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Colombia
Mergers & Acquisitions

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This country-specific Q&A provides an overview of mergers & acquisitions laws and regulations applicable in Colombia.

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Colombia: Mergers & Acquisitions

1. What are the key rules/laws relevant to M&A and who are the key regulatory authorities?

At a regulatory level, Colombia has achieved an important development of merge and acquisitions ("M&A") transactions, seeking protection of the right to competition and guaranteeing fiscal stability, among other relevant matters. These are the main provisions when talking about M&A transactions:

i. Colombian Code of Commerce, Law 222 of 1995 and Law 1258 of 2008 which establishes the fundamental regulation of M&A. At more specific level, Law 222 of 1995 modernized the regulations established in the Colombian Code of Commerce, facilitating the processes of corporate restructuring, and Law 1258 de 2008 establishes the rules applicable to M&A of simplified stock companies (*sociedades por acciones simplificadas*) in Colombia.
ii. Law 964 of 2005 which regulates the negotiation of securities and M&A operations in the capital market, establishing additional requirements for them.
iii. Organic Statute of the Financial System and Decree 2555 of 2010 compiles the applicable rules to M&A operations in the financial sector.
iv. Law 1340 of 2009 which establishes the applicable rules to control M&A operations in terms of competition protection.
v. Tax Statute that establishes the tax effects and minimum tax requirements that must be met in M&A transactions

On the other hand, the regulatory structure in Colombia regarding M&A transactions has the supervision of different authorities, namely:

i. The Superintendence of Industry and Commerce ("SIC"), studies the impact that this type of operations can have on the market. The SIC also have the competence to impose conditions or reject operations that generate anticompetitive effects in the market.
ii. The Financial Superintendency of Colombia ("SIF"), is the competent authority when there are M&A operations of financial sector entities and where listed regulated companies are involved.
iii. The Superintendency of Companies ("SIS"),may intervene in M&A processes, especially when intervened regulated companies are involved.
iv. The Bank of the Republic of Colombia competent to regulate situations where there is foreign investment in companies under certain conditions, or where the operation may affect the economic system.

2. What is the current state of the market?

Currently, it could be said that the M&A market in Colombia is going through a rebalancing stage, which responds to a progressive reactivation of the economy after a period of deceleration, marked by economic uncertainties, exchange rate volatility, and a special tension between market players and the current government.

Although the government's stance may have generated some caution among foreign investors, especially due to the highly protective regulatory context and change in the tax conditions, it has not been a decisive factor in stopping the rebalancing sought by the market; in fact, this reactivation has been driven by the country's investment attractions, such as the strength of different sectors of the economy, geographic diversification, among others. The technology, food, aviation, agribusiness and construction sectors have played a key role in this economic recovery, although construction has faced major challenges considering the current change of regulatory and housing subsidies policies issued by the government.

3. Which market sectors have been particularly active recently?

The sectors that have led M&A transactions in Colombia are related to technology, financial services and renewable energies. An example of this is the recently announced merger between Banco Davivienda S.A. and Scotiabank Canada, which is expected to be completed in the last quarter of 2025.

Likewise, the energy transition promoted by the current government has boosted operations with companies that provide these services, seeking to adapt the traditional companies that exploit natural resources. In the same manner, the area of technology and digital services has found great growth, especially for its scope in different areas such as financial, educational, and legal

4. What do you believe will be the three most significant factors influencing M&A activity over the next 2 years?

Considering the economic and political conditions, we believe the following 3 factors will significantly influence M&A activities:

(i) Energy Transition

Since the current administration has promoted decarbonization in industrial scenarios, stopping Colombia's economic dependence on fossil fuels, which translates into a future with a greater flow of operations with renewable energies; therefore, companies engaged in the extraction of oil, gas or mining will seek strategic acquisitions, seeking to adapt their portfolios to the reality of energy.

(ii) Increased Restrictions and change in tax regulation

Recently, the current Colombian government has taken important decisions that can affect M&A operations, such as the stamp tax in Colombia, which is mainly levied on documents executed in the national territory under certain conditions. This decision was adopted in the midst of the internal commotion situation, regarding the emergency that the Catatumbo region in Colombia is currently facing, by means of Decree 175 of 2025, which came into force from 22 February 2025 until 31 December. Measures such as this increase the costs of these of M&A operations.

On the other hand, given the pro-guaranteed nature of the current government, there is a possibility that more invasive or restrictive antitrust control policies will be promoted, which could affect strategic transactions for economic development.

(iii) Change of government

Due to the presidential elections scheduled for 2026, investors may be cautious in their behavior, as they must assess the political risks they face. In the M&A market, many companies may decide to postpone their strategic decisions until they are clear about the political and economic orientation of the next government; this phenomenon tends to intensify between 12 and 18 months before the elections. However, there are investors with a higher risk tolerance as consequence, for example, of the length of their projects, who can take advantage of this political uncertainty to execute these transactions.

5. What are the key means of effecting the acquisition of a publicly traded company?

The most common way to acquire a publicly traded company is through a Public Tender Offer ("*Oferta Pública de Adquisición* – "*OPA*"). According to article 6.15.2.1.1 – Decree 2555 of 2010, if someone intends to acquire control, either directly or indirectly of any company listed on the stock market, to; (i) become a beneficial owner of 25% or more of the capital with voting rights or (ii) increase its participation by more than 5%, having previously being a beneficial owner of 25% or more of the capital with voting rights, will have to address a Public Tender Offer to all the shareholders of the company.

Additionally, it is also possible to acquire shares directly in markets such as the Colombian Stock Exchange (Market Purchase), without exceeding the aforementioned percentages, otherwise, the obligation to present the Public Tender Offer must be fulfilled.

Other options for acquiring a publicly traded company are:

i. Spin-offs, in which the public company divides its assets or issues new shares, used especially when partial acquisitions are made,
ii. Acquisition by merger, where a listed company may be absorbed or merged with another company, where the agreement may include as consideration payment in the form of shares.
iii. Stock Swap, a company which seeks to be an acquirer, may offer its own shares in exchange for the shares of another company.

6. What information relating to a target company is publicly available and to what extent is a target company obliged to disclose diligence related information to a potential acquirer?

The information publicly available during the M&A process depends on whether the company is a publicly traded company or not.

For publicly traded companies, high standards of transparency are required due to the disclosure obligations of the stock market regime. Information publicly available for this type of company consists of: **(i)** annual auditable financial statements and quarterly non-auditable financial statements, **(ii)** corporate governance reports and **(iii)** any relevant fact or legal situation that may have an impact on the share price. In the case of regulated sectors, these companies must share any additional reports requested by the corresponding control entities, such as the SIF in the cases of financial sector entities.

In the case of private companies, the public information consists of basic corporate matters available in the registry system of the Chamber of Commerce of the company's registered office and no further disclosure is required.

7. To what level of detail is due diligence customarily undertaken?

Due diligence in M&A processes must be adapted to the particularities of each transaction, determined by the size and complexity of the transaction, the nature of the companies involved and the sector to which they belong. In this sense, it is essential to analyze the information looking for any potential risk that affects the valuation of the business or even its viability, and in order to comply with any due diligence regulatory requirements applicable to the operation to be carried out.

In any case, it is important to make a study of the corporate structure, including key contracts and the existence of possible litigation, and of the financial situation, including credit obligations that the company has, without leaving behind the fiscal incidences that may arise, especially due to the complexity of the Colombian tax regime.

Depending on the size of the operation, from 3 to 10 years of operating history should be reviewed; specific areas such as anti-money laundering and anti-corruption, cybersecurity and personal data protection cannot be ignored. Likewise, due to robust Colombian protection to labor matters, labor contracts, union agreements, if any, specific cases of reinforced labor stability, independent contractors, among others, should be part of the due diligence process.

8. What are the key decision-making bodies within a target company and what approval rights do shareholders have?

The main decision-making bodies within a target company based in Colombia are the General Shareholders' Assembly, or Board of Partners in limited liability companies, and the Board of Directors, which is optional to simplified stock companies, each with different levels of authority to authorize transactions.

The General Shareholders' Assembly or the Board of Partners is the highest corporate body of a company, which has the power to approve mergers, spin-offs or transformations. At a second level, the Board of Directors, if applicable, among its functions, must filter M&A transactions, representing the interests of the shareholders and providing guidance. Likewise, if the Board of Directors, subject to the bylaws, has additional powers, they may make operational and strategic decisions regarding the process, as long as they do not substantially affect it.

It is important to note that the Colombian legislation allows the partners or shareholders of the company to exercise the right of withdrawal when the approved transaction imposes a greater liability or diminishes their equity rights (decreases the percentage of participation, decreases the equity value of the share or limits or diminishes the possibility of negotiating the share).

9. What are the duties of the directors and controlling shareholders of a target company?

As previously mentioned, the administrators fulfill essential functions to carry out operationally the M&A in Colombia; their fundamental duties are enshrined in article 23 of Law 222 of 1995, this article requires to act with good faith, loyalty and diligence of a good business name.

Applying diligence in the above-mentioned operations implies that the administrators must watch over the interests of the corporation and especially of the administrators without distinguishing between the majority and minority interests. Likewise, the administrators must rigorously evaluate the offers, avoiding any contingency, resorting to technical evaluations when merited, in other words, it must be an active and informed participation focused on maintaining the operation in the same way to avoid events that could affect the acquisition.

Regarding the duty of loyalty, it must be manifested in these operations by placing the interests of the company and its shareholders before those of the individuals or third parties involved, thus avoiding any conflict of interest and in the event of such a conflict, forming and refraining from participating in the decision.

10. Do employees/other stakeholders have any specific approval, consultation or other rights?

As a general rule, M&A processes do not require prior consultation or approval from employees or stakeholders.

However, if the M&A process requires, due to the structure of the transaction, to advance collective layoffs or substantial changes in the company's personnel, authorization from the Ministry of Labor will be required.

Additionally, if the due diligence process reveals contracts or agreements with stakeholders that contain clauses that expressly require their approval for the assignment of contracts or for the advancement of M&A processes, these authorizations must be requested in accordance with the provisions of said agreements.

11. To what degree is conditionality an accepted market feature on acquisitions?

In M&A transactions, conditionality is not a foreign element, in fact, it is fully accepted in this type of transaction, which responds to certain practices aligned with international standards. In these operations, compliance with certain conditions is usually agreed even after the signing, such as the authorization of administrative authorities, consent of third parties that may be affected by these decisions, such as the company's creditors.

However, it is important to note that publicly traded companies may have a more restrictive regime, especially by Decree 2555 of 2010, which specifies that the conditions in these operations must deal with minimum conditions of acceptance of the shares (when a minimum purchase of shares is expected to economically justify the operation, or regulatory approvals as mentioned above, since it is usual that in Colombia authorizations are required to avoid an abuse of the dominant position in the market).

12. What steps can an acquirer of a target company take to secure deal exclusivity?

As a general rule, exclusivity deals in M&A processes occur in the preliminary stages of negotiation and, to ensure this, parties may include such agreements in the letters of intent or memorandum of understanding signed by the parties to determine the general or specific terms of the transaction.

Notwithstanding, in some cases, the parties decide to regulate this matter as a separate agreement from the letter of intent or memorandum of understanding, in which the purchaser can negotiate the inclusion of penalty clauses or sanctions of various kinds due to non-compliance of the exclusivity duty of agreed among them.

13. What other deal protection and costs coverage mechanisms are most frequently used by acquirers?

Other deal protection and cost coverage mechanisms that can be used by acquirers can be the imposition of breakup fees that must be paid if the deal falls apart due to certain triggers (e.g., accepting a competing offer) or the enforceability of insurance, such as the representations and warranties insurance or the offer seriousness insurance.

14. Which forms of consideration are most commonly used?

In the Colombian M&A market, cash payment predominates as consideration, especially in transactions involving medium or small companies, since it can guarantee simplicity in the closing of operations.

However, hybrid structures have been proposed, combining a part in cash and another with deferred payments linked to certain goals (earn-outs), since the value of the business is subsequently established with the performance after the acquisition. In other cases, a stock-for-stock payment may be chosen, although this type of consideration is not highly common.

15. At what ownership levels by an acquirer is public disclosure required (whether acquiring a target company as a whole or a minority stake)?

Regarding private companies, when the acquisition of a shareholding interest generates a *control* situation over the company, this situation must be informed and registered before the corresponding Chamber of Commerce of the company's registered office. Likewise, if someone acquires 10% or more of the shares of publicly traded company, either directly or indirectly, they must inform the Financial Superintendency of Colombia ("SIF") and the corresponding stock exchange about this purchase; this information will be published in the mechanisms enabled according to the stock exchange. The above, in any case, considering the percentages mentioned for the purposes of the obligation to issue the Public Tender Offer mentioned in the previous questions.

16. At what stage of negotiation is public disclosure required or customary?

In principle, private companies do not have a legal duty to disclose trading information, unless the parties deem it necessary.

In the case of publicly traded companies, a report of any factor that may affect the price of the shares or that may influence the decision of future investors must be disclosed as soon as possible; usually, this information is published prior to the closing of the negotiation (in early stages), in order to protect the integrity of the market and prevent the use of privileged information. Likewise, when the definitive agreement is signed, the material information regarding the transaction is disclosed to the market.

17. Is there any maximum time period for negotiations or due diligence?

Colombian law does not provide for a maximum term to carry out negotiations or due diligence; this aspect is usually defined contractually by the parties, which is subject to factors such as the complexity of the transaction, the size of the company subject to the operation, sophistication of the parties, among others.

The Colombian reality has shown that it usually takes between four and eight weeks in cases of medium complexity, reaching up to six months for more complex cases. However, these terms may be extended if the operations require regulatory approval from any entity, even when the stock exchanges usually establish specific terms for the presentation of the offer, acceptance and execution of the transaction. Likewise, it is recommended to incorporate automatic termination clauses (long-stop dates) that enable the parties to terminate the agreement in case specific conditions are not met within the established deadlines.

18. Is there any maximum time period between announcement of a transaction and completion of a transaction?

There is no legal term between the announcement of a transaction and its execution, since this factor is usually determined by the complexity of each process. Notwithstanding, for publicly traded companies, the law establishes specific deadlines for certain stages of the transaction process; an example article 6.15.2.1.7. – Decree 2555 of 2010, states that; **(i)** the notice of the Public Tender Offer must be published at least 3 times with an interval of no more than 5 days, and **(ii)** the term for the acceptance of the Public Tender Offer r, although determined by the offeror, may not be less than 10 business days or more than 30 business days from the date on which the term for the receipt of acceptances begins.

19. Are there any circumstances where a minimum price may be set for the shares in a target company?

For publicly traded companies, article 6.15.2.1.10 – Decree 2555 of 2010, recognizes that generally the price of the securities object of public offer will be determined by the offeror, taking into account the following special rules:

i. If the offeror acquired shares within the prior 3 months, counted from the submission of the application to the Financial Superintendence of Colombia, the price cannot be lower that the higher price paid in such acquisition,
ii. If there is a pre-agreement for the offer, the price may not be lower than the highest price set in said pre-agreement.
iii. If there is a competing Public Tender Offer the price cannot be for a lesser amount or lesser price than the original Public Tender Offer.

In certain cases (e.g. forced purchase of minority shares when another shareholder acquires more than 90% of the capital of the company) the price must be determined by the appraisal entity, which will be qualified according to its suitability and independence in advance by the Financial Superintendence of Colombia.

For the case of private companies, pursuant to Article 90 of the Tax Code, the sale price of shares cannot be less than 130% of their intrinsic value.

20. Is it possible for target companies to provide financial assistance?

Even if there is no express prohibition for target companies to provide financial assistance, is important to validate in advance that any financial assistance does not affect the interests of the company or its shareholders, since these actions can constitute a direct violation of the duties of the administrators and even generate alleged conflicts of interest. Therefore, any financing by the recipient company must be justified as an act tending to benefit the company and more than an abuse of law or a simple deviation of corporate power, especially with companies listed on the stock exchange.

21. Which governing law is customarily used on

acquisitions?

M&A operations in Colombia are generally regulated by Colombian law. However, not all M&A operations are purely domestic, since sometimes foreign companies that seek to invest in other countries are involved in them; in these cases, a hybrid structure is can be handled, in which the interested foreigners can apply certain customs of stock exchanges such as the ones of New York.

22. What public-facing documentation must a buyer produce in connection with the acquisition of a listed company?

During the acquisition process of a publicly traded company, certain documents specified in Decree 2555 of 2010 and in the Basic Legal Circular of the Financial Superintendency must be published, among these documents we find; **(i)** the offer notice, **(ii)** the Public Tender Offer prospectus, this document usually includes the offer, price, conditions, financing, financial justification, risks associated to the operation, among others, **(iii)** any modification made to the offer and the final results of the operation must be included; the purpose of making them public is to guarantee transparency and equality of information to the shareholders. Finally, if the parties recognize any change in the management, in the taking of control and in any general condition that may affect the valuation of the company, these must be disclosed to the stock exchange and to the Colombian Financial Superintendency.

23. What formalities are required in order to document a transfer of shares, including any local transfer taxes or duties?

In Colombia there are certain formalities for the transfer of shares; **(i)** the endorsement of the company's shares to the transferee, **(ii)** the registration of the transfer of shares in the shareholder registry book of the company, and **(iii)** the cancellation of old shares and the issuance of new share certificates. Similarly, the transfer of shares of companies listed on the stock exchange is usually updated electronically without the need for a physical document or endorsement.

In any case, if the transfer of shares results in foreign investment, such investment must be registered before the Bank of the Republic of Colombia, otherwise the transaction may be declared as null.

On the other hand, with respect to the possible tax obligations, the transfer of shares may cause income tax, occasional income tax, and may even generate national stamp tax, considering the provisions of Decree 175 of 2025.

24. Are hostile acquisitions a common feature?

Practice has shown us that hostile takeovers are not so usual in the Colombian market, they tend to be infrequent phenomena, since in these operations trust and transparency prevail in business; another factor that may affect this scarcity is that the controlling groups maintain significant percentages in the participation, thus avoiding the taking of control without consent.

Nevertheless, in recent years, hostile acquisitions, such as the one of the Nutresa group, have begun to occur.

25. What protections do directors of a target company have against a hostile approach?

In the face of a hostile bid, the directors of a company have certain protections; article 23 of Law 222 of 1995 establishes that it is the duty of the directors to act with loyalty and diligence in the interests of the company, thus indirectly giving the directors the freedom to adopt defensive measures when the bid may affect the company's interests. For example, directors can seek alternative buyers to intervene to prevent the company from being taken over by another company in a hostile manner (white knight); likewise, another example of a defensive measure is to increase the company's indebtedness, prior to the takeover, to make it less attractive to potential acquirers (poison pills).

26. Are there circumstances where a buyer may have to make a mandatory or compulsory offer for a target company?

Indeed, for publicly traded companies, there are cases in which they are obliged to submit Public Tender Offers, as we previously mentioned. Similarly, for private companies, an obligation regarding the right of preference of shareholders can be included in their bylaws, which may establish that, in the case of the sale of shares, the offeror must first offer the shares to the company's shareholders to prevent them from losing decision-making power.

27. If an acquirer does not obtain full control of a

target company, what rights do minority shareholders enjoy?

Minority shareholders, unless the bylaws of the company provide otherwise, possess the same rights as majority shareholders, such as **(i)** the right to request information on the management and finances of the company, **(ii)** voting rights, **(iii)** the right to receive dividends, among others.

Notwithstanding, and even if the aforementioned rights are maintained by minority shareholders, none of them guarantee a truly effective mechanism that allows them to express their discontent in a way that has a real impact on the operation of the company.

This is where the right to freely negotiate shares—without being limited by preference rights or the tedious process of determining the value of the stake to be sold—may signify a vote of confidence to the management, by refusing to sell the shares, or a criticism, either of the way the economic matters has been managed and/or the conduct of the directors, by accepting the offer.

28. Is a mechanism available to compulsorily acquire minority stakes?

In Colombia, there is no available legal mechanism that obliges minority shareholders to sell their shares. Notwithstanding, it is important to mention that there are mechanisms aimed to ease the exit of shareholders, such as Tag Along and Drag Along clauses, which are established through shareholder agreements.

On the one hand, Tag Along clauses establish that, when any shareholder intends to sell any percentage of their stake, they must inform the other shareholders so that they can decide whether to participate in the sale under the same terms agreed with the third party. In this event, shares of all shareholders who express interest in participating in the sale must be sold. On the other hand, Drag Along clauses provide that when any shareholder representing more than 20% of the subscribed and paid-in capital receives an offer from a third party for a number of shares greater than their participation, they may require the other shareholders to sell, in favor of the third party, the shares necessary to meet the offer.

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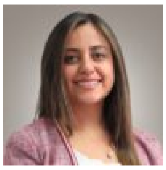

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