GETTING THE DEAL THROUGH

Mergers & Acquisitions

in 68 jurisdictions worldwide

2012

Contributing editor: Casey Cogut

Published by
Getting the Deal Through
in association with:

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Mergers & Acquisitions 2012
Published by
Law Business Research Ltd
87 Lancaster Road
London, W11 1QQ, UK
Tel: +44 20 7908 1188
Fax: +44 20 7229 6910

ISSN 1471-1230

Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112

Law Business Research

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Bulgaria

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1 Types of transaction

How may businesses combine?

The most common methods for achieving the combination of two or more businesses that are used in the Bulgarian legal practice are the following:

- the acquisition of a majority or all of the shares or stocks of a company – the acquirer would assume control over the target by acquiring the majority of its voting rights;
- the transfer of the going concern of one entity to another – the transferor shall transfer all of its assets, liabilities and goodwill to the acquirer through a single transaction;
- the transfer of all the assets and contracts piece by piece by one company to another – the transferor shall transfer all or some of its assets and contracts via series of transactions. Normally this procedure is used in case of uncertainty about undisclosed or hidden liabilities on the transferor's side;
- the merger by way of acquisition (one or more entities are absorbed into another entity and the absorbed entities cease to exist) or by way of incorporation (two or more entities combine to establish a new one and all of the combined entities cease to exist);
- the demerger by way of acquisition – a portion of the assets and liabilities of an entity are split off and pass onto another entity; and
- the entering into various contractual arrangements leading to the establishment of joint ventures, consortia or similar unincorporated structures.

2 Statutes and regulations

What are the main laws and regulations governing business combinations?

Not all forms of business combination are governed by specific legislation. The applicability of a specific legislation depends mainly on the type of the combination and/or the business of the companies involved:

- the Commerce Act of 1991, as amended, is the main legislative act regulating the legal status of companies, mergers, acquisitions, sale of shares in limited liability companies and stocks in joint-stock companies, transfer of going concerns, etc;
- the Contracts and Obligations Act of 1950, as amended, applies to all issues not covered by the Commerce Act, as well as to the transfers of assets, transfers or novation of contracts, etc. It also governs general issues such as the nullity of the civil contracts;
- the Commercial Registry Act of 2006 regulates the procedures for registration of business combinations (when such are subject to registration) with the Commercial Registry;
- the Public Offering of Securities Act regulates the legal status and the special requirements applicable to publicly traded joint-stock companies, the procedures for the acquisition of their non-physical shares, the obligations for the launch of tender offers once certain shareholding thresholds are exceeded, etc; and
- the Privatization and Post-privatization Control Act regulates the special procedures applicable with respect to the privatisation of state and municipal companies and assets.

The legislation specifically governing the regulated industries should also be considered when a merger or acquisition is made within that industry, for example:

- the Credit Institutions Act and its regulations set up special permit requirements of the banking regulator with respect to the acquisition of shares in a banking institution or the transformation of banks;
- the Markets in Financial Instruments Act regulates the establishment and the requirements with respect to investment intermediaries;
- the Insurance Code regulates the legal status of insurance joint-stock companies, including rules on business combinations; and
- the Telecommunications Act sets forth special permit requirements with respect to the acquisition of shares in a public telecommunications operator.

Certain Bulgarian laws may affect the procedures for the payment of the acquisition price, such as:

- the Foreign Exchange Act regulating the declaration of transactions involving sums over certain amounts for national statistics purposes;
- the Corporate Income Tax Act, which may impose a withholding tax obligation, respectively the various double tax treaties to which Bulgaria is a party and which may alter the said obligation, and the Tax and Social Security Procedure Code, which establishes the procedure for the application of the double tax treaties; and
- the Measures Against Money Laundering Act, regulating specific obligations of the banks to identify the entities that effect certain payments, etc.

With respect to general administrative law, the Protection of Competition Act regulating concentration clearances by the Bulgarian Commission for the Protection of the Competition (the Competition Commission) is also relevant.

3 Governing law

What law typically governs the transaction agreements?

On many occasions the parties may choose a foreign law to govern their contractual relations. In those cases the applicability of the Bulgarian laws may not be derogated with respect to material elements of the deal such as:

- the form of the agreement – especially if the agreement is subject to registration or enforcement in Bulgaria;
- corporate requirements with respect to the adoption of corporate decisions by the Bulgarian participants in the deal;

- administrative requirements such as the registration of the deal and the fees associated therewith, getting of the necessary permits for the deal, etc; and
- due taxes – withholding tax (in the case of sale of shares in a Bulgarian company), local taxes (in the case of sales of real estate located in Bulgaria), VAT, etc.

If the transaction is governed by Bulgarian law, then the following legislation would apply in most cases:

- the Commerce Act governs the forms of the agreements for the transfer of shares, physical stocks or going concerns, the procedures for the adoption of the relevant corporate decisions, the procedures for the effective assumption of control after the deal closes, the deal registration requirements, the procedures for the companies' transformation, like mergers or demergers, etc;
- the Contracts and Obligations Act – according to the Commerce Act to all matters not regulated by it the provisions of civil legislation shall apply. The law forming the backbone of the civil legislation is the Contracts and Obligations Act, therefore it may, and most probably will, be applicable to many elements of an M&A project; and
- the Public Offering of Securities Act applies to acquisitions or transformations involving publicly traded companies, etc.

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?

Commercial registration

Most business combinations require registration with the Commercial Register. At present, the Commercial Register is kept by the Registry Agency, which is subordinated to the Ministry of Justice. Commercial registration is required with respect to all of the transformation procedures (ie, mergers and demergers), transfer of going concerns, transfer of shares in a limited liability company, transfer of 100 per cent of the stocks in a joint stock company, etc. Registration normally requires a fee the amount of which is relatively low. The refusals of the Commercial Register officials to register business combinations are subject to judicial control. Depending on the concrete type of the business combination and the legal form of the companies involved, the procedure for carrying out of a business combination varies in terms of steps to be undertaken and documents to be executed. For example, the Commerce Act provides for easier and shorter procedure for registering business combinations between daughter companies or between a mother and a daughter company – compared to the general case scenario, where it is necessary to draft and submit a special plan or agreement for the combination, to have it examined by an independent examiner, etc.

Transactions concluded on and off the floor of the stock exchange

Transactions with shares of publicly traded companies at the floor of the exchange are automatically announced to and registered by the Central Depository. The ones concluded off the floor of the exchange are subject to registration with the Central Depository and announcement at the exchange. Transactions with dematerialised shares issued by non-publicly traded companies are also subject to registration with the Central Depository. All those announcements or registrations are subject to a fee determined on the basis of special tariffs and could be defined as reasonable.

Assets deal registrations

If such a deal is implemented, then registrations must be made with respect to all assets that are subject to special registration and/or control (real estate, trademarks, motor vehicles, securities, ships, aircraft, weapons and ammunitions, etc). The fees payable depend on the nature of the asset and are in general reasonable.

Auxiliary registrations

Normally a business combination is associated with changes in the constituent documents of the target, its management bodies, address of management, trading name, etc. Those changes are also subject to commercial registration. In addition, and depending on the form of the M&A transaction, registrations may have to be made with respect to all assets that are subject to special registration (please see above). The making of those registrations is also conditional upon the payment of a fee, which in most cases is reasonable.

Concentration clearance

Concentration clearance is required if the sum of the turnovers of the participants in the concentration on the territory of Bulgaria exceeds 25 million Bulgarian levs for the year preceding the year of the concentration and (i) the turnover of each one of at least two of the participants exceeds 3 million levs; or (ii) the turnover of the participant being acquired exceeds 3 million levs. The fee payable for the issuing of the clearance is 0.1 per cent of the combined turnover, but no more than 60,000 levs.

In case the concentration has a community dimension, as defined by the Merger Regulation (Council Regulation (EC) No. 139/2004), then the concentration clearance is to be issued by the European Commission.

Regulatory permits

Regulatory permits are required depending on the nature of the transaction and the industry sector in which the target operates. The general principle is that in case the business is of a regulated nature (ie, the company possesses permits, licences or concessions), the obtaining of a permit by the authority monitoring and regulating the respective business is a must, if the surviving entity wants to keep the business. Such authorities include the Bulgarian National Bank, the Financial Supervision Commission, the Commission for Protection of Competition, the State Energy and Waters Regulatory Commission, the Telecommunications Regulatory Commission, etc. Usually the issuing of the permit incurs a fee.

It should be noted that whenever fees are collected in connection with the performance of a business combination their amount is either fixed in advance in a special tariff or can be calculated on the basis of rules contained in such a document and does not depend on the judgement or discretion of the relevant officials.

In certain cases the business combination may entail the payment of local taxes. For example in an asset deal involving real estate the parties may have to pay local taxes of up to 3 per cent of the transfer value of the real estate. Some forms of transfer agreements may require notarisation (eg, transfer of going concerns, transfer of shares in a limited liability company, transfer of real estates and motor vehicles in an asset deal). The notary fees are computed pursuant to a progressive tariff and their maximum may not exceed €3,000 (depending on the deal).

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 that shall be made public depends primarily on the type of business combination as well as on the legal form of the participants. In certain cases there is no requirement for public announcement (eg, acquisition of less than 100 per cent of the shares in a non-publicly traded joint-stock company). In other cases, the parties may have to disclose material amounts of information to the general public, the regulators or the Competition Commission.

In the case of a planned transformation of non-publicly traded companies, the public will be informed about the planned merger through the advance announcement in the Commercial Register of the merger documents and the invitation for the general meeting. Given that the Commercial Register is public, any person (not just the shareholders) may learn all of the details with respect to the transformation, such as its form, the participants therein, the proposed exchange of shares, the amount of cash payments, if any have been envisaged, and the time period within which payment must be made, etc.

Each person acquiring 5 per cent or more of the shares in a publicly traded company should make an announcement. A similar requirement applies with respect to subsequent acquisitions where the total shareholding would exceed 10 per cent, 15 per cent and other percentages divisible by 5.

In addition, a disclosure to the regulated market is to be made when a potential acquirer enters into confirmed negotiations for the acquisition of control over the publicly traded company.

In the case of acquisition of control over a company, the shares of which are publicly traded, the acquirer should launch a tender offer to the minority stockholders. The minimum content of the tender offer is determined by law and includes, inter alia, information about the acquirer, its business plans for the future, plans with respect to the employees, offer to acquire the minority shares and indication of the price at which this will be done, etc. A notice about the tender offer and the text of the tender offer are to be published in at least two national daily newspapers.

The information disclosed to the Competition Commission usually covers a wide range of commercially sensitive information, therefore, the parties may indicate in their filings the data that they consider covered by commercial secrecy. The Competition Commission may then disclose the non-confidential information to the public via announcements on its official website.

For the purposes of obtaining the regulatory permit (if required) the applicants may also need to disclose to the regulator a material amount of information, including on their business plans; however, this information will not be made public.

The Privatisation Agency must publish reports on its activity in the official gazette. According to the law, those reports should include information on transferred shares or assets, the name of the acquirer, the purchase price and the additional obligations assumed by the acquirer, such as the obligation to make investments or the obligation to maintain certain number of employees.

The above is only an example on the different types of requirements applicable to different types of business combinations and neither covers and exhausts all the requirements for revealing of information nor spreads over all the possible business combinations.

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?

According to the Commerce Act and the Commercial Register Act, the names of the shareholders in a limited liability company and their share participation are public and can be seen by any third party.

The shareholders in a non-publicly traded joint-stock company are not required to be announced with the Commercial Registry. However, if a person acquires 100 per cent of the capital of such company, then his or her name shall be recorded in the registry.

As mentioned above, each person acquiring 5 per cent or more of the capital of a publicly traded joint-stock company should disclose this to the regulated market on which the acquisition took place, as well as to the company itself and to the Commission for Financial Supervision (the Commission).

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?

Managers and directors play different roles depending on the type of the business combination that is to be implemented.

In the case of mergers and demergers, the role of the managing bodies is fundamental for the successful completion of the planned combination, as they are responsible for the entire procedure, including preparation of the merger agreement and the reports of the management bodies, securing the proper auditing of the merger documentation and the disclosure of information to the shareholders, convocation of the general meeting of the shareholders to vote the requisite resolutions, registration of the combination, etc.

Without the assistance of the management bodies the preparation of a competition clearance filing would be impossible. However, it is up to the selling shareholder to secure their assistance. The same is valid with respect to the regulatory permit filings.

The Commerce Act provides that the members of the managing bodies of the companies participating in a merger or demerger will be liable to the partners and shareholders in the companies for any damages resulting from a failure to fulfil their duties in preparing and effecting the combination.

The management of the surviving or acquiring company (in cases of mergers, demergers or acquisitions of a going concern) is obliged to secure the separate management of the assets for six months after the business combination is complete. Should they fail to observe this requirement they shall be liable to the creditors for the resulting damages.

The members of the managing bodies of publicly traded joint-stock companies are jointly liable for any detriment as may be inflicted by reason of any untrue, misleading or deficient particulars in the prospectus submitted to the Commission.

No specific obligations exist with respect to the controlling shareholders.

8 Approval and appraisal rights

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

Certain business combinations do require approval by the general meeting of shareholders, whereas others may be implemented by a resolution of the management or jointly by the management and supervisory bodies.

Transformation of the company (merger or demerger)

Resolution of the general meeting is needed to be passed with a majority of three-quarters of (i) the entire capital when transforming a limited liability company; or (ii) the presented voting shares when transforming a joint-stock company. In case of stocks from different classes, the decision shall be taken by the stockowners from each class. To transform a partnership limited by stocks, it is necessary to have a decision of the unlimited liability partners taken unanimously in writing with notarisation of the signatures, and a decision of the general meeting of the shareholders taken by a majority vote of three-quarters of the represented shares. A transformation of a general partnership or a limited partnership shall be done upon the agreement of all partners given in writing with notarisation of the signatures.

Transfer of the entire going concern

Resolution of the general meeting is needed, however, this power may be delegated to the management or the management and supervisory bodies jointly by the statute of the joint-stock company.

Transfer of assets which value exceeds one-half of the total value of the assets as per the last audited balance sheet

Resolution of the general meeting is needed, however, this power can be delegated to the management or management and supervisory bodies jointly by the statute of the joint-stock company.

Entering into consortia or similar arrangements

Entering into consortia or similar arrangements may be delegated to the management bodies.

Appraisal rights

In the case of a merger or demerger the shareholders have to receive a report by a licensed auditor confirming the fairness of the exchange coefficients at which their shares would be exchanged.

In case of a mandatory tender offer in a publicly traded company the shareholders have to receive a report from the management of the company on the proposed offer and the calculation of the price is to be reviewed first and approved by the Commission for Financial Supervision.

9 Hostile transactions

What are the special considerations for unsolicited transactions?

In general, in the case of a transfer of shares in a limited liability company, the new shareholder needs to be approved by all of the shareholders. There is no such legal rule for the transfer of shares in a non-publicly traded joint-stock company but the shareholders could implement similar protective mechanisms though 'right of first refusal' or similar clauses in the statute of the company. However, this is not applicable with respect to publicly traded joint-stock companies, the shares of which are supposed to be freely transferable.

The Bulgarian stock market is still underdeveloped and has seen no hostile takeovers to date. Furthermore, the free-float of Bulgarian public companies is usually small which makes hostile takeovers practically impossible.

As a rule, any person possessing 5 per cent or more of the capital of a public company and wishing to acquire more than one-third of the capital may register a tender offer addressed to all of the shareholders.

The said tender offer (as well as any other tender offer – see question 12) is to be based on the following general rules:

- all of the shareholders should be treated equally;
- the shareholders should be given sufficient time to assess the offer and take a grounded decision;
- the management must act in the interests of the target company, its shareholders and employees; and
- no market manipulations of the shares of the target company or other affected companies are allowed.

The management of the target company has to be requested to provide an opinion on the tender offer.

During the tender offer, the target company may not issue shares, rights, warrants or other securities convertible into voting shares or enter into transactions that would materially alter its property, redeem shares or take any other steps to prevent the acceptance of the tender offer, or create material difficulties or inflict additional expenses to the offeror.

The law does not provide for any specific measures that the management of the target company may take to prevent a hostile takeover. However, it may provide a negative opinion on the tender offer as long as such opinion could be backed with arguments. Due to the reasons explained above there is no court practice on such cases.

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 law requires that all pre-contractual relations and negotiations should be conducted in good faith. Since this wording is quite broad prudent investors prefer to settle issues like the exclusivity for negotiations, break-up fees, and the possibility to negotiate with more than one party in advance through written instruments. Those documents would also regulate the possible break-up fee payable to the buyer should third parties interfere successfully in the planned transaction. The break-up fees could be included in those documents also as a penalty for breaching the pre-contractual obligation not to negotiate with a third party.

The law contains no limitation with respect to break-up fees and it may be freely negotiated between the parties. However, if the seller is an individual and the break-up fee is negotiated as a 'penalty' then the seller can claim its amount is excessive if it is materially higher than the damages actually suffered by the potential buyer.

Although the break-up fee is more often intended to protect the potential buyer, there is no legal prohibition on agreeing a fee in favour of the seller too.

It should be noted that even without a break-up fee arrangement, there may be pre-contractual liability if one party leaves the negotiations without just grounds and in bad faith.

The Commerce Act prohibits joint-stock companies from granting credits or providing security for the acquisition of their own shares. The wording of the 'financial assistance' prohibition is quite broad and still there is no strong court practice on its application. No such prohibition exists with respect to shares in limited liability companies.

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?

If all the prescriptions of the law are observed, no government agencies may influence or restrict the completion of business combinations.

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 Bulgarian Public Offering of Securities Act regulates three types of tender offers.

Compulsory offers

Any person, who acquires, whether directly or through connected persons, more than 50 per cent of the votes in the general meeting of any public company, must either register with the Commission for Financial Supervision a tender offer to the rest of the voting stockowners for the purchase of their stocks or for exchange with stocks to be issued by the offeror for this purpose, or transfer the requisite number of shares so as to hold, whether directly or through connected persons, less than 50 per cent of the votes in the general meeting. Similar requirements apply to persons acquiring, directly or together with related persons, two-thirds of the voting shares of a listed company. The compulsory tender offer rule is also triggered in case two or more persons own jointly the thresholds as pointed out with the previous sentences and such persons have entered into agreement for joint management and voting.

Voluntary offers (usually to delist the company)
Persons who own more than 90 per cent of the voting capital of a listed company may address a tender offer to the remaining minority shareholders. As a result thereof the company could be delisted.

Voluntary offers (usually to take over the company)
A shareholder in a listed company owning 5 per cent or more of the shares may address a tender offer to the other shareholders if he or she wishes to acquire more than one-third of the voting capital.

As a rule the tender offer is unconditional and may not be withdrawn with the following exceptions:

- a voluntary tender offer aimed at acquiring more than one third of the voting capital may be withdrawn freely; and
- mandatory tender offers and voluntary tender offer by a shareholder with more than 90 per cent of the capital may be withdrawn after its publication exceptionally if its completion has become impossible owing to reasons beyond the control of the offeror and provided that the period for acceptance of the tender offer has not expired. The withdrawal is subject to approval by the Commission for Financial Supervision.

The tender offer documentation, to be filed with the Commission for Financial Supervision, should contain, inter alia, evidence that the offeror is in possession of the funds needed to pay for the acquired shares, and details of the securities that shall be transferred in exchange for the acquired shares. The offeror may finance the acquisition through its own funds or through a loan. In any case, the offeror shall ensure the possibility for full payment of the shares (ie, in case of conditional financing, the Commission shall judge whether such conditions may affect the capability of the offeror to pay the purchase price for the shares).

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?

Bulgarian legislation does not provide for any specific rules regarding the seller's assistance in the financing of the buyer. However, on the basis of the general principal of freedom of contracts such arrangements could be included in the transaction documentation.

In the current financial crisis environment there have been a number of transactions where the sellers have provided certain access to their business documentation and data to the buyer's crediting institutions so that they could assess the security they could obtain post-completion (subject to the financial assistance prohibition rules). The sellers were also prone to assume negative pledge or similar obligations (also as part of their stand-still pre-closing obligations). In some cases the sellers introduced buyers to Bulgarian financial institutions thus making the financing process smoother.

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 Commerce Act does not allow for the squeeze-out of minority shareholders by the majority shareholder in a non-public joint-stock company or limited liability company, irrespective of the percentage held by the latter.

It would not be unthinkable, however, to implement a mechanism for the separation of an existing company into two or more entities, where one of the successors would receive the entire business while the other(s) would receive, for example, only cash. The majority shareholder interested in squeezing out the minority shareholders would then receive shares in the operational company, whereas the minority shareholders would become shareholders in the cash company(ies).

The Commerce Act provides explicitly for few options, the effect of which, if applied to minority shareholders, shall be the same as a squeeze-out.

Non-payment of the shares value in a limited liability company
A shareholder who has not paid up or contributed his interest stake shall be deemed expelled from a company if he fails to pay up or pay in his stake within a time limit as determined additionally by the general meeting.

Expel of a shareholder in a limited liability company
A shareholder in a limited liability company (including the majority shareholder) may be expelled by the general meeting following a notice in writing if he (i) fails to perform his obligations for providing assistance for the carrying out of the activities of the company; (ii) fails to abide the resolutions of the general meeting; or (iii) acts against the interests of the company.

Non-observance of a resolution for additional monetary contribution or capital increase in a limited liability company
The majority shareholders in a limited liability company may adopt a resolution for a capital increase or additional monetary contribution which imply financial obligations to a minority shareholder. If the latter would fail to comply with the resolution, then he may be expelled from the company. A minority shareholder who is dissenting with the additional capital contributions may leave the company voluntarily.

Non-payment of the issuance value of the stocks in a joint-stock company
If the payment of the issuance value was postponed and a stockholder is in delay and fails to pay the said value within one month as of written notice to do so, he shall be deemed expelled.

Squeeze-out in a public joint-stock company
In a public joint-stock company the minority shareholders could be squeezed out, subject to the following procedure:

- the majority shareholder should have had launched a tender offer;
- as a result thereof he should have acquired more than 95 per cent of the voting capital;
- within a period of three months following the completion of the tender offer the majority shareholder may publish an invitation to the remaining minorities to acquire their shares;
- the minority shareholders are obliged to transfer their shares within one month following the publication;
- the shares of those minority shareholders who did not transfer their shares will be considered property of the majority shareholder upon the expiry of the period; and
- the invitation is to be submitted in advance to the Commission for Financial Supervision for approval. Rules similar to the rules for approval of a tender offer and the offered price would apply.

15 Cross-border transactions

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

As a rule, foreign entities enjoy the same economic rights as Bulgarian entities. However, the involvement of an international element affects in most cases the structure of the business combination. The following should be mentioned.

In most cases of cross-border transactions the parties would choose a foreign law to govern their relations, provided however, that certain mandatory provisions of the Bulgarian laws shall equally apply.

In the case of sale of shares in a Bulgarian company by a foreign seller, the withholding tax requirements of the Bulgarian laws should be complied with.

The parties to a cross-border transaction prefer to choose foreign courts or arbitral institutions as the forum competent to settle their disputes.

The Private International Law Code provides that the foreign company shall be duly registered and validly existing under the laws of the relevant country. Such registration and existence can be proved by presenting a certificate issued by the proper authority keeping the commercial registries in the relevant country.

As of December 2007, Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies has been implemented in the Bulgarian legislation. The rules on cross-border mergers apply in the case of merger between joint-stock companies, limited liability companies and partnerships limited by shares seated in Bulgaria, on the one hand and another limited liability company (within the meaning of article 1 of Directive 68/151/EEC) seated in different member states of the European Union or contracting parties to the agreement on the European Economic Area, on the other hand.

The Public Offering of Securities Act provides the requirements for public offering by non-resident persons in Bulgaria of stocks that are not publicly traded in another country and for public offering abroad of stocks issued by resident persons.

If a non-resident company wants to perform public offering in Bulgaria it shall fulfil the following conditions:

- the stocks must satisfy the requirements of the Public Offering of Securities Act, including on the disclosure of information via approved prospectus;
- the issuer shall present evidence of conformity with the law of the place of his registration; and
- realisation of the rights of the resident investors shall be guaranteed.

If the stocks are physical, they may be offered to the public after being immobilised at the Central Depository.

The Commission shall be notified of any public offering abroad of stocks issued by resident persons. Upon submission of documents for public offering abroad to the competent foreign institutions, the issuer or the investment intermediary shall submit to the Commission:

- the draft prospectus and any other documents as may be required according to the foreign law;
- a declaration pledging to submit to the Commission copies of all documents as may be published or presented abroad according to the foreign law; and
- any other documents as may be prescribed by ordinance.

The Foreign Exchange Act provides that transactions of money between foreign and resident persons of more than 100,000 levs shall be declared before the Bulgarian National Bank with special forms for statistical purposes only. The bank effecting the transfer would need to receive valid evidence about the need to do the transfer (eg, shares transfer agreement, closing protocol, other).

In case the seller of the shares or stock is a foreign entity then it shall need to consider its withholding tax obligations with respect of the capital gain, which is of 10 per cent in the general case, but could be reduced to 5 or zero per cent by operation of a double tax treaty. The seller may file for the application of the more favourable tax rate with the Bulgarian National Revenue Agency.

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?

The time for completing a business combination depends mainly on the form chosen. Generally mergers and demergers are completed within a period of three to six months (including the waiting period for the concentration clearance and regulatory permits). The procedures for transfer of going concerns are slightly shorter, including where associated with concentration clearance and regulatory permits. Otherwise, the transfer of the going concern, once the agreement is executed, could be registered within 15 to 20 days. The Commerce Act provides for less complicated procedures in terms of mergers and demergers, in case such combinations are made between daughter companies or mother and a daughter company and such daughter companies have one shareholder only. In such cases a merger or demerger may be completed within a month.

Some examples of waiting periods are discussed below.

A concentration clearance is to be issued within 25 business days following the filing (extensions are possible for collection of additional data and curing defects). The clearance will enter into force in 14 days following its announcement unless appealed. The Commission may allow the immediate enforcement of the clearance in which the transaction could be closed right away, yet the clearance can still be appealed (and if such an appeal is successful the transaction may have to be unwound).

Announcement of the merger or demerger documentation – 30 days prior to the date of the general meeting to approve the merger or demerger. The registration of the merger or demerger is to be done upon the expiry of 14 days following the filing.

Certificate of notification to the tax authorities – some forms of business combination (eg, transfer of going concerns, merger or demerger) require the filing with the Commercial Registry of a certificate to be issued by the tax authorities evidencing they were notified about the planned combination by the entity or entities participating therein. Such a certificate can be issued in up to 60 days following the filing.

It must be noted that after registering a business combination in the Commercial Registry in the form of transfer of a going concern or merger, a six-month period starts to run within which the assets of the acquired business shall be managed separately. No special actions are needed to be performed when this term expires.

The combinations involving companies from regulated industries are normally subject to regulatory permits (banking, insurance, investment brokerage, telecommunications, companies operating under concessions for subsoil resources, etc).

17 Sector-specific rules

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

Business combinations in certain sectors are subject to specific rules providing for additional authorisations and permits to be given by different authorities for the proper completion of the planned combination. Such industries include banking, insurance, telecommunications (especially where scarce recourses are used), energy (distribution, transmission, storage, electricity production above certain thresholds), investment intermediation, regulated market operators, etc.

18 Tax issues

What are the basic tax issues involved in business combinations?

The tax implications shall depend primarily on the chosen form of the business combination.

Corporate tax

In the case of a merger, the surviving or newly incorporated company should pay the final corporate tax of the terminated companies calculated as of the date of registration of the merger in one month following such registration.

Update and trends

The rules regulating the main forms of business combinations were only enacted in 2003. Since then, a vast number of business combinations took place which lead to the introduction of amendments to the legislation for the purpose of better regulation of the processes. The accession of Bulgaria to the EU in 2007 recognised the harmonisation of the Bulgarian law with the acquis communautaire.

The future development of the Bulgarian legal framework will strongly depend on the pieces of legislation adopted by the EU. In addition, the trend for bettering of the administrative services and procedures applicable to business combinations will continue. One of the examples is the start and the already fluent and quick work of the Commercial Register, which is internet-based, fully accessible and with the possibility for filings to be made by means of using e-signature and scanned papers only.

The knowledge and competence of the Bulgarian revenue authorities has evolved significantly during the last decade. The control over the possible attempts for tax evasion or tax fraud as a result of a business combination has strengthened significantly. At the same time some of the measures introduced on the requirement of the revenue authorities have the capacity to slow down the business combination process (eg, the requirement for 60 days' advance notice – see question 16).

The financial crisis has seriously affected the Bulgarian M&A market. As a result thereof there was a significant growth of the insolvency proceedings, including transfers of going concerns as a result of such proceedings.

Withholding taxes

Withholding taxes become due with respect to incomes of Bulgarian sources paid or payable to foreign persons. Typically the withholding taxes issue arises with respect to share acquisitions, although theoretically this could happen in asset deals too. The standard rate applicable to incomes from the sale of shares is 10 per cent but may be reduced by operation of various double tax treaties to which Bulgaria is a party.

Local taxes

Local taxes are due in the case of asset deals involving real estate and motor vehicles. The maximum rate is of 3 per cent. No local taxes are charged in merger or demerger combinations or transfers of going concerns.

VAT

The transfers of shares or going concerns and the transformation of companies are not subject to VAT. However, in case of merger the terminated entity will be deregistered for VAT purposes and its successor would have to charge VAT over the acquired assets except if the successor is VAT registered or becomes VAT registered.

19 Labour and employee benefits

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

The obligations of the companies participating in a business transaction are regulated primarily by the Labour Code of 1987 (as amended).

As a rule, the relationship with the employee shall not be terminated in case of merger or demerger of companies, transfer of going concerns or autonomous parts thereof. Such changes could occur at a later stage after the organisation and the structure of the new employer is optimised, provided that the employment can be terminated on grounds and subject to compliance with the requirements and procedures laid down in the Labour Code.

In the above cases, the legal successor or the new owner shall become employers by direct operation of the law.

Prior to putting into effect a business combination of the type described above (or of any of the most common types of business combinations listed in question 1) the employer shall be bound to notify the employees about the anticipated changes and the date of their effect; the reasons for the changes; the possible legal, economic and social consequences of the changes for the employees; the measures planned in respect of the employees. The notification shall be given at least two months before the occurrence of the consequences for the employment and the working conditions of the employees.

Where the business combination could lead to the implementation of certain measures with respect to the employees, the employer is obliged to conduct in due time consultations and to try to achieve agreement with the representatives of the trade unions and with representatives of the employees before giving the notification.

In case of surviving of the two participants in the combination, where transfer of employees is involved, unless otherwise agreed between the two employers, liable for the obligations to the employees originating before the implementation of the combination, shall be both the participants.

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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?

If a company is in bankruptcy proceedings it may participate in a business combination (eg, merger or demerger) only if the approved by the bankruptcy court recovery plan provides so. Alternatively, the approved recovery plan may provide for the transfer of the entire going concern of the bankrupt company to a third party.

It should be also noted that the recovery plan may provide for the conversion of the receivables of a creditor or creditors into capital as a result of which such creditor or creditors could acquire control over the company.

If no recovery plan is approved a possibility exists for selling of the whole going concern of the bankrupt company instead of cashing it out on a piecemeal basis. For such a sale the approval of the bankruptcy court is needed.

21 Anti-corruption and sanctions

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

Bulgarian law does not provide any specific anti-corruption regulation in connection with business combinations. However there are general provisions in the Criminal Code that define bribery as a crime and provide for sanctions. The bribery provisions include the following crimes:

- offering, promising or giving of a bribe to an officer (management or high-level officials of a company included) for the purpose of the non-observance or observance of his office;
- asking for or acceptance of a bribe by an officer (management or high-level officials of a company included) for the purpose of the non-observance or observance of his office; and
- intermediation for offering, promising, giving, asking for or receiving of a bribe as well as provoking of bribery.

The penalty for the above crimes is imprisonment and a fine, where the exact imprisonment period and the particular fine amount vary depending on the specifics of the bribe (ie, whether the bribed officer has broken his office with regard to the bribe, what is the particular position which the bribed officer occupies, etc).

In addition, as mentioned above, the management may be held liable towards the company and/or the investors in case of damages caused to the company or the investors.

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MERGERS & ACQUISITIONS 2012 ISSN 1471-1230