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Contributing editor
Alan M Klein

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GETTING THE DEAL THROUGH

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Contributing editor

Alan M Klein

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Latvia

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1 Types of transaction

How may businesses combine?

There are several forms of combination used in Latvia:

- purchase of shares in the target;
- purchase of the target's assets or business;
- mergers or demergers; and
- acquisition by using a contractual joint venture.

Purchase of shares is the most common method of structuring M&A deals in Latvia. A purchase of shares is a straightforward way to combine. Less common and more complex is acquisition of the target's business. In the case of a business transfer both the seller and the acquirer may be liable for all liabilities of the seller associated with the business for a period of five years from the transfer date. No such liability issues arise if an undertaking of an insolvent company is acquired (by way of acquisition during insolvency proceedings). Transfer of assets by banks, insurers or state-controlled entities is subject to special regulations and the same applies to acquisition of shares in these businesses.

2 Statutes and regulations

What are the main laws and regulations governing business combinations?

Business combinations are primarily governed by:

- the Civil Law, which governs all civil transactions;
- the Commercial Law, which governs all company matters including special commercial transactions;
- the Competition Law, which deals with merger control and all other competition law areas; and
- the Group of Companies Law, which deals with company groups, holdings and multilayered company structures.

If the companies' bonds or shares are publicly traded then the Financial Instruments Market Law also applies.

The Law on State and Municipality Owned Shares and Companies mostly regulates transactions with state (municipality) owned shares.
In addition, the acquisition of shares in insurance companies or their portfolio is governed by the Insurance Companies and Their Supervision Law. Transactions with the shares (or transfer of loan portfolios) in banks or similar financial entities is governed mainly by the Credit Institutions Law.

3 Governing law

What law typically governs the transaction agreements?

In case of private share and asset transactions the parties may choose the governing law. However, some aspects of the transaction are always governed by Latvian law (especially in relation to registration of the shares or real estate transfer as well as other mandatory requirements).

For instance, the Commercial Law prescribes what documentation is necessary in case of reorganisation (shareholders' decisions, reorganisation agreement, auditor's reports, etc) and what procedures should be followed (always ensuring that the interests of the shareholders and creditors are duly taken into account). In case of a public offer the necessary documentation and information to be included is prescribed by the Financial Instruments Market Law.

It is acceptable for a transaction to be subject to non-Latvian law, but owing to its connection with Latvia it might also be necessary to execute local transfer documents.

4 Filings and fees

Which government or stock exchange filings are necessary in connection with a business combination? Are there stamp taxes or other government fees in connection with completing a business combination?

The Company Register is involved at a certain stage in almost every business combination as it performs, inter alia, registration of share transfers (in case of limited liability companies) and reorganisations, and contains information related to beneficial owners. The standard fees for such registration vary from approximately €15 to €350. Since July 2013 share transfers in private limited liability companies (SIA) are subject to public notary verification. The costs of such verification range from €100 to €1,000.

In case of a merger the parties have to submit a notice to the Competition Council if the combined turnover of the merger participants during the previous financial year exceeds €35,572,000 or the total market share of the merger participants in any relevant market exceeds 40 per cent. The notification procedure does not apply if there are no more than two merger participants and if their combined turnover during the previous financial year did not exceed €2,134,000. Failure to notify the merger makes it void. In practice, however, the Competition Council has up to date issued the post factum permissions for mergers, but imposed the fines for failure to issue timely notification of the merger. The fine is set in the amount of €1,400 per each day of failure to submit the notification to the Competition Council.

5 Information to be disclosed

What information needs to be made public in a business combination? Does this depend on what type of structure is used?

The information to be disclosed depends on the type of combination as well as on the type of companies involved in the combination. In the case of private share deals or asset deals no disclosures are generally required. Certain information has to be disclosed in the case of reorganisations and public offers. Companies that have their bonds or shares publicly traded are obliged to disclose information in other cases, as well.

As mentioned above (see question 4) the companies involved in reorganisation are required to make certain filings with the Company Register. Namely, the Company Register has to be notified on the fact of reorganisation (by, inter alia, filing the reorganisation agreement). This fact also has to be published in the Official Gazette. The companies involved in reorganisation are obliged to duly inform all shareholders and to ensure that all shareholders are provided with an opportunity to review the documents related to organisation. After the reorganisation agreement is approved by the shareholders' meeting, each company involved in reorganisation has to notify its creditors (as well as publish a notification in the Official Gazette).

Public tender offers also require disclosure of certain information. For instance, within five business days after permission to make the public offer has been granted by the Financial Supervision Authority (FSA), information on the offer has to be published in the Official Gazette. Afterwards, the board of the target company is obliged to prepare its opinion (within five business days) on the expressed tender offer. This opinion has to be expressed by means of mass media to ensure that this message reaches as many interested persons as possible. The market organiser as well as the employees of the target company must also be informed about the opinion of the board of directors.

Public companies are required to disclose certain information on an ongoing basis. For instance, a listed company is obliged to disclose such information that is related to the company or financial instruments issued by it that might materially influence the price of these financial instruments.

6 Disclosure of substantial shareholdings

What are the disclosure requirements for owners of large shareholdings in a company? Are the requirements affected if the company is a party to a business combination?

The disclosure requirements for owners are prescribed in the Commercial Law (as regards beneficial owners), the Financial Instruments Market Law and the Group of Companies Law.

The general duty of disclosure of the beneficiaries applies to non-EU shareholders. Pursuant to the requirements of the Commercial Law the companies are required to disclose information to the Company Register (this information is not public) about their beneficial owners after such information is received from the shareholders. A shareholder who holds or acquires at least 25 per cent of the shares in his name but for the benefit of another person is obliged to disclose who the beneficiary (natural person) is.

Specific duty of disclosure is incorporated in the Financial Instruments Market Law and the Group of Companies Law, which require disclosure when the shareholding reaches a certain level.

In accordance with the Group of Companies Law, the shareholder should inform the company about the changes in the shareholding. Thereafter, the company must submit a notice in the Company Register if the shareholding of the particular shareholder surpasses or falls below 10, 25, 50, 75 or 90 per cent. A shareholder is also obliged to notify the Company Register in case a qualifying shareholding is acquired.

The Financial Instruments Market Law requires a notification to the company and the FSA when the percentage of voting rights of a shareholder (in a listed public company) reaches, exceeds or falls below 5, 10, 15, 20, 25, 30, 50 or 75 (and 90 or 95 in case the domicile of the company is Latvia) per cent.

7 Duties of directors and controlling shareholders

What duties do the directors or managers of a company owe to the company's shareholders, creditors and other stakeholders in connection with a business combination? Do controlling shareholders have similar duties?

There is a general obligation of the management and supervisory board members to act with the due care of an honest and diligent owner and they are jointly liable for the losses caused to the company. This general obligation also serves as protection for the creditors and minority shareholders because creditors and minority shareholders may submit a claim against the management and supervisory board members for losses caused due to the breach of this general obligation. Claims against board members of insolvent companies are often brought by insolvency administrators. The Insolvency Law was recently amended increasing the liability of the management board members. It is now prescribed that in case the accounting documents (sufficient to assess the company's financial standing during the previous three years) are not handed over to the insolvency administrator the management board members might be personally liable for the whole amount of the outstanding debts towards the company's creditors.

There are also more specific obligations of directors. As already mentioned, the board of directors of the listed target company is required to prepare an opinion on the proposed public offer. It is prohibited for the board of directors to impede the process of the public offer by any acts or inaction. In case of reorganisation the board of directors of the company to be dissolved or acquired is obliged to inform the shareholders and the acquiring company of all material changes in the financial standing of the company before the authority of the respective board of directors is terminated.

The controlling shareholders also have some duties. A shareholder who is a legal person and holds at least 90 per cent of the shares is obliged to purchase the minority shareholder's shares if the minority shareholder so requests. If the respective parties cannot reach an agreement on the share price, it is determined by the court. The controlling shareholder must also refrain from exercising such influence on the company that would induce the company to conclude a disadvantageous transaction or would cause any other detriment, unless any loss of the company (and in some instances also direct losses of minority shareholders) is compensated.

A shareholder in a listed company has to make a mandatory bid for the remaining shares in the company if its ownership reaches more than 50 per cent of the votes.

8 Approval and appraisal rights

What approval rights do shareholders have over business combinations? Do shareholders have appraisal or similar rights in business combinations?

Initiation of any reorganisation requires a resolution of shareholders. In case of private limited liability companies (SIA) two-thirds of votes (unless the articles prescribe a higher number) are required to pass such resolution. In case of public limited liability companies (AS) the number is three-quarters (unless the articles prescribe a higher number). Active shareholders will use their right to review the draft documents (among others, the reorganisation agreement, reorganisation prospectus, auditor's report and financial accounts of the company) and to request the board of directors to provide information related to the draft documents, legal and economic consequences of the reorganisation and other aspects of reorganisation. The shareholders are also entitled to challenge the validity of the decision of the shareholders' meeting to initiate reorganisation (such decision may be declared invalid if it is adopted in violation of law or the articles of association).

The company share transfers may be subject to right of first refusal. In the case of mergers disagreeing minority shareholders may request buyout of their shares. An auditor may be involved to assess the value of the shares. The auditor's valuation can be challenged in the courts.

In addition to mandatory bid offer obligation in case of listed companies, non-listed companies have a similar obligation. Under the Group of Companies Law, if one of the shareholders owns 90 per cent or more shares, the minority shareholders may demand buyout of their shares.

9 Hostile transactions

What are the special considerations for unsolicited transactions?

The laws of the Republic of Latvia do not make any distinction between friendly and hostile transactions.

10 Break-up fees – frustration of additional bidders

Which types of break-up and reverse break-up fees are allowed? What are the limitations on a company's ability to protect deals from third-party bidders?

The laws of the Republic of Latvia do not contain any special regulation on break-up and reverse break-up fees. The parties are free to include such provisions in their transactions.

However, it should be noted that there is a general prohibition for the public companies (AS) to finance, directly or indirectly, acquisition of their own shares. This restriction does not apply to SIA. The court practice in cases when illegal acquisition finance is successfully jeopardised by the creditors or minority shareholders is under development.

11 Government influence

Other than through relevant competition regulations, or in specific industries in which business combinations are regulated, may government agencies influence or restrict the completion of business combinations, including for reasons of national security?

In general there are no restrictions except for land ownership near country borders and companies owning important infrastructure assets that may require consent of the National Security Council under the National Security Law. In case of sale of the state-owned companies, the government of Latvia may impose restrictions or qualification criteria on potential bidders.

A natural person may be restricted by a court decision to carry out certain commercial activities or hold certain positions in companies.

If the company owns a land plot and the new shareholder is subject to restrictions to acquire such land plot a consent from the local municipality is required to allow the target company to keep the land plot in its possession. If such consent is not received, the target company is obligated to sell the land plot within two years (unless there is a further change of shareholding and the new shareholder is not subject to similar restrictions).

12 Conditional offers

What conditions to a tender offer, exchange offer or other form of business combination are allowed? In a cash acquisition, may the financing be conditional?

The laws of the Republic of Latvia provide requirements on what should be included in the offer (price, terms of the offer, procedure for the acceptance of the offer, etc). There are no provisions on the terms of conditional offers.

Any deviation from the standard provisions of the law should be discussed and clarified with the FSA.

13 Financing

If a buyer needs to obtain financing for a transaction, how is this dealt with in the transaction documents? What are the typical obligations of the seller to assist in the buyer's financing?

There is no special regulation as regards financing for a transaction in the laws of the Republic of Latvia. The parties are free to reflect on the financing method in the transaction documents. Obtaining financing by the buyer may be set as a precondition of the transaction. The financial provider may require registration of a charge (in Latvia it is called a 'commercial pledge') over the target shares, which is usually required to be registered simultaneously with the registration of the share transfer. It is typical that it requires a consent of the seller and its creditor, but in practice they are not supportive.

Local banks are used to use the borrower's other assets as collateral for financing and after closing these collaterals are replaced with the target's assets.

14 Minority squeeze-out

May minority stockholders be squeezed out? If so, what steps must be taken and what is the time frame for the process?

The Financial Instruments Market Law prescribes that a shareholder who has acquired at least 95 per cent of the voting rights of a listed public company may require the rest of the shareholders to sell their shares. This is called a final buyout offer and the minority shareholders are obliged to sell their shares in this case. A buyout offer may be expressed within three months after at least 95 per cent of the voting rights were acquired. The buyout offer is subject to the decision of the company to leave the regulated market and permission from the FSA.

15 Cross-border transactions

How are cross-border transactions structured? Do specific laws and regulations apply to cross-border transactions?

Cross-border transactions are usually structured as sale of shares. Cross-border mergers are also possible in which case the regulation on cross-border mergers prescribed by the Commercial Law (implementing the Directive 2005/56/EC) should be observed. Establishment of a European Company (Societas Europaea) is regulated by EC Regulation No. 2157/2001 (which is implemented by the Law on European Companies).

Cross-border structuring depends on the tax burden and because under Latvian law there is no capital gains tax on profit gained from the sale of the shares by a Latvian company (no minimum holding period required) it is normal to organise a Latvian structure for the sale of the shares.

16 Waiting or notification periods

Other than as set forth in the competition laws, what are the relevant waiting or notification periods for completing business combinations?

There are several waiting and notification periods that might be relevant. For instance, in case of private share deals the shareholders (unless the articles of association provide otherwise) of the target company will have statutory first refusal rights. These rights can be exercised within a month after notification. In case of transfer of an undertaking the employees have to be informed about it at least one month before.

The reorganisation process will also involve waiting and notification periods. The draft reorganisation agreement and financial documents should be available at least one month before the shareholders' meeting in which it is planned to approve the reorganisation agreement. After it is approved and the shareholders' meeting passes a resolution on reorganisation (business combination), the creditors of the involved companies have to be informed and information on the initiated reorganisation should be published in the Official Gazette. After publication, the creditors should have at least one month to submit their claims, if any. The final documents can be submitted to the Company Register and the reorganisation can thus be finalised not earlier than three months after the official publication. Typically reorganisation takes between four and six months.

In case of public tender offers the persons expressing the offer (or obliged to express the offer) should immediately notify the board of directors of the target company and submit offer documentation to the FSA (the FSA should review the offer within 10 days). Following permission being granted by the FSA to express the offer, the offeror should publish a notification in the Official Gazette. The term of the offer should be 30 to 70 days.

17 Sector-specific rules

Are companies in specific industries subject to additional regulations and statutes?

There are sector-specific rules in relation to some industries, for instance banking and insurance. To acquire a qualified shareholding (above 10 per cent) in a company operating in the banking or insurance sector the person should submit a notification to the FSA and meet certain criteria. The FSA should also be notified whenever the shareholding surpasses or falls below 20, 33 or 50 per cent.

The real estate sector is subject to more and more strict regulation and restrictions mostly relate to agricultural land, forests and land near to borders and the seashore. New restrictions in relation to acquisition of agricultural land were introduced in 2014. It is now forbidden for one person to acquire more than 2,000 ha of agricultural land (the local municipalities are entitled to prescribe lower amount). Moreover, the purchaser should conform with certain criteria (eg, has no tax debts, has confirmed that will commence agricultural activities and has received single area payments under Regulation 73/2009 for at least a year during the last three year period, etc).

18 Tax issues

What are the basic tax issues involved in business combinations?

In general, reorganisations are tax neutral. However, additional tax liability of the surviving company might be triggered in some cases. So far the approach of the State Revenue Service has not been consistent in this regard.

Share transfers and asset deals may be subject to income tax. Any profits earned by a Latvian company on sale of assets are subject to 15 per cent corporate income tax. Any profits earned by a Latvian company on sale of the shares in a Latvian or non-Latvian company are exempt from corporate income tax.

Individuals, sellers of the shares, may also be taxed at the rate of 15 per cent on capital gains.

It is always advisable to carry out a tax due diligence of the target company prior to closing of the transaction. If the accounting of the target company has been inaccurate in any aspect then there is a high risk that the Latvian taxing authority will spot these inaccuracies during its audit and will impose a substantial fine on the target company.

19 Labour and employee benefits

What is the basic regulatory framework governing labour and employee benefits in a business combination?

As already mentioned (see question 16), employees have to be informed in advance about the planned reorganisation and its legal, economic and social consequences. In case of reorganisation employees automatically transfer to the receiving company which should comply with existing

Update and trends

Directors' liability substantially increased
Recent amendments to the tax and insolvency regulations have substantially increased the directors' liability. It is now explicitly prescribed that under certain circumstances the directors of the management board may be held personally liable for the company's tax debts as well as debts towards other creditors. The personal liability of the directors for the company's tax debts will be triggered if the company's tax debts exceed approximately €18,000, the directors have not filed a mandatory insolvency application and the company (after the tax debt accrued) has alienated its assets to related parties. More controversial are amendments to the insolvency regulation prescribing the personal liability of the directors if the accounting documents (sufficient to assess the company's financial standing during the previous three years) are not handed over to the insolvency administrator. In such case the directors might be personally liable for the whole amount of the outstanding debts towards the company's creditors. The claims against the management board directors can be brought by the insolvency administrator or the creditors (even after the liquidation of the company).

Upcoming
The Law on Company Register was recently amended prescribing a mandatory requirement that at least one director of the management board of a Latvian company should be a citizen of the EU, EEA or Switzerland. This requirement will take effect after the Commercial Law is amended.

collective employment agreements (if they exist) until they are terminated or new agreements are executed. Such collective employment agreements cannot be amended for the detriment of employees within one year ofcompletion of the reorganisation. Furthermore, reorganisation or transfer of the company itself cannot serve as a basis to terminate employment contracts. However, the employment agreements can be terminated on the basis of company restructuring (economic, technological, organisational or similar restructuring).

In theory, in the case of a transfer of undertaking the employees connected with a specific group of assets should become employees of the transferee. There have been mixed results in the courts when employees tried to dispute their lay-off shortly before an asset transfer transaction.

20 Restructuring, bankruptcy or receivership

What are the special considerations for business combinations involving a target company that is in bankruptcy or receivership or engaged in a similar restructuring?

Acquisition of an insolvent company or acquisition of assets from an insolvent company are regulated by the Insolvency Law and the Civil Procedure Law. There are no restrictions to conclude agreements with a company that is de facto insolvent, but has not yet been declared insolvent by the court. However, such transactions can be challenged by the insolvency administrator when the insolvency proceedings are commenced (ie, when the company is declared insolvent by the court). The insolvency administrator may challenge any transaction made five years before insolvency and whether these transactions were not made at arm's length (ie, the insolvent company suffered losses).

After the commencement of insolvency proceedings the insolvency administrator should identify all the assets of the company and prepare a plan for the sale of these assets. The assets can be sold separately or the company (or its part) can be sold in one transaction (if such transaction is more beneficial). The liabilities of the insolvent company do not transfer to the acquirer of the company (or its part).

21 Anti-corruption and sanctions

What are the anti-corruption, anti-bribery and economic sanctions considerations in connection with business combinations?

The general rules on anti-corruption, anti-bribery, money laundering and terrorism financing also apply in case of business combinations. Latvia is also a party to the international anti-corruption treaties. For breach of these rules banks and other financial institutions may suffer a penalty up to €142,000 and other companies up to €14,000. The major obligation to control the origins of the financing is imposed on the banks.

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