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DEAL THROUGH 

Private Equity

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2018

North America • Asia-Pacific • Europe • Latin America
Investment hotspots • Cross-border challenges • Keynote deals • 2019 outlook

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market intelligence

Welcome to GTDT: *Market Intelligence*.

This is the 2018 edition of *Private Equity*.

Getting the Deal Through invites leading practitioners to reflect on evolving legal and regulatory landscapes. Through engaging and analytical interviews, featuring a uniform set of questions to aid in jurisdictional comparison, *Market Intelligence* offers readers a highly accessible take on the crucial issues of the day and an opportunity to discover more about the people behind the most interesting cases and deals.

Market Intelligence is available in print and online at
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PRIVATE EQUITY IN MEXICO

Luis Burgueño is partner of Von Wobeser y Sierra corporate and M&A practice, with more than 25 years of experience in advising leading international corporations in their most important transactions and business matters in Mexico. His clients include public companies listed on the Dow Jones, S&P, DAX, Nikkei and BMV, some of most profitable Forbes 100 Top Brands, as well as some of the largest and most innovative private equity and venture capital funds. He has been a key player in the most ground-breaking and complex M&A matters and transactions that have taken place in Mexico and Latin America recently. He also regularly advises clients in information technology and telecom-related transactions and matters, including outsourcing, software, patent and media content licensing, e-commerce and internet regulation, data privacy and fintech. Luis has been involved in many of the most transcendent disputes handled by the firm in both arbitration and court litigation and has sat as arbitrator in several cases.

Partner of the banking, finance and capital markets, Andrés Nieto has a multidisciplinary practice, with an emphasis on cross-border transactions, which includes experience in several of the principal transactions that have taken place in Mexico and the United States in the legal areas of banking and finance, securities, private equity, mergers and acquisitions, as well as corporate, structured and project finance. Currently, he advises many national and foreign companies in their most important and strategic operations in Mexico and Latin America. His clients include companies and regional and multinational financial institutions based in the United States, Canada, Germany, the European Community and Asia. Additionally, he has advised clients in the development of legal strategies and solutions in relation to, among other areas, cross-border acquisitions, financial operations and bank investments, incorporation of companies and associations, workouts, restructuring and reorganisations.





Luis Burgueño



Andrés Nieto

GTDT: What trends are you seeing in overall activity levels for private equity buyouts and investments in your jurisdiction during the past year or so?

Luis Burgueño and Andrés Nieto Sánchez de Tagle: In 2018, the trends of the past few years continued in the energy and telecommunications sectors, whose environment for private equity and investment has been more attractive since the significant reforms and legislation modifications that were made in the recent past.

Apart from these well-known sectors, a remarkable trending topic nowadays is the fintech industry. As a result of the publication of the Fintech Law in March, which regulates crowdfunding, electronic payment funds

institutions, cryptocurrencies and new financing operations through novelty models, the fintech sector has been targeted by both national and international investors interested in entering in the Mexican fintech market, becoming a trend for private equity and investments in Mexico.

Stock market valuations may have some impact in the private equity market, although, since the companies listed on the stock market are not numerous, buyout firms may not be heavily influenced by such valuations.

This notwithstanding, there have been some large-scale transactions, private equity transactions have been concentrated primarily in small and mid-sized companies that are not traded on the stock market, with horizontal investments made over three to seven years, on average.

GTDT: Looking at types of investments and transactions, are private equity firms primarily pursuing straight buyouts, or are other opportunities, such as minority-stake investments, partnerships or add-on acquisitions, also being explored?

LB & ANST: One of the outstanding aspects of the Mexican market is that we have seen almost every type of investment, from typical equity transactions, to mezzanine loans, leveraged buyouts and a variety of arrangements with a large number of start-ups. Besides the well-known energy and telecom industries, since the Fintech Law has given more regulatory certainty to investors, fintech start-ups have become another hotspot for investment.

Another important and attractive characteristic that has caught the attention of investors is the big diversity of companies in the Mexican market, from start-ups, to big portfolio companies. Although private equity transactions are concentrated in small and mid-sized companies, there are also some transactions involving portfolio companies.

GTDT: What were the recent keynote deals? And what made them stand out?

LB & ANST: Glisco Partners, a spin-off from investment bank Evercor, together with Discovery Capital Management, raised US\$72 million through a restricted public offering of fiduciary stock certificates. Glisco Partners is seeking to invest 60 per cent of the capital raised in Mexican mid-sized companies, which are targeted on the retail, health, education and energy industries.

Another outstanding deal was an investment of US\$200 million from the Mexican Avant Energy Firm in the energy industry. This investment will be destined to build a network of terminals to supply refined petroleum products from the port of Altamira, Tamaulipas to the Bajío region of North-Central Mexico.

The fintech sector also presented a keynote deal, since the fintech company Konfio, which is an online credit platform, raised M\$1,700 million from private equity transactions and debt issuance. The capital raised will be destined to finance small and mid-sized companies in Mexico.

GTDT: *Does private equity M&A tend to be cross-border? What are some of the typical challenges legal advisers in your jurisdiction face in a multi-jurisdictional deal? How are those challenges evolving?*

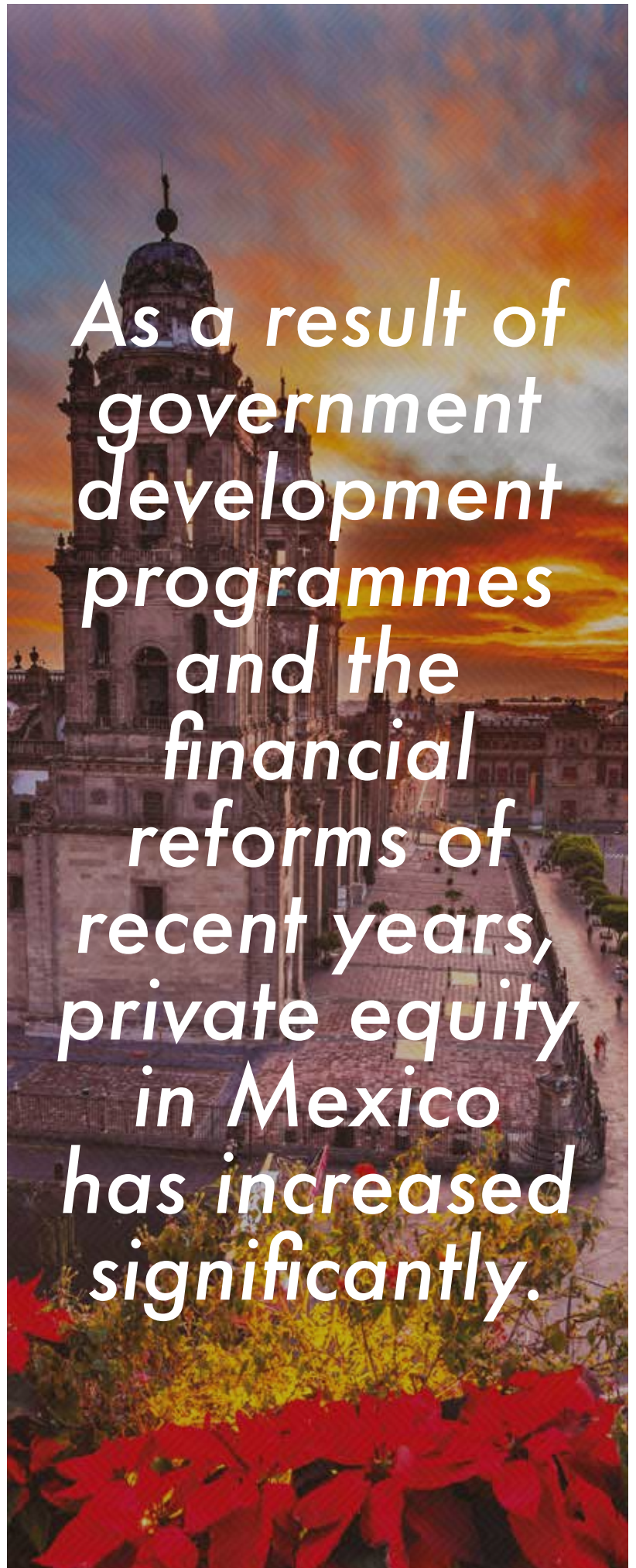
LB & ANST: Most private equity in the country comes from foreign investors, therefore there is a tendency to engage in cross-border transactions. One of the primary challenges legal advisers face is the business culture in Mexico. Although legal advisers are familiar with typical vehicles involved, they face several issues, since there are still several family businesses that tend to be run using methods that can be antiquated. Despite this adverse 'cultural' issue, the situation has been evolving in the past few years.

GTDT: *What are some of the current trends in financing for private equity transactions? Have there been any notable developments in the availability or the terms of debt financing for buyers over the past year or so?*

LB & ANST: As a result of government development programmes and the financial reforms of recent years, private equity in Mexico has increased significantly. Such programmes and reforms have promoted and increased investment even in industries that were exclusively state-run and private investment was not allowed. Owing to the growth of private investments in the past few years, Mexico is now placed as one of the leading markets in Latin America for general partner investments. Mexico is still below expectations; nevertheless, capital funds in the country continue to rise.

GTDT: *How has the legal, regulatory and policy landscape changed during the past few years in your jurisdiction?*

LB & ANST: An important change in the legal and regulatory aspect in Mexico during 2018 came with the publication of the Fintech Law, which has boosted investments in the industry to significant levels during the past year. The Fintech Law contemplates the regulation of crowdfunding, electronic payment funds institutions, cryptocurrencies and new financing operations through novelty models. The presence of the Fintech Law in the Mexican legal landscape regulating key aspects of the industry has made the Mexican fintech market more competitive and attractive for national and foreign investment in this sector.



GTDT: *What are the current attitudes towards private equity among policymakers and the public? Does shareholder activism play a significant role in your jurisdiction?*

LB & ANST: Although private equity levels in Mexico have not met expectations, in recent years we have seen a positive, inclusive, proactive and dynamic attitude from policymakers towards private equity. The recent reforms in different sectors such as telecoms, energy and fintech helped to create an environment that has given more certainty to private equity investments. Even though private equity has increased over recent years, one of the challenges it has faced is the reluctance of entrepreneurs and families managing many of the companies in Mexico to surrender control of their companies by accepting external investment by capital funds as partners or shareholders. Nonetheless, private equity has been gradually gaining relevance in the country in the past few years.

GTDT: *What levels of exit activity have you been seeing? Which exit route is the most common? Which exits have caught your eye recently, and why?*

LB & ANST: One of the most common exit routes we have seen in the past few years is the transfer of the investor's investment to another company, generally a related company such as a competitor, supplier or client that finds strategic value in it. In addition, we have also seen direct transfers to another capital fund, public stock offers on the securities market, as well as the sale of shares acquired by the investor to another shareholder of the company.

GTDT: *Looking at funds and fundraising, does the market currently favour investors or sponsors? What are fundraising levels like now relative to the past few years?*

LB & ANST: As markets and needs increase, there is an equivalent need for managing parties to be able to respond rapidly and effectively. Therefore, private equity sponsors that may add value with hands-on expertise and many other management skills are now preferred to pure capital investments.

Since 2009, as a result of the government's authorisation to retirement fund administrations to invest in private equity, fundraising activities have been increasing. Fundraising is now much easier, because funds can raise both national and international capital, and because the latest amendments to the legislation have made the process more effective. This also has helped the expansion of the base for private equity and investment.

GTDT: *Talk us through a typical fundraising. What are the timelines, structures and the key contractual points? What are the most significant legal issues specific to your jurisdiction?*

LB & ANST: There are several instruments available to companies that are looking to obtain funding to develop their business. They can primarily do so through contributions of capital from their partners or shareholders, financing from the government, private equity, project finance, financing by banking institutions, or financing through the securities market. Timelines and structures may depend on the complexity of each transaction. Nevertheless, any option may require the preparation and negotiation of different instruments that make it possible to carry out these types of transactions.

GTDT: *How closely are private equity sponsors supervised in your jurisdiction? Does this supervision impact the day-to-day business?*

LB & ANST: Under Mexican law, private equity sponsors do not have specific treatment or supervision; nonetheless, because of the nature of private equity operations, certain acts require regulatory compliance, and tax issues must be addressed carefully. In regard to the supervision point of view, authorities do not intervene in the day-to-day business of a company as long as there has been careful planning and design in the early stages of the project.

GTDT: *What effect has the AIFMD had on fundraising in your jurisdiction?*

LB & ANST: AIFMD has barely impacted normal operations in the country. The only operations that have been affected are those related to European fund managers managing AIFs, AIFs established in Europe, and those who market units or shares in Europe.

GTDT: *What are the major tax issues that private equity faces in your jurisdiction? How is carried interest taxed? Do you see the current treatment potentially changing in the near future?*

LB & ANST: In recent years, tax authorities have implemented different tax policies to benefit investment. As an example, tax authorities have granted benefits to trusts operating investment capital. Such activities are not taxed until the revenues are allotted to private hands, and the income tax imposed is based on the receiver's status. In another attempt to boost confidence in alternative investment structures, the tax treatment of investment schemes will be frozen

THE INSIDE TRACK

What factors make private equity practice in your jurisdiction unique?

The fact that publicly traded companies are typically controlled outside the stock market (ie, by a family or other closely held group) substantially limits public-to-private equity deals. Mexican firms are very reluctant to give away control or even provide transparency as a condition to accept private equity. Many Mexican firms, their owners and managers lack experience in M&A transactions, therefore, some deals in Mexico can move slowly in some instances, which private equity firms may find frustrating, given the fast-paced nature of their typical transactions.

What should a client consider when choosing counsel for a complex private equity transaction in your jurisdiction?

Counsel should ideally have experience not only in private equity deals, but also in the industry where the target operates, or have experience in similar industries. Also, the firm should have experts in several proactive areas that are particular to Mexican law (ie, labour,

tax, environmental) and to the specific industry where the target operates. The firm should be able and have enough resources readily available to provide a timely response to private equity clients, for whom time is the essence.

What interesting or unusual issues have you come across in recent matters?

In the recent past, Mexico has been targeted by foreign investors seeking to carry on private equity transactions in Mexican companies. In recent months we have worked on a transaction that involved the investment of M\$250 million by a US private equity firm in a Mexican company in the financial sector. This has led us to develop closer working relationships with foreign private equity firms and we have witnessed an environment of optimism from private equity transactions in Mexico among foreign investors.

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until November. With such policies, it is expected to encourage confidence in alternative investment structures and to foster the development of solid funding.

GTDT: Looking ahead, what can we expect? What might be the main themes in the next 12 months for both private equity deal activity and fundraising?

LB & ANST: Private equity in Mexico, over the years, has gradually and constantly become a more competitive sector for investment in the country. Following the reforms that have taken place in different sectors and industries, such as energy, telecoms, and most recently fintech, Mexico has become a leading market for investments in Latin America. Despite the

uncertainty that the NAFTA negotiations and the presidential election could have generated in recent months, there is a positive outlook for the Mexican private equity industry. Over the next year we foresee investments in the energy and telecoms sectors continuing to increase, and the fintech industry becoming a hotspot for national and foreign investments. There is a lot of expectation for the private equity market in the next few years, since the tendency is that government policies are shifting towards a larger role for private investment in such industries. If conditions remain the same, and the growth remains at current levels, private equity will reach over US\$80 billion by the end of 2020, according to AMEXCAP, the Mexican Association of Private Capital.

Also available online



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