Q&A: shareholder claims against M&A transactions in Mexico

Mexico | April 30 2021

Types of shareholders' claims

Main claims

Identify the main claims shareholders in your jurisdiction may assert against corporations, officers and directors in connection with M&A transactions.

In Mexico, the main claims shareholders may assert against corporations, officers and directors in connection with mergers and acquisitions transactions are: forced fulfilment of the contract, (this is the main claim in courts in this jurisdiction); termination of the contract; and (the most important) payment of damages. With regard to damages more and more conciliation agreements are made during the first phases of the claim when the early notification arrives to the litigated party from the courts.

Requirements for successful claims

For each of the most common claims, what must shareholders in your jurisdiction show to bring a successful suit?

To be successful against corporations, officers and directors in connection with mergers and acquisitions transactions for the main claims of forced fulfilment of the contract, termination of the contract and payment of damages, the shareholders must show the correct and legal incorporation of the company, as well as legal representation and finally, the base agreement or contract supporting the action to be brought supporting the scope of the claim.

Publicly traded or privately held corporations

Do the types of claims that shareholders can bring differ depending on whether the corporations involved in the M&A transaction are publicly traded or privately held?

The types of claims that shareholders can file do not differ depending on whether the corporations involved are publicly traded or private but the share price is usually monitored on time before and after the merger and acquisition transaction to check the future projections that were analysed prior to the operation. To do so, financial statements of the issuers that are part of the transaction are analysed; the market price of the share is analysed according to the performance of the assets owned by the companies and the growth expectations, making a map of the growth value where the issuers are distributed in zones, and the strategy followed is assessed, indicating the most promising variables for creating value. These do not affect the type of claim between a public company and a private company.

Form of transaction

Do the types of claims that shareholders can bring differ depending on the form of the transaction?

Yes. The types of claims that shareholders can present differ according to the form of the transaction because it depends on the type of claim to be presented. In other words, merger, public offering, sale of assets, purchase of shares are totally different so the claim is prepared for each scenario according to each specific case. Even so, operations within the same industry must also be analysed in detail, since a merger, a public offering, a sale of assets and a purchase of shares do not resemble each other. All of these are aspects that must be taken into account when making a claim regarding the transaction in question.

Negotiated or hostile transaction

Do the types of claims differ depending on whether the transaction involves a negotiated transaction versus a hostile or unsolicited offer?

The type of claim differs depending on whether the transaction involves a negotiated transaction versus a hostile or unsolicited offer, since the way in which the claim will be made will depend on the legal position of the hostile party. However, there may be alternative means prior to litigation or in its early stages that will help negotiations such as arbitration that may dampen the hostile environment between the parties. There are lawyers and specialised organisations to carry out these approaches between the parties, however, if the hostile party does not yield the claim, it may contest the interests of the latter with great force.

Party suffering loss

Do the types of claims differ depending on whether the loss is suffered by the corporation or by the shareholder?

Yes, because the type of corporation and the way in which it was incorporated have an influence on the way the demand is managed, therefore the liabilities may be different for the shareholders versus the corporation.

Law stated date

Correct on

Give the date on which the above information is accurate.

1 April 2021.

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