviews and potential joint and several liability determinations. At PwC Mexico, he has supported various entities with: the application for the adoption of conclusive agreements; requests for federal tax refunds; administrative appeals and nullity trials; constitutional appeals against laws; and specialised advice on legal issues of a tax nature.

Pérez Correa González
Citi Center Building | Insurgentes Sur 1602
11th Floor – Suite 1102, Crédito Constructor, Benito Juárez
03940, Mexico City, Mexico

Tel: +52 55 5985 0417
Email: adiaz@pcga.mx
LinkedIn: www.linkedin.com/in/alberto-diaz-de-leon

Marshall Watson is a U.S. attorney with eight years of litigation experience. His practice areas have focused on corporate defence, complex litigation, workers' compensation, tort, insurance defence and first-person property insurance claims, privacy violations, and various corporate disputes. Today, he utilises that experience to advise clients in multinational corporate matters.

Pérez Correa González
Citi Center Building | Insurgentes Sur 1602
11th Floor – Suite 1102, Crédito Constructor, Benito Juárez
03940, Mexico City, Mexico

Tel: +52 55 5001 5420
Email: mwatson@pcga.mx
LinkedIn: www.linkedin.com/in/marshall-watson-87a001143

Pérez Correa González is a full-service law firm based in Mexico City, with a solid and highly qualified team that brings together a wealth of knowledge and expertise, making it well-equipped to handle complex legal matters. With over 30 years' experience from most of our partners, we understand the current needs of the market and provide clients with personalised services based on trust, honesty, excellence and integral legal solutions. The firm represents domestic and foreign clients, including public and private companies, Fortune 500 companies, investment funds, government agencies, non-profit organisations, and entrepreneurs at different stages of their endeavours. One of our key strengths is the balance between our corporate and dispute resolution practices; this integrated approach enables us to offer comprehensive legal advice in structuring business operations and addressing complex legal challenges. We promote the implementation of policies on environmental protection, labour welfare, non-discrimination, and inclusion, as well as the positive social impact of business activity. In an ever-evolving landscape, we know that companies must become more agile and adapt their operations and decision-making to meet ESG goals with greater responsibility and commitment.

www.pcga.mx

PÉREZ CORREA
GONZÁLEZ