Latvia

Gints Vilgerts and Jūlija Jerņeva

VILGERTS

STRUCTURE AND PROCESS, LEGAL REGULATION AND CONSENTS

Structure

1 How are acquisitions and disposals of privately owned companies, businesses or assets structured in your jurisdiction? What might a typical transaction process involve and how long does it usually take?

In general, all acquisitions are structured through share transfers or asset transfers. A significant part of the decision regarding how to structure a purchase depends on tax considerations – in other words, the situation in respect of income tax and VAT.

From time to time, albeit infrequently, real estate is sold as an asset. Those types of transfers have a high transfer tax of 2 per cent (capped at €50,000), and the business transfer risk that protects employees is closely connected with the asset. Asset transfers almost always face the risk of being considered 'business transfers', thus sometimes triggering the application of VAT. The buyer also faces potential liability from the seller's creditors.

It is not unusual for the parties to agree that the seller, first, make an in-kind investment into the new company and, second, sell the shares in the company. Most companies in Latvia are either a type of private limited liability company called an SIA or a type of public limited liability company called an AS. Although there are no material differences in respect of structuring, there are some formal differences in respect of share transfer formalities.

Legal regulation

2 Which laws regulate private acquisitions and disposals in your jurisdiction? Must the acquisition of shares in a company, a business or assets be governed by local law?

There is no particular law that deals with share transfers or M&A transactions; however, in principle, most aspects of share or asset agreements stem from the general civil law in Latvia. Consequently, the main legal acts are the Civil Law 1937 and the Commercial law 2004. Sales of distressed assets may also be subject to the provisions of the Insolvency Law 2010 as well.

There is no strict obligation to apply Latvian law. When applying foreign law, it is not unusual for the parties, in the case of a real estate transfer, to use a local form for agreements as they need to be registered with the Land Book.

Legal title

3 What legal title to shares in a company, a business or assets does a buyer acquire? Is this legal title prescribed by law or can the level of assurance be negotiated by a buyer? Does legal title to shares in a company, a business or assets transfer automatically by operation of law? Is there a difference between legal and beneficial title?

There is usually no difference between the title and ownership of the shares or assets. When the shares are acquired and the changes are made in the shareholders' register of the company, the buyer becomes a shareholder in the company (target). It may then exercise all voting rights and elect the management of the company.

Control over the assets is exercised through corporate governance and provisions of the articles of association. In the case of real estate, the title is registered with the Land Book. In respect of other assets (ie, movables), an important element is consideration of the delivery for assets that fall into the possession of the buyer.

In practice, all issues related to the acquisition of the title and the formalities surrounding the process, including the retention of title clauses, are set out in the purchase agreement.

The parties do not distinguish between legal title or the beneficial title. If disputes arise regarding title, the parties analyse the contract terms and the provisions of law. As most purchase agreements define payment of the purchase price and registration of the transfer with the public registers, disputes about title seldom arise.

With the exception of demergers, in the case of corporate 'consolidation' mergers, the law provides that as of the completed merger date, the surviving entity becomes the owner of all assets of the disappearing legal entity. There is no need to pay 2 per cent transfer tax in the case of a real estate transfer through the merger process.

Multiple sellers

4 Specifically in relation to the acquisition or disposal of shares in a company, where there are multiple sellers, must everyone agree to sell for the buyer to acquire all shares? If not, how can minority sellers that refuse to sell be squeezed out or dragged along by a buyer?

It is not unusual for Latvian companies to have the 'right of first refusal' be available to all shareholders. Under normal circumstances, the buyer negotiates the purchase agreement with as many shareholders as possible or ideally with the majority shareholder. It is unusual for the articles of association to have provisions that block individual sales of the shares.

In practice, minority shareholders are 'forced' to sell the shares when there is a risk of dilution or several years of unpaid dividends. Dilution is effectuated either by way of mergers or share capital increases. The statutory minimum to decide in favour of a share capital

increase for shareholdings is 67 per cent for SIA companies and 75 per cent for AS companies. There are no minimum dividends set by law, but there may be minimum dividends set in the articles of association.

Not paying dividends for several years is a tactic used by local majority shareholders when they wish to decrease the price of the shares owned by the minority. When the majority shareholder has acquired 90 per cent or more of the shares in the company, the minority shareholders may demand a buyout under the provisions of the Group Law 2000. Alternatively, if a private company becomes public, the majority shareholder may buy out the remaining shareholders after it has acquired direct or indirect control of at least 95 per cent of the shares in the company.

Some companies where the shareholders are venture capital funds or private equity funds have tag-along and drag-along provisions; however, it is, in general, far from regular practice or a normal part of the shareholders' agreement or articles of association.

Exclusion of assets or liabilities

5 | Specifically in relation to the acquisition or disposal of a business, are there any assets or liabilities that cannot be excluded from the transaction by agreement between the parties? Are there any consents commonly required to be obtained or notifications to be made in order to effect the transfer of assets or liabilities in a business transfer?

There are no statutory limitations to define a pool of assets or liabilities that is subject to a transfer; however, the Commercial law provides that:

- the buyer of a business shall remain liable to the creditors of the seller;
- if the seller becomes insolvent, the bankruptcy administrator may review the purchase price of the business transfer; and
- if the assets and liabilities are divested into a new company by way of demerger, the demerged entity remains liable to the creditors of the selling entity.

In the context of employees, there is a risk that employees will remain with the business and not with the seller. There is usually no need to inform third parties about the sale of the business except for cases in which such an obligation is part of the agreement (banks, major suppliers, etc) or if it is in the interests of the buyer.

If the subject of the sale is real estate that has tenants, the buyer of the real estate must inform the tenants in order to start receiving the rent payments.

Standard loan agreements with banks have provisions requiring the bank's consent in advance of the business sale or major asset sale. If the business comprises assets that are pledged (this can be checked with the public registers online), consent of the pledgee is required; otherwise, the parties may face criminal liability. Depending on the circumstances, the acquisition of assets as part of a business may be subject to review under merger control.

From a practical point of view, local counsel should be engaged in respect of any details that relate to non-Latvian transactions and involve securities to be registered in the Latvian public registers.

Consents

6 | Are there any legal, regulatory or governmental restrictions on the transfer of shares in a company, a business or assets in your jurisdiction? Do transactions in particular industries require consent from specific regulators or a governmental body? Are transactions commonly subject to any public or national interest considerations?

Since 2017, under the scope of the National Security Law, Latvia has defined industries in which change of control (eg, an acquisition of 10 per cent or more of the shares, acquisition of decisive influence, business transfer or use of indirect influence in the event of a change of ultimate beneficial owner) is subject to government approval owing to national security concerns. The industries subject to approval are:

- electronic communication services (with a substantial market share);
- mass media (operating countrywide or in at least 60 per cent of the territory);
- distribution and storage of natural gas;
- electricity and thermal energy producers (with at least a capacity of 50 megawatts);
- thermal energy distributors (owning at least 100km of network);
- electricity transmission;
- forest land (ownership of at least 10,000 hectares);
- agricultural land (ownership of at least 4,000 hectares); and
- manufacturers of military equipment.

This list is not exhaustive as there have been cases when the government has provided financial assistance to protect locally owned companies. For example, in the case of hostile takeovers of private entities that are significant for the national economy and that are locally owned, there is no relevant law that sets out the exact rules or conditions. Other restrictions exist in relation to agricultural and forest land in special areas and state-owned companies. The approval process may last between one and four months, and it is appealable in the state courts.

Owing to Russia's invasion of Ukraine and the support of this invasion by Belarus, amendments were made to the National Security Law in 2022. As a result of those amendments, any ownership of critical assets in Latvia by Belarusian or Russian citizens is prohibited.

7 | Are any other third-party consents commonly required?

Yes. It is not unusual for the buyer to ask for an approval of the transaction by the shareholders or their majority for the sale of assets, or if the shares are a substantial part of the assets owned by the seller. Whether the shareholders' consent is required depends on the facts of the case, the articles of association or even the major contracts. It is not unusual for the targets to have financing agreements with the banks, which usually contain change of control clauses.

Regulatory filings

8 | Must regulatory filings be made or registration (or other official) fees paid to acquire shares in a company, a business or assets in your jurisdiction?

In general, there are no foreign direct investment filings and fees. It is rare for any regulatory filings to be necessary. Any standard filings to the Company Register are nominal and rarely exceed €100.

Merger control filing fees range anywhere between €2,000 and €8,000. Any filings with the Latvian Financial Supervisory Authority are exempt from any fee.

If the transaction involves a notary, notary fees apply, which range between €50 and €250.

ADVISERS, NEGOTIATION AND DOCUMENTATION

Appointed advisers

9 In addition to external lawyers, which advisers might a buyer or a seller customarily appoint to assist with a transaction? Are there any typical terms of appointment of such advisers?

Yes. In most cases, the sellers hire M&A advisers to help them with the financial aspects of the case and the understanding of the process as most sellers will be completing it for the first time. Typical terms of appointment are a small retainer for preparation of the teaser or investment memorandum and a success fee in the event of completion. It is rare to see monthly retainers or similar payments that are not focused on the result. Engagement terms are very similar to international standards.

On the other hand, buyers seldom hire M&A advisers or similar consultants as they, in most cases, are substantially larger organisations with a lot of experience in M&A transactions. Other advisers may include public relations companies, which are hired closer to the signing or completion stage.

For the purposes of due diligence, buyers usually hire local technical experts, such as engineers, architects, environmentalists, property surveyors, IT experts, accountants and business consultants.

Duty of good faith

10 Is there a duty to negotiate in good faith? Are the parties subject to any other duties when negotiating a transaction?

Latvian case law is undeveloped in the area of disputes that relate to the behaviour of the parties prior to the signing or completion or that arise from a breach of the letter of intent. Although, in theory, there is an obligation of good faith, efficient enforcement of this obligation is unrealistic.

There are stricter rules when it comes to competition law and breach of confidentiality undertakings. The parties should exercise extra care when exchanging information that is commercially sensitive to ensure there is no disclosure of confidential information in breach of the terms of the letter of intent. Breach of a confidentiality undertaking may be subject to criminal liability under Latvian law.

Post-signing or post-completion, the parties may argue that the other party did not act in good faith prior to the transaction. This may be taken into consideration by the arbitration court or the state courts during the dispute.

Documentation

11 What documentation do buyers and sellers customarily enter into when acquiring shares or a business or assets? Are there differences between the documents used for acquiring shares as opposed to a business or assets?

With regard to the sale of assets, the parties sign an asset purchase agreement with annexes that list all the details of the transferred assets or the assets that are transferred together with the main asset (eg, hotel property and its fixed assets or movables, domains and trademarks). If property registered in the Land Book is among the assets, a notarised application to the Land Book must also be executed. If there are tractors, trucks, cars or similar transportation assets in the asset pool, the public register must be informed about the changes in ownership.

The exact sequence in respect of the signing of the documents, their submission to the management board and the formalities with the Company Register in relation to share transfers may differ depending on whether the target company is a limited liability company or a public company (AS), as well as the intention of the parties.

With regard to the sale of shares, the share purchase agreement is the main document that is accompanied by the shareholders' register and the resignation letters of the seller's management. The share purchase agreement usually has several exhibits that serve various purposes, but this depends on the parties and varies on a case-by-case basis.

Shareholders' registers that are manually signed must be accompanied by notary approval. There are standard forms to be filed with the Company Register, which are usually completed by the lawyers and signed either by electronic signature or manually by the parties.

The stock register for AS companies is not publicly available; therefore, notarised signatures are not requested.

The share purchase agreement is a private document and is not submitted to the Company Register, nor does it require approval of a notary.

If the buyer or seller is a foreign company, the Company Register requires an extract from the foreign company register to prove the right of representation when signing a shareholders' register. In that case, the legal representatives and their authorisation must be mentioned in the extract.

The documents regarding the ultimate beneficial owner (UBO) of the company must be submitted to the Company Register when acquiring shares and the sole shareholder owns more than 25 per cent of the shares (this must be proved to the Company Register). The documentation includes:

- a notarised copy of the UBO's government-issued identification document;
- a notarised copy of the extract from the foreign company register or an official extract from the foreign company register; and
- documents substantiating the confirmation that the UBO cannot be ascertained.

12 Are there formalities for executing documents? Are digital signatures enforceable?

Yes. EU-recognised and qualified electronic signatures are accepted and enforceable. Notarisation is required in the case of manual signing of the shareholders' register and submission to the Company Register regarding the same. Parties normally resolve this by issuing notarised power of attorney to their lawyers to act on their behalf.

The Company Register accepts only qualified electronic signatures that contain a timestamp. For an electronic signature to be valid, it should comprise the following parts:

- identification of the signatory (the full name of the signatory should be visible);
- timestamp (the date and time of the signature must be clearly visible); and
- the exact place of signing.

If the document is executed by a notary in a country that is a party to the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents 1961, an apostille is required. If the document is issued in a country that is not a contracting state of the Convention, the document must be authenticated at the Consular Department of the Ministry of Foreign Affairs or at the diplomatic or consular mission of Latvia in the relevant foreign country.

All documents must be in Latvian. If the documents are executed in another language, a notarised translation into Latvian must be prepared.

DUE DILIGENCE AND DISCLOSURE

Scope of due diligence

13 What is the typical scope of due diligence in your jurisdiction? Do sellers usually provide due diligence reports to prospective buyers? Can buyers usually rely on due diligence reports produced for the seller?

Buyers prefer due diligence request lists from their lawyers as these are standard detailed documents that cover some local specifics. Sellers do not usually provide vendor due diligence (VDD) reports; buyers carry out their own due diligence in most cases because of the limited liability of the seller or its advisers in respect of the VDD.

In event of a negotiated auction sale, the buyers are invited to make price offers on the basis of the VDD; however, the ultimate buyer reserves the rights and time to carry out its own due diligence.

Liability for statements

14 Can a seller be liable for pre-contractual or misleading statements? Can any such liability be excluded by agreement between the parties?

Yes. The seller may be liable for pre-contractual or misleading statements; however, this liability is usually excluded by the purchase agreement as the main principle under Latvian law is that the purchase is the buyer's risk.

Publicly available information

15 What information is publicly available on private companies and their assets? What searches of such information might a buyer customarily carry out before entering into an agreement?

Public databases cover various topics in various industries. For a nominal fee, any third party may obtain from the Company Register information on the management board, the supervisory board, the annual reports, the articles of association, the share capital and number of shares, the ultimate beneficial owners, current tax debts, the owners of shares and memberships in Latvian companies by related parties (ie, shareholders, management board members and supervisory board members).

In other public databases, information can be obtained about the real estate its owners and binding lease contracts and publicly registered encumbrances, public licences, public tenders and court proceedings.

Impact of deemed or actual knowledge

16 What impact might a buyer's actual or deemed knowledge have on claims it may seek to bring against a seller relating to a transaction?

In practice, the buyer's knowledge about the target or its assets and liabilities has a negative effect on the buyer's potential claim against the seller. It is established practice that the seller is not liable for any matters duly disclosed to the buyer unless the seller has provided a specific warranty or indemnity.

In most deals, there are issues that are significant for the buyer, and the seller is most likely to grant warranty or indemnity regardless of previous discussions or email exchanges, as most purchase agreements have a merger clause.

PRICING, CONSIDERATION AND FINANCING

Determining pricing

17 How is pricing customarily determined? Is the use of closing accounts or a locked-box structure more common?

The price is discussed and fixed at the letter of intent (term sheet) stage. In the case of real estate M&A, the price is linked to net operating income. In the case of non-real estate M&A, the price in most cases is linked to earnings before interest, taxes, depreciation and amortisation. In all cases, debt to third parties is deducted.

After due diligence, the price discussions are opened and, in most cases, the seller assumes liability for specific risks instead of price decreases asked for by the buyer.

Earn-outs are popular if the seller makes a bet on better performance in the future. Closing accounts are more popular and better accepted by the sellers.

Locked-box mechanisms are seldom used; however, in asset sales, the parties usually – but not always – agree on a fixed purchase price.

Form of consideration

18 What form does consideration normally take? Is there any overriding obligation to pay multiple sellers the same consideration?

In most cases, the consideration is paid in cash, and the same price per share is paid to all sellers who sell at the same time. In some cases, buyers that are unable to pay the price requested by the seller acquire less than 100 per cent of the shares to match the valuation, with a call option to buy out the seller at any time during next five years.

Sellers do not usually finance the sale in any substantial part; however, in some cases, a combination is made comprising the deferral of the purchase price payment (up to 30 per cent) and the buyer's mother company surety for the benefit of the seller.

Earn-outs, deposits and escrows

19 Are earn-outs, deposits and escrows used?

Escrows opened at Latvian banks are used in most cases, and the bank commissions vary, ranging from €5,000 to €25,000 for those services. Escrows are normally opened with the bank that finances the transaction. If no bank financing is involved, the buyer's bank acts as the escrow agent to reduce the burden of work in respect of anti-money laundering and know your customer (AML/KYC). Escrow set-up is supported by both parties: on one hand, it secures payment and, on the other hand, for the buyer there is security in case the warranties were breached.

Earn-outs are used mostly in non-real estate M&A cases; however, the motivation and the amount of the earn-out vary. Deposits are rarely used because of the AML/KYC risks in respect of the deposit holder. It is not unusual for disputes on the amount of the earn-out and the breach of warranties to be resolved in the same dispute forum – simultaneously and more effectively – if there is cash in hands of the escrow agent.

Financing

20 How are acquisitions financed? How is assurance provided that financing will be available?

A special purpose vehicle (SPV) is usually created that acts as the buyer and is later merged into the target. Initially the bank, after credit committee approval, makes a binding offer to the borrower (the SPV as the buyer), which is valid for two to three months. During this period, the borrower (buyer) signs a purchase agreement with the seller and, in parallel, negotiates and completes the loan and security documentation with the bank.

Sometimes the loan agreement is agreed but its signing is suspended until the purchase agreement is duly signed and the escrow account is credited.

In most cases, the purchase price is released to the seller when the buyer's bank has registered all collateral in its favour.

Limitations on financing structure

21 Are there any limitations that impact the financing structure? Is a seller restricted from giving financial assistance to a buyer in connection with a transaction?

Public companies (ie, AS companies) cannot finance, directly or indirectly, acquisitions of its own shares. This restriction does not apply to private limited liability companies (ie, SIA companies). The seller helps the buyer to finance the transaction either by deferred purchase price payment or by call options in combination with the seller remaining as a minority shareholder but giving up full management control to the buyer.

CONDITIONS, PRE-CLOSING COVENANTS AND TERMINATION RIGHTS

Closing conditions

22 Are transactions normally subject to closing conditions? Describe those closing conditions that are customarily acceptable to a seller and any other conditions a buyer may seek to include in the agreement.

Yes. There are usually closing conditions when selling shares or assets. The most common closing conditions are:

- completed registrations in public registers;
- resignation of the management;
- re-signing of agreements on new terms with the related parties;
- fulfilment of conditions for bank financing in respect of registration of collateral;
- no material adverse change;
- no breach of warranties;
- no departure of major customers or tenants; and
- unconditional merger approval by the Competition Council.

23 What typical obligations are placed on a buyer or a seller to satisfy closing conditions? Does the strength of these obligations customarily vary depending on the subject matter of the condition?

The text of the purchase agreement contains some protection, but it is not a perfect solution. Most agreements contain a general provision that the parties have general obligations to act without delay and bona fide. There are deadlines for satisfying the conditions; if the conditions are not fulfilled by the long-stop date, the deal will be cancelled.

To the extent possible, the purchase agreement sets out the responsibility for each of the closing conditions. This includes the sequence in respect of signing documents, where, in general, the seller signs first.

Pre-closing covenants

24 Are pre-closing covenants normally agreed by parties? If so, what is the usual scope of those covenants and the remedy for any breach?

There are usually clauses about the ordinary course of business between signing and closing. Some buyers wish to be informed; however, some buyers insist on consent for any material decision – it depends on the negotiations between the parties.

Another important standard provision is continuing the seller's and target's management support in getting financing for the deal; the bank's condition precedent for release of the funds to the seller will be linked to the completed registration of all security documentation. The buyer will ask the target entity and its management to sign various collateral documents and to consent to register collateral on the shares owned by the seller. The provisions about such cooperation are included in the agreement; otherwise, the seller or the target have no incentive or obligation towards the buyer to help to meet formalities related to the financing.

Termination rights

25 Can the parties typically terminate the transaction after signing? If so, in what circumstances?

Termination must be easy to implement. Termination is usually enforced when the buyer misses the deadline to pay funds into the escrow account or because the closing does not occur by the long-stop date owing to the fault of any party, etc. Sometimes the closing date can be automatically extended for consideration; however, this is not common and is rarely agreed.

In most cases in which merger approval is conditional, the parties try their best to proceed to closing, with some adjustments to the terms and conditions. It is not unusual for the parties to agree on substantial penalties if the seller's actions result in the failure to close.

26 Are break-up fees and reverse break-up fees common in your jurisdiction? If so, what are the typical terms? Are there any applicable restrictions on paying break-up fees?

Break-up fees are used in cases when the transaction fails because of the actions or omissions of one of the parties. They apply to the seller or the buyer, as appropriate. Events that occur because of third parties do not lead to break-up fees.

The size of the break-up fees rarely exceed 5 per cent of the purchase price. Break-up fees are rarely agreed prior to the final and definite purchase agreement, and in cases where those fees are agreed, the amount is nominal, ranging between €25,000 and €100,000.

REPRESENTATIONS, WARRANTIES, INDEMNITIES AND POST-CLOSING COVENANTS

Scope of representations, warranties and indemnities

27 Does a seller typically give representations, warranties and indemnities to a buyer? If so, what is the usual scope of those representations, warranties and indemnities? Are there legal distinctions between representations, warranties and indemnities?

The bargaining power of the parties has a major impact on the length and extent of the representations and warranties (R&W) and indemnities, as well as who prepares the first draft of the purchase agreement.

In most asset sales, R&W is limited to ownership as the assets are acquired on an 'as is' basis, and the seller provides indemnity against claims from the seller's creditors.

In share sales, the shortest R&W is limited to ownership of shares and key assets of the target, solvency of the target and accuracy of financial statements.

In most cases, the seller also provides warranties regarding the taxes, litigation, permits, licences, IP rights, employment, environmental matters, major contracts, general compliance with laws and related party transactions. Indemnities are issued for specific risks or losses exceeding the agreed cap or estimate.

The difference between R&W and indemnities is unclear under Latvian law; it depends on the actual text of the purchase agreement and the provisions concerning each clause.

Limitations on liability

28 What are the customary limitations on a seller's liability under a sale and purchase agreement?

In asset sales, there are fewer liability provisions that limit the seller's liability; therefore, it is not unusual for there to be no limits to the seller's liability, and it is capped at the amount of the purchase price received by the seller.

Several factors apply to liability limitations in share sale transactions:

- short-term suspensions to notify potential breaches of R&W or trigger indemnity;
- minimum claims (eg, €10,000, with basket trades starting from €100,000);
- differentiated cap of liability for each specific R&W;
- minimum claim to start a dispute (eg, from €200,000 to €500,000 or 2 per cent of the purchase price); and
- different time bars to commence legal action.

Indemnities are not usually subject to the above caps or liability limitations.

The seller is not usually liable for losses caused by events that were fairly disclosed in the purchase agreement, caused by changes in the law or court practice, or disclosed in the financial statement or the disclosure letter. The general duty of the buyer is to minimise losses and inform the seller about the potential claim as soon as reasonably possible.

Transaction insurance

29 Is transaction insurance in respect of representation, warranty and indemnity claims common in your jurisdiction? If so, does a buyer or a seller customarily put the insurance in place and what are the customary terms?

There is a lot of discussion in the market about insurance products; however, parties prefer not to use insurance owing to the high premiums of those insurance products and the exclusion list used by insurers that are not familiar with the Latvian market.

Post-closing covenants

30 Do parties typically agree to post-closing covenants? If so, what is the usual scope of such covenants?

There are often non-compete and non-solicitation undertakings in the purchase agreements. Both of those obligations are strengthened by penalties of €50,000 for each breach, as well as an obligation to compensate the losses of the target or the buyer.

The non-compete clause is in most cases for three years, and the non-solicitation clause for one year. Depending on the industry and the size of the target, there may be case-specific post-closing obligations (eg, construction warranties or easements to be granted or unlimited assignment of IP rights).

TAX

Transfer taxes

31 Are transfer taxes payable on the transfers of shares in a company, a business or assets? If so, what is the rate of such transfer tax and which party customarily bears the cost?

With regard to the sale of assets, the parties must conduct a tax analysis to assess whether VAT (currently 21 per cent) is applicable and, if VAT is applicable, the extent to which it is applicable (eg, fixed assets or movables only).

Share sales are not subject to transfer tax; however, the seller may be obliged to pay capital gains in its tax residence. Further, a VAT risk that must be addressed arises if the asset under sale is real estate that has used VAT deductions related to construction or renovation works during the 10 years prior to sale.

In the case of a real estate transfer, the transfer tax is 2 per cent of the purchase price, and it is usually paid by the buyer. If the buyer has strong bargaining power, it can demand a decrease of the purchase price by 1 per cent as a compromise under the general understanding that 2 per cent is too high a cost.

Corporate and other taxes

32 Are corporate taxes or other taxes payable on transactions involving the transfers of shares in a company, a business or assets? If so, what is the rate of such transfer tax and which party customarily bears the cost?

With regard to the sale of shares, the capital gains tax is zero per cent if the Latvian company has owned the shares for at least three years. In other cases, it is levied at the standard rate of 15 per cent.

In an asset sale, the corporate income tax rate is 15 per cent, but it is not payable if the profits are not distributed as dividends. If 50 per cent or more of the assets owned by the target are real estate and the seller is a non-Latvian taxpayer, the buyer (Latvian tax resident) withholds 3 per cent of the purchase price, which is then paid to the Treasury.

EMPLOYEES, PENSIONS AND BENEFITS

Transfer of employees

33 Are the employees of a target company automatically transferred when a buyer acquires the shares in the target company? Is the same true when a buyer acquires a business or assets from the target company?

The employees of the target are not usually transferred when the buyer acquires the shares in the target; their employment continues regardless of the changes in the shareholding structure.

Employees have an obligation to provide one months' notice if they wish to resign from the target.

If the buyer acquires assets, an additional analysis is needed to assess the application of transfer of undertaking risks. The transfer of assets does not automatically trigger the transfer of employees, but the transfer of assets that constitute an independent business does.

Notification and consultation of employees

34 Are there obligations to notify or consult with employees or employee representatives in connection with an acquisition of shares in a company, a business or assets?

There is no obligation to discuss the acquisition or potential acquisition with the employees. In the case of the transfer of an undertaking, the seller and the buyer must inform the employees about the changes in

the employer, and the employees may resign or follow the undertaking transferred.

In most cases, most employees follow the undertaking and sign formal amendments to their employment contracts. Some employees may refuse to do so and may terminate employment.

In practice, the buyer may provide better incentives and higher salaries to key employees to join its organisation.

Transfer of pensions and benefits

35 Do pensions and other benefits automatically transfer with the employees of a target company? Must filings be made or consent obtained relating to employee benefits where there is the acquisition of a company or business?

Private pension plans are rare in Latvian companies. In the case of the transfer of an undertaking, employees retain all benefits prescribed by their employment contracts. If a private pension plan is agreed, the buyer must continue at least the same contributions as those that the seller agreed with the employee.

UPDATE AND TRENDS

Key developments

36 What are the most significant legal, regulatory and market practice developments and trends in private M&A transactions during the past 12 months in your jurisdiction?

The government-controlled financial institution ALTUM provides legal assistance to large Latvian companies either as loans or convertible loans. Private equity and mezzanine finance funds use this to exit Latvian companies.

Owing to laws in respect of the covid-19 pandemic, unsecured creditors cannot make debtors insolvent in the event of default. Consequently, there are fewer distressed assets for sale than initially expected. The retail and hotel industry has suffered the most over the past 12 months, and many of those assets are available for sale.

The biggest impact on the economy over the past 12 months arose owing to Russia's invasion of Ukraine and the sanctions that followed. Most of the affected industries relate to aviation and logistics. The introduction of sanctions by the European Union and Latvia has led to an increase in the costs of construction materials, natural gas and petrol-related products, which has affected most businesses.

VILGERTS

Gints Vilgerts
gints.vilgerts@vilgerts.com

Jūlija Jerņeva
julija.jerneva@vilgerts.com

Jupiter Tower, 12th Floor
Skanstes iela 7 k-1
Riga 1013
Tel: +371 67 320 000
www.vilgerts.com