

---

CHAMBERS GLOBAL PRACTICE GUIDES

---

# Corporate M&A 2023

---

Definitive global law guides offering  
comparative analysis from top-ranked  
lawyers

**Bulgaria: Law & Practice**

Mihail Vishanin  
Boyanov & Co.

**Bulgaria: Trends & Developments**

Yordan Naydenov,  
Nevena Dzhurova and  
Mihail Vashinin  
Boyanov & Co.



# BULGARIA



## Law and Practice

**Contributed by:**  
Mihail Vishanin  
**Boyanov & Co.**

### Contents

#### 1. Trends p.4

- 1.1 M&A Market p.4
- 1.2 Key Trends p.4
- 1.3 Key Industries p.4

#### 2. Overview of Regulatory Field p.4

- 2.1 Acquiring a Company p.4
- 2.2 Primary Regulators p.4
- 2.3 Restrictions on Foreign Investments p.4
- 2.4 Antitrust Regulations p.4
- 2.5 Labour Law Regulations p.5
- 2.6 National Security Review p.5

#### 3. Recent Legal Developments p.5

- 3.1 Significant Court Decisions or Legal Developments p.5
- 3.2 Significant Changes to Takeover Law p.5

#### 4. Stakebuilding p.5

- 4.1 Principal Stakebuilding Strategies p.5
- 4.2 Material Shareholding Disclosure Threshold p.5
- 4.3 Hurdles to Stakebuilding p.6
- 4.4 Dealings in Derivatives p.6
- 4.5 Filing/Reporting Obligations p.6
- 4.6 Transparency p.6

#### 5. Negotiation Phase p.6

- 5.1 Requirement to Disclose a Deal p.6
- 5.2 Market Practice on Timing p.7
- 5.3 Scope of Due Diligence p.7
- 5.4 Standstills or Exclusivity p.7
- 5.5 Definitive Agreements p.7

#### 6. Structuring p.7

- 6.1 Length of Process for Acquisition/Sale p.7
- 6.2 Mandatory Offer Threshold p.8
- 6.3 Consideration p.8
- 6.4 Common Conditions for a Takeover Offer p.9

6.5 Minimum Acceptance Conditions p.9

6.6 Requirement to Obtain Financing p.9

6.7 Types of Deal Security Measures p.10

6.8 Additional Governance Rights p.10

6.9 Voting by Proxy p.10

6.10 Squeeze-Out Mechanisms p.10

6.11 Irrevocable Commitments p.11

#### 7. Disclosure p.11

7.1 Making a Bid Public p.11

7.2 Type of Disclosure Required p.11

7.3 Producing Financial Statements p.12

7.4 Transaction Documents p.12

#### 8. Duties of Directors p.12

8.1 Principal Directors' Duties p.12

8.2 Special or Ad Hoc Committees p.12

8.3 Business Judgement Rule p.12

8.4 Independent Outside Advice p.12

8.5 Conflicts of Interest p.12

#### 9. Defensive Measures p.13

9.1 Hostile Tender Offers p.13

9.2 Directors' Use of Defensive Measures p.13

9.3 Common Defensive Measures p.13

9.4 Directors' Duties p.13

9.5 Directors' Ability to "Just Say No" p.13

#### 10. Litigation p.13

10.1 Frequency of Litigation p.13

10.2 Stage of Deal p.13

10.3 "Broken-Deal" Disputes p.14

#### 11. Activism p.14

11.1 Shareholder Activism p.14

11.2 Aims of Activists p.14

11.3 Interference With Completion p.14

Contributed by: Mihail Vishanin, **Boyanov & Co.**

**Boyanov & Co.** is widely recognised as a top law firm for doing business in Bulgaria and in South-East Europe. Since 1990, Boyanov & Co. has advised on numerous landmark transactions and has earned unparalleled international and local recognition as a preferred law firm. Boyanov & Co. has always been ranked as a market leader for the excellence of its services, drawing on years of experience and on the brilliance of its professionals. The firm

is strongly dedicated to supporting the rule of law, and the adoption and implementation of efficient business regulations. As the founder of the Legal Development Foundation, Boyanov & Co. strives to assist in the formation of a new generation of modern lawyers. Boyanov & Co. was the initiator of the South East Europe Legal Group (SEE Legal), the largest and oldest integrated organisation of leading law firms across 12 countries in South-East Europe.

## Author



**Mihail Vishanin** is counsel at Boyanov & Co. and has more than 17 years of professional experience as a Bulgarian lawyer, focusing on corporate law, M&A, PPP/concessions and commercial litigation. He has assisted in high-profile acquisitions, strategic joint ventures, cross-border transactions and

divestitures, covering all key types of M&A projects across a range of industries, including IT, retail, confectionery, life sciences, healthcare, transportation, manufacturing, services and media. He regularly advises leading international and local corporations, credit institutions and public entities on commercial operations and investment projects.

---

## Boyanov & Co.

82 Patriarch Evtimii Blvd.  
1463 Sofia  
Bulgaria

Tel: +359 2 805 50 55  
Fax: +359 2 805 50 00  
Email: [mail@boyanov.com](mailto:mail@boyanov.com)  
Web: [www.boyanov.com](http://www.boyanov.com)

# BOYANOV & Co.

## 1. Trends

### 1.1 M&A Market

The ongoing COVID-19 pandemic affected the pace of deal activity in Bulgaria over the last 12 months only to a minor extent. The recovery from the COVID-19 pandemic continued apace, with an increase in the number of transactions. In the last 12 months, there were about 60 transactions. If sales of business properties are included, this brings the number up to 70–80, which was usual before the pandemic.

### 1.2 Key Trends

After the lull in the pandemic year 2020 and the excitement in 2021, the past 12 months have brought new activity to the market to further offset the previous slowdown. However, Russia's war in Ukraine and its catalysation of global trade tensions, energy uncertainty and soaring inflation have made investors more cautious. As in previous years, the vast majority of corporate transfers are small in size, and, outside of technology companies, most buyers are local. Since the autumn of 2022, there has been a slowdown among buyers, mainly due to the increase in interest rates and more expensive financing. Equity funds have become much more selective.

### 1.3 Key Industries

M&A activity in 2022 for Bulgaria comprised many technology companies, an energy and communication giant, several financial companies and a handful of manufacturing companies. The industries most affected by the COVID-19 pandemic are the manufacturing, transportation, and hospitality and catering industries.

## 2. Overview of Regulatory Field

### 2.1 Acquiring a Company

The typical legal means of acquiring a company is through acquisition of shares in its capital. Acquisition of the entirety or a part of a company's going concern is also common.

### 2.2 Primary Regulators

In principle, no state authority regulates M&A activity in Bulgaria. However, depending on the sector in which the target operates, an approval may be required, for example from the Bulgarian National Bank if the target is a credit institution. In the case of a concentration of business activity, an antitrust clearance from the Bulgarian Commission on the Protection of Competition may be required.

### 2.3 Restrictions on Foreign Investments

Foreign nationals or non-resident legal persons may acquire a right to ownership of land in Bulgaria under the terms arising from the accession of the Republic of Bulgaria to the European Union, or by virtue of an international treaty which has been ratified by, has been promulgated in, and has entered into force for the Republic of Bulgaria, as well as through legal succession. Some other restrictions on foreign investments also exist.

### 2.4 Antitrust Regulations

The Bulgarian antitrust legislation is harmonised with the relevant EU regulations, which are also directly applicable in Bulgaria. A concentration of a business activity resulting in a change of control is subject to notification to the Bulgarian Commission on the Protection of Competition, if the combined worldwide turnover of the undertakings concerned exceeds EUR12,782,297 and each of at least two of the undertakings concerned had a turnover in Bulgaria exceeding

EUR1,533,875 in the year preceding the transaction.

## 2.5 Labour Law Regulations

The labour law regulations are provided in the Bulgarian Labour Code and other applicable legislation, depending on the type of transaction. Executions of share deals do not require prior notification to the employees. Transfers of the entire or part of a company's going concern, as well as mergers and spin-offs, require a notification two months in advance and negotiations with the affected employees. The TUPE rules for protection of employees are applicable to such transactions.

## 2.6 National Security Review

Bulgaria has not yet implemented the EU Foreign Direct Investment Screening Regulation, which entered into force in 2019. No other, similar mechanisms exist in Bulgaria.

## 3. Recent Legal Developments

### 3.1 Significant Court Decisions or Legal Developments

Due to the COVID-19 pandemic, the deadline for submission of Bulgarian companies' annual financial statements was extended from 30 June to 30 September of the year following the accounting year. For the same reason, public companies were allowed to provide in their statutes provisions on conducting general meetings without the physical presence of the shareholders, including online participation.

Some of the amendments to the Public Offering of Securities Act (POSA) in the past three years aim at transposition of the Shareholder Rights Directive II into the Bulgarian legislation. Such amendments include regulation of proxy advis-

ers, General Meeting of Shareholders' approval and publication of the policy on remuneration for Board members, as well as publication of a report on the fulfilment of the remuneration policy, etc.

### 3.2 Significant Changes to Takeover Law

In 2020, the POSA was amended to include measures for implementation of Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market. In addition, in 2022, the POSA was amended to include measures for implementation of Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020 on European crowdfunding service providers for business, and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937.

## 4. Stakebuilding

### 4.1 Principal Stakebuilding Strategies

In Bulgaria, it is not common for a bidder to build a stake in the target prior to launching an offer. The main reason is the low liquidity of the Bulgarian stock market. Nevertheless, Bulgarian law does not prohibit stakebuilding, but it should be noted that stakebuilding may trigger certain reporting obligations if the thresholds described below are exceeded.

### 4.2 Material Shareholding Disclosure Threshold

Any shareholder who acquires or transfers directly or indirectly (under Article 146 POSA) voting rights in the General Meeting of a public company must notify the Financial Supervision Commission and the public company if, following the acquisition or transfer, their vot-

ing rights amount to a quantity above or below 5%, or a multiple of 5%, more than one-third, more than two-thirds of the number of voting rights in the General Meeting of the public company. The voting rights are calculated based on the total amount of voting shares, regardless of whether a restriction is imposed on the right to exercise them. Calculation is made for each class of shares. Where the thresholds above are reached or exceeded because of direct acquisition or transfer of voting shares, an obligation also arises for notification to the central securities depository.

### 4.3 Hurdles to Stakebuilding

Bulgarian law does not provide for the right of a public company to introduce different reporting thresholds. The potential situation where a bidder may become subject to a mandatory takeover bid requirement may be considered as another hurdle to stakebuilding.

### 4.4 Dealings in Derivatives

Dealing in derivatives is allowed in Bulgaria.

### 4.5 Filing/Reporting Obligations

Bulgarian public companies are obliged under the POSA to disclose any changes in the rights given by derivative financial instruments issued by them which give the right to acquire shares of the company. Bulgarian law does not provide for specific competition rules relating to derivatives, and the merger control rules will be triggered if the option to acquire shares is exercised.

In addition, under the Collective Investment Schemes and Other Undertakings for Collective Investments Act, the so-called Managing Company shall provide the Financial Supervision Commission with periodic information about the types of derivative financial instruments which it invests in, the major risks associated with the

underlying instruments, the quantitative limits and the methods which have been chosen in order to estimate the risks associated with transactions in derivative instruments for each collective investment scheme managed thereby.

### 4.6 Transparency

If a takeover bid is made, the bidder is obliged to include in its tender offer certain information. This information must include the intentions of the bidder regarding the future operation of the public company subject to the tender offer and those the bidder, if it is a legal entity, to the extent the latter is affected by the tender offer. Furthermore, said tender offer must include information regarding retention of the members of the management bodies and the public company's staff, including any material changes in the terms and conditions of the employment contracts. In particular, the bidder's strategic plans for the two merged companies and regarding the likely implications of the tender offer on the employees must be included in the information provided. In addition, information about the locations of the companies' places of business and potential withdrawing from trading on a regulated market must be included as well.

## 5. Negotiation Phase

### 5.1 Requirement to Disclose a Deal

Public companies are obliged to disclose a deal in accordance with the principles of Article 17 of the EU Market Abuse Regulation (Regulation (EU) No 596/2014). Hence, an analysis on a case-by-case basis should be made as to whether the information about the deal is to be disclosed. In principle, a public company should inform the public as soon as possible of any inside information which directly concerns that public company.

## 5.2 Market Practice on Timing

Non-compliance with the disclosure requirements may lead to serious financial sanctions. Therefore, in theory, the timing of disclosure should not differ from the legal requirements. However, there might be cases of discrepancies between the practice on timing and the legal requirements.

## 5.3 Scope of Due Diligence

In private M&A transactions, there are standard areas which are covered in almost all legal due diligence processes, such as title over shares, arrangements with the management, contracts with clients and suppliers, employment, litigation, relationships with state authorities and data protection. Depending on the specifics of the sector in which the target operates, some other areas of focus may be added, such as title over real estate, IP rights, regulatory licences and permits, etc. In public M&A transactions, the legal due diligence process is usually based on public information and more in-depth analysis, and if it is based on non-public information, this would be possible subject to the restrictions for disclosure of information provided by the legislation.

The COVID-19 pandemic impacted the scope of legal due diligence, and extra focus was given to some areas such as the impact of the pandemic on the supply chain used by the target, the organisation of work (including remote work) during lockdowns, the forms of financial compensation received by the target from the state, IT and data privacy.

## 5.4 Standstills or Exclusivity

Exclusivity and standstills are common in negotiated private M&A transactions. Standstills are also common in private M&A transactions organised as auctions, but exclusivity is agreed

at a later stage of the auction process, when one or a few of the bidders are shortlisted. The restrictions over the seller may cover the due diligence period through to the negotiation process until a definitive agreement is signed. Standstill arrangements are not common in public M&A transactions. In the context of tender offers, the principle of ensuring equal treatment of the shareholders, enjoying equal status in the company subject to the tender offer, and protection of the other shareholders upon acquiring control of the company applies. The tender offer must specify the term for its acceptance, which must not be shorter than 28 days or longer than 70 days after the date of publication of the tender offer. If there is a competitive tender offer, then the term of the tender offer is to be extended until expiry of the term for acceptance of the competitive tender offer.

## 5.5 Definitive Agreements

It is permissible for tender offer terms and conditions to be documented in a definitive agreement. In private M&A transactions, this is the common way of documenting the terms and conditions of the offer. In public M&A transactions, the tender offer contains the terms and conditions of the offer. A tender offer is accepted by means of an express statement and the depositing of the documents certifying the shares with an investment firm or with the central securities depository. The transaction is considered concluded at the time of expiration of the term for acceptance of the offer.

## 6. Structuring

### 6.1 Length of Process for Acquisition/Sale

In public M&A transactions, the timeframe of the process is generally regulated by law. As noted

in **5.4 Standstills or Exclusivity**, the tender offer must specify the term for its acceptance, which must not be shorter than 28 days or longer than 70 days after the date of publication of the tender offer.

In private M&A transactions, the timeframe depends on several factors, such as the type of the transaction (share deal vs. going concern deal vs. asset deal), the legal form of the target (limited liability company vs. joint stock company), the size and complexity of the business of the target, and the necessity of merger control or other regulatory clearance. In terms of allowing the possibility to carve out certain assets or liabilities from the scope of the deal, going concern/asset deals may have an advantage over share deals. However, the finalisation of going concern/asset deals may be more time-consuming, in light of the requirement for prior notification to the revenue authorities and to affected employees and the necessity of transfer or renewal of certain regulatory permits.

During lockdowns imposed as a response to the COVID-19 pandemic, the biggest hurdles causing delays in the deal-closing process included the limited ability of the parties to be physically present at the closing meetings (including in front of notaries) and the delays in the work of some state institutions (including those abroad, and relating mainly to obtainment of apostils on official or notarised documents). Nevertheless, after the easing of the anti-pandemic measures, such obstacles were gradually overcome.

## 6.2 Mandatory Offer Threshold

In public M&A transactions, any person that acquires more than one-third of the votes in the General Meeting of a public company, in which nobody holds more than 50% of the votes in the General Meeting, must make a tender offer

to the voting shareholders for purchase of their shares. The tender offer must be made through registration with the Financial Supervision Commission within 14 days of the relevant acquisition, or within one month of the registration of the reorganisation or decrease of the capital, if the threshold is exceeded due to reorganisation or cancellation of shares.

The obligation described in the paragraph above also arises for any person that acquires more than 50% of the votes in the General Meeting of a public company, as well as for any person that acquires more than two-thirds of the votes in the General Meeting of a public company.

If a person simultaneously exceeds more than one of the thresholds referred to above, within 14 days respectively one month from exceeding the lowest threshold, such person must register a single tender offer. The tender offer registration time limit is the period that would expire first, if an obligation arose to file separate tender offers upon exceeding each threshold.

## 6.3 Consideration

In both public and private M&A transactions, cash consideration is the principle. In public M&A transactions, the law also provides the opportunity for the bidder to offer to the rest of the shareholders, instead of cash, exchange of the acquired shares for shares which will be issued by the bidder for this purpose.

In private M&A transactions, combined consideration of cash and equity is sometimes also applied, especially if the acquirer is a public company (or has a parent company which is publicly traded), or if the management of the target is also the seller or one of the sellers (used as an incentive for the management to continue working for the target). The latter mechanism is



also applied to bridge the gap in a deal environment or industry with high valuation uncertainty, together with other tools, such as closing accounts.

## 6.4 Common Conditions for a Takeover Offer

The law does not regulate the possibility to include conditions in a takeover offer. Based on the legal framework, we may conclude that a takeover offer is to be unconditional. Exceptions are possible to the extent that a competition clearance or other type of regulatory approval is required for the takeover.

## 6.5 Minimum Acceptance Conditions

As noted in **6.4 Common Conditions for a Takeover Offer**, mandatory offers cannot be subject to conditions, save for the conditions for obtainment of regulatory clearance. Furthermore, in those cases where a person holding at least 5% of the votes in the General Meeting of any public company seeks to acquire more than one-third of the votes in the General Meeting of said company, that person may publish a tender offer to all voting shareholders – but in such case the offeror is obliged to purchase or to exchange, as the case may be, all voting shares held by any shareholder that has accepted the offer. Purely voluntary offers may contain conditions for any minimum threshold of acceptance.

The relevant control thresholds in respect of Bulgarian public companies are:

- A shareholder of more than one-third, more than 50% or more than two-thirds of the votes in the General Meeting of a public company is obliged to make a tender offer to the voting shareholders for purchase of their shares;

- The holding of more than 50% of the votes in the General Meeting enables a shareholder to take most of the decisions in the General Meeting, including electing members of the Board of Directors or the Supervisory Board, which, in turn, elects the Managing Board's members, adoption of the annual financial statements and distribution of dividends, amending the statutes of the public company, etc;
- The holding of two-thirds of the votes present at the General Meeting enables a shareholder to make the decision to delist the public company from the regulated market; and
- The holding of three-quarters of the votes present at the General Meeting enables a shareholder to make the decision to conclude transactions which involve disposal or acquisition of a certain percentage of the company's assets or enter into a joint venture contract.

## 6.6 Requirement to Obtain Financing

In private M&A transactions, the securing of financing may be included in the transaction documents as a condition (condition precedent) to completion of the transaction. However, the sellers would rarely agree to such a condition.

In public M&A transactions, the tender offer can be made only after providing an opportunity for full payment or exchange of the shares to the shareholders who have accepted the offer. Furthermore, the tender offer must contain the terms and conditions under which the offeror is to finance the acquisition of the shares and provide proof of availability of the resources necessary for the purchase, or of the securities necessary for the exchange.

## 6.7 Types of Deal Security Measures

Security measures in M&A transactions may be negotiated during any stage of the deal process, to the extent that they do not contradict the law or morals. Outside the security measures which represent collaterals in the strict sense of that concept (such as participation bonds in the form of bank guarantees or pledges) and which are listed in the law, the parties may negotiate other provisions which provide certain security to one of the parties as to the safeguarding of its interest. Examples of such provisions are exclusivity clauses, standstill obligations, break-up fees and non-solicitation provisions. No new contractual tools were developed to manage the pandemic risk and this risk is no longer of serious consideration, since the pandemic is no longer as serious a threat to the public health as it used to be. In addition, there have not been any changes to the regulatory environment that have impacted the length of the interim periods.

## 6.8 Additional Governance Rights

If the shares in a company are held by at least two shareholders, additional governing rights may be negotiated in a shareholder agreement. Such rights may include the right to appoint a certain number of Board members (including members with certain functions, eg, CFO, COO, etc). The additional governance rights may comprise certain minimum quorum and majority requirements (including veto rights) in the Boards and the General Meeting, which are higher than the requirements under the law. Most of those additional rights, in order to be enforceable, must be replicated in the company's by-laws (articles of association, deed of incorporation, statutes). However, not all additional governance rights may be replicated in the company's by-laws, in which case only contractual remedies, such as liquidated damages, may be used to make

them enforceable towards the counterparty to the shareholder agreement.

## 6.9 Voting by Proxy

Voting by proxy in the General Meeting is allowed. The power of attorney must be issued in writing. The members of the Boards cannot represent a shareholder, except in the General Meeting of public companies where the shareholder has expressly stated the way of voting on each item on the agenda. In addition to being issued in writing, the power of attorney for voting in the General Meeting of Shareholders in a public company must have the contents provided by the law. The public company may pose additional formal requirements to the authorisation, such as notarisation of the signatures under the power of attorney. The public company must provide a template of the written power of attorney on paper or electronically, where applicable, together with the materials for the General Meeting.

## 6.10 Squeeze-Out Mechanisms

Bulgarian law allows a squeeze-out right to any person that acquires, whether directly, through related parties, or indirectly, more than 90% of the votes in the General Meeting of a public company. Such person has the right to register a tender offer for purchase of the shares held by the rest of the shareholders. If such person fails to register a tender offer within 14 days after the acquisition of 90% of the votes in the General Meeting, the same is obligated to notify the shareholders, the regulated market and the Financial Supervision Commission of its intention to register a tender offer at least three months in advance. A special case of squeeze-out mechanism is applied when a person who, as a result of a tender offer, acquires directly, through related parties or indirectly at least 95% of the votes in the General Meeting of a public

company. In such case, the relevant person has the right, within three months of the term of the tender offer, to purchase the voting shares from the remaining shareholders. The proposed purchase must be approved by the Financial Supervision Commission.

## 6.11 Irrevocable Commitments

The obtaining of irrevocable commitments to tender or vote by principal shareholders in a company is seldomly used in practice in Bulgaria. However, there are sound legal and corporate strategy arguments for obtaining such commitments.

## 7. Disclosure

### 7.1 Making a Bid Public

Takeover bids, whether mandatory or voluntary for the other shareholders in public companies, must be registered with the Financial Supervision Commission. The tender offer is effected through an investment firm, using the opportunities for remote acceptance of the tender offer through the central securities depository. Once a tender offer is registered with the Commission, it may be published, unless the Commission issues a temporary prohibition within 20 business days. Any failure of the Commission to deliver a decision within the said term of 20 business days is presumed to be tacit approval of the tender offer concerned. On the day of the registration, the bidder is obligated to submit the offer that has been made to the management body of the public company subject to the tender offer to the representatives of its employees, or, where there are no such representatives, to the employees themselves, as well as to the regulated market on which the shares in the relevant public company are traded. Any such notices must expressly state that the Commis-

sion has not yet issued a decision on the tender offer. If the Commission fails to issue a final prohibition against the publication of an offer within the statutory deadlines, the bidder may publish the said offer. Within three business days of the expiry of the time limits, the bidder must publish a notification of the tender offer and the material conditions thereof in a national daily newspaper or on the website of a news agency or other media which can ensure the effective dissemination of the regulated information to the public in all Member States, and shall submit the final version of the tender offer to the public company and to the regulated market on which the shares are admitted to trading. The public company, the investment intermediary, and the regulated market on which the public company's shares are traded must disclose the tender offer on their websites within the time limit for acceptance of the said offer, and the public company must also make a disclosure of the position of the public company's management body on the offer.

### 7.2 Type of Disclosure Required

The offer document must contain the ratio of exchange of the shares offered in exchange for the shares of the public company subject to acquisition, the issue price, and particulars of the rights attaching to the shares offered as a consideration. Details must be provided about the key information necessary, so that the shareholders to whom the tender offer is addressed can understand the substance of the bidder's business and the features of the securities proposed for exchange, and also any risks associated with the bidder and the securities, in cases where an exchange of securities is also proposed. The tender offer must include a justification of the proposed price or of the proposed rate of exchange. The justification should name the fair price per share in the company, calculated on the basis of generally accepted valua-

tion methods. The contents of the justification and the requirements for the valuation methods are regulated in a special ordinance.

### 7.3 Producing Financial Statements

If the bidder offers shares issued by it in exchange for the shares subject to the offer, the bidder must provide financial and other information which is normally contained in its financial statements. Although this is not explicitly stated in the law, the most reliable financial information about the bidder will be contained in the financial statements prepared in the form required by the law.

### 7.4 Transaction Documents

The transaction documents that are to be disclosed in public M&A deals are listed in the law. In private M&A transactions, some of the documents may need to be disclosed to the commercial registry pertaining to the relevant registration which the law requires, such as the notarised transfer deeds for the shares in limited liability companies and the endorsement of the share certificates, if the target is a single-shareholder joint stock company.

## 8. Duties of Directors

### 8.1 Principal Directors' Duties

The directors of the target may be involved in the business combination, to the extent they are to prepare the disclosure of the information during the due diligence process. During the acquisition process, they are to continue managing the company in the ordinary course of business and with the diligence and loyalty to the target company and its shareholders as required by the law. In public M&A transactions, upon receipt of the tender offer and until publication of the results of the tender offer, or until closing of the said offer,

as the case may be, the management body of the target company may not perform any acts, save for seeking a competitive tender offer, that aim at frustration of the acceptance of the tender offer or infliction of material difficulties or material additional expenses on the bidder, such as issue of shares or conclusion of transactions, which would result in a significant change in the property of the target company, unless said acts are performed with the prior approval of the General Meeting of the offeree company.

### 8.2 Special or Ad Hoc Committees

It is not common in Bulgaria for the Boards to establish special or ad hoc committees in business combinations or in case of a conflict of interest. Conflicted members of the Board must refrain from voting or even participating in the meeting.

### 8.3 Business Judgement Rule

The courts in Bulgaria review the decisions of the companies' Boards from the point of view of their compliance with the law. If, as a result of the decisions of the Boards, the relevant company sustains damages, the relevant claimant (the company or a shareholder) must prove such damages and that they resulted from the Boards' decisions.

### 8.4 Independent Outside Advice

The directors in a business combination may seek advice from outside consultants relating to their future work for the target company. Such advice is mainly sought from lawyers in employment and tax matters when, for example, the acquisition mechanism also includes earn-out arrangements.

### 8.5 Conflicts of Interest

The law provides for obligations for the directors to avoid or mitigate conflict of interest situations.

However, disputes relating to conflicts of interest rarely end up in court.

## 9. Defensive Measures

### 9.1 Hostile Tender Offers

Bulgarian law does not provide for the classification of takeovers that may be qualified as friendly or hostile.

### 9.2 Directors' Use of Defensive Measures

As mentioned in 8.1 **Principal Directors' Duties**, the management body of the target company may not perform any acts aiming at frustration of the acceptance of the tender offer or infliction of material difficulties or material additional expenses on the bidder. The directors may only seek a competitive tender offer which is more favourable. In addition, and as mentioned in 7.1 **Making a Bid Public**, the public company must also make a disclosure of the opinion of the public company's management body on the offer. Hence, the management body may express a negative opinion as to the takeover attempt and advise the shareholders to refuse the tender offer.

### 9.3 Common Defensive Measures

The most common defensive measure is the entitlement of the Boards to search for an alternative, more favourable bid. The COVID-19 pandemic did not influence the frequency of using this defensive measure.

### 9.4 Directors' Duties

Upon enacting defensive measures, the directors must comply with the law. Within seven days after receipt of any tender offer, the management body of the affected company must present a reasoned opinion on the transaction

proposed to the Financial Supervision Commission, to the bidder, and to the representatives of the employees, or, where there are no such representatives, to the employees themselves, inter alia as to the repercussions on the company and the employees from accepting the tender offer and the strategic plans of the bidder for the offeree company and their likely implications for the employees and the place of business.

In taking defensive measures, the general obligations of the directors of due care and loyalty to the company still apply.

### 9.5 Directors' Ability to "Just Say No"

The directors are not entitled to "just say no". However, they can influence the takeover process by seeking an alternative, more favourable offer or by delivering a well-justified and convincing negative opinion on the takeover.

## 10. Litigation

### 10.1 Frequency of Litigation

The frequency of litigation is influenced by the costs that litigation proceedings would incur. In smaller M&A transactions, litigation proceedings are rare since in most of those cases the adjudicated compensation would not cover the litigation costs, especially if an arbitration is agreed (because arbitration proceedings are more expensive than the proceedings in front of the state court). In sizeable M&A transactions, litigation is more plausible, since the parties tend to accept the higher costs of those proceedings in such cases.

### 10.2 Stage of Deal

Most litigations occur after closing. They are mainly connected with untrue representations

and warranties, or with calculation of the price, in the cases in which adjustments may be applied.

### 10.3 “Broken-Deal” Disputes

Only a few transactions failed due to the pandemic and the lockdowns in Bulgaria in early 2020. Since such deal failures never became common, there are no notable lessons to be learned with regard to “broken deal” disputes during the pandemic.

## 11. Activism

### 11.1 Shareholder Activism

In Bulgaria, shareholder activism is not common. When it exists, it is focused on the selection of subcontractors of the company, related parties’ agreements, conflicts of interest of the managing bodies, protection of consumer rights and social responsibility.

### 11.2 Aims of Activists

Activists may encourage a company to enter M&A transactions, if that will make the company more socially responsible. Shareholder activism was not affected by the pandemic.

### 11.3 Interference With Completion

Shareholder activists may seek to interfere with the completion of announced transactions in Bulgaria, if this will help them to achieve their goals.

## Trends and Developments

### Contributed by:

Yordan Naydenov, Nevena Dzhurova and Mihail Vashinin  
**Boyanov & Co.**

**Boyanov & Co.** is widely recognised as a top law firm for doing business in Bulgaria and in South-East Europe. Since 1990, Boyanov & Co. has advised on numerous landmark transactions and has earned unparalleled international and local recognition as a preferred law firm. Boyanov & Co. has always been ranked as a market leader for the excellence of its services, drawing on years of experience and on the brilliance of its professionals. The firm

is strongly dedicated to supporting the rule of law, and the adoption and implementation of efficient business regulations. As the founder of the Legal Development Foundation, Boyanov & Co. strives to assist in the formation of a new generation of modern lawyers. Boyanov & Co. was the initiator of the South East Europe Legal Group (SEE Legal), the largest and oldest integrated organisation of leading law firms across 12 countries in South-East Europe.

## Authors



**Yordan Naydenov** is a Partner at Boyanov & Co. with almost 30 years of professional experience as a Bulgarian lawyer heading the M&A and Corporate Practice groups at the firm. Yordan

specialises in high-value M&A deals and often receives mandates for complex corporate restructuring projects. His experience includes numerous complex public and private M&A transactions and structuring large international joint ventures and public takeovers. Yordan is a member of Sofia Bar Association, International Bar Association, Honorary Member in the Association of Fellows and Legal Scholars of the Centre for International Legal Studies, Legal Development Foundation. He is the author of numerous publications, and his expertise has been widely recognised by international research organisations.



**Nevena Dzhurova** is an associate at Boyanov & Co. and has almost 13 years of professional experience as a corporate lawyer, advising

clients on a spectrum of matters concerning their business in Bulgaria. Her main practice areas are corporate and commercial law, M&A and regulatory issues. She has been part of teams assisting investors with major mergers and acquisitions, joint venture establishments, and local and cross-border transactions in different industries, such as the retail petrol trade, the food and beverage sector, clinical research, the tobacco industry, telecommunications and media, some of which were “champions” in the local market and would remain remarkable in the transaction history of the country during the years. She advises multinational companies and local corporations on their day-to-day business in the country, including their commercial operations, corporate matters, relations with consumers, regulatory issues and employment disputes.



**Mihail Vashinin** is counsel at Boyanov & Co. and has more than 17 years of professional experience as a Bulgarian lawyer, focusing on corporate law, M&A, PPP/concessions and

commercial litigation. He has assisted in high-profile acquisitions, strategic joint ventures, cross-border transactions and divestitures, covering all key types of M&A projects across a range of industries, including IT, retail, confectionery, life sciences, healthcare, transportation, manufacturing, services and media. He regularly advises leading international and local corporations, credit institutions and public entities on commercial operations and investment projects.

---

### Boyanov & Co.

82 Patriarch Evtimii Blvd.  
1463 Sofia  
Bulgaria

Tel: +359 2 805 50 55  
Fax: +359 2 805 50 00  
Email: [mail@boyanov.com](mailto:mail@boyanov.com)  
Web: [www.boyanov.com](http://www.boyanov.com)

## BOYANOV & Co.



## M&A Transactions – Yesterday, Today and Tomorrow

*“Know the past, manage the present and change the future.”*

If we had to describe, in just a few words, all the nuances of the M&A transactions that took place in the Bulgarian market throughout 2021–2022 and to compare them with the expectations for development during 2023, such a summary would mainly include the following:

- *The revival of M&A*: One year after the beginning of the COVID-19 era, in 2021, there was a revival of the M&A sector and a boom in transactions. The Bulgarian market would see a record set in the banking sector, keen interest in the technology and renewable energy sectors, a focus on telecommunications, numerous deals in the real estate sector and a larger number of local rather than foreign investors acquiring businesses.
- *M&A in 2022 “on the stage of ‘War and Peace’”*: Following the beginning of the Russian war in Ukraine and the crisis that this invasion unleashed worldwide, there was a drop in the total value of M&A transactions in the country. As a matter of fact, there were a larger number of deals during 2022 compared with 2021, but at the same time, they were at a lower value. The “stars” were three higher-priced transactions in three different sectors: energy, banking and telecommunications. The “secondary character on the M&A stage” was a variety of smaller deals in the technology sector.
- *What’s new in M&A in the course of 2023 – expected developments and possible “surprises”*: The deepening geopolitical tensions in Europe and all over the world, caused by the conflict in Ukraine and leading to a number of negative consequences, such

as the continuing economic turbulence, the energy crisis, growing inflation, disruptions in the supply chain, increasing credit interest, etc, do not suggest a “shining future” for M&A development worldwide, throughout Europe, or in Bulgaria in particular. Experts forecast a slow start to 2023 and a decline in M&A transactions during the year due to an expected increase in credit interest rates and potential bankruptcies in various sectors of the economy. Yet, Bulgarian companies and analysts, unlike those elsewhere in Europe, are optimistic about business development and the possible M&A transactions in some particular sectors in the course of 2023.

## 2021 vs 2022

The post-COVID trend, in terms of the increase in the number of M&A transactions that took place in Europe and worldwide, did not pass Bulgaria by. The local market saw growth after the lull in 2020.

In 2021, similar to the trends that took place in other countries in the region, there was a jump in M&A activities in Bulgaria that approached the volumes of trade from the years before the COVID-19 crisis. Due to the pandemic-related general uncertainty in 2020, some investment decisions were postponed, and many sale processes were prolonged, whereas, ultimately, they were implemented and effectively closed in 2021. From this perspective, 2021 became a “catch-up” year for a number of transactions. For example, some large-scale transfers were completed in 2021, including the Sofia airport concession, the acquisition of CEZ’s Bulgarian businesses by Eurohold, and the purchase of Nova TV by the new owner of the Bulgarian Telecommunication Company – United Group.

Having in mind the slow but steady exit from the most critical stage of the COVID-19 pandemic, together with the restarting of economic activities in various sectors, regional and international investors have switched their focus away from concerns for the preservation and sustainability of their existing business to expansion through the acquisition of new companies. In 2021, the energy and telecommunications sectors were the main deal drivers, with other industries contributing, such as transport infrastructure, software technologies, e-commerce and real estate. The M&A market was also marked by two emblematic transactions – in the banking sector (the acquisition of Raiffeisenbank (Bulgaria) by the owner of United Bulgarian Bank (UBB), the KBC financial group) and in the telecoms sector (the sale of the largest TV cable operator, Bulsatcom). Ultimately, both deals were closed in 2022, and we will describe them in more detail later.

After the number and size of deals executed reached record levels in 2021, 2022 was marked by a serious decline globally and at a European level. The high rates of inflation, rising credit costs and geopolitical uncertainty hampered dealmaking in 2022 and sent global M&A activity down by nearly 30% from the record high in 2021.

After the unusually active 2021, the M&A market was normalised in 2022. There was a downward trend in deal activity, but this activity was still above pre-pandemic levels. Similarly to the global markets, the local M&A market was deeply affected by the geopolitical crisis caused by the military conflict between Russia and Ukraine and all the secondary crises and complications that this caused, resulting in a “domino effect” – energy crisis, social and economic crisis, including delays and interruptions to supplies in

certain sectors, galloping inflation, rising interest rates on loans, a refugee crisis, the sanctions imposed on Russia, and others. Apart from all foreign geopolitical and social-economic factors, an additional complication in the already-complex situation was the internal political tension caused by the impossibility of forming a regular cabinet and a stable government in Bulgaria. In the last quarter of 2022, there was a slowdown mainly among buyers, who were more cautious in making decisions due to the overall complexity of the business climate worldwide and in the country, including but not limited to the rise in interest rates and more expensive financing. For example, equity funds became much more selective, but there was no dramatic drop in the deals.

With this background, similar to the European and global trends, at local level, we can also define the development of the M&A sector in 2022 as not so successful compared with the rates from the previous year.

## 2022 M&A transactions

### *Energy*

First place goes to the so-called “Giant of the Year” – the acquisition of the TPP ContourGlobal Maritsa-Iztok 3. This, the second largest coal-fired power plant in Bulgaria, is part of the American group ContourGlobal, which announced in the first half of 2021 that it had agreed to sell its business to KKR for more than EUR2 billion. The power plant, with 908 megawatts of installed capacity, contributed about 30% of the parent company’s revenues for 2021, whose total value was USD2.15 billion. ContourGlobal owns the majority stake (73%) in the plant, while the rest is owned by the state-owned National Electricity Company (NEK).

In the energy sector, another story also deserves attention – this one concerns CEZ’s business in Bulgaria. Once Eurohold had finally completed the transaction for the majority packages of the local companies of the Czech group in the summer of 2021, in 2022, the Bulgarian holding became almost the sole owner of CEZ Distribution (CEZ Razpredelenie) and CEZ Electro. In a series of transactions on the stock exchange, Eurohold paid a total of BGN103 million for 10.74% of CEZ Distribution and 27.58% of CEZ Electro, thereby increasing its share to 99% and 97% of the capital of the two companies, respectively, and announced plans to delist them from public trading.

## *Banking*

In 2022, the largest transaction in the Bulgarian bank history was completed – the acquisition of Raiffeisenbank (Bulgaria), which was the sixth largest credit institution in the country in terms of the value of its assets, by the owner of UBB – KBC financial group. Part of the implementation of the acquisition took place in 2021; however, the transaction was closed in 2022 with its price being a record for the local market, amounting to EUR1 billion. A merger with UBB is expected as a next step in 2023. The merger will create a third banking giant in the country after UniCredit Bulbank and DSK Bank, helping to position KBC firmly towards its strategic goal of being among the top three in every market in which it operates.

At the end of 2022, the next step in the consolidation of the banking sector became clear – Post-bank announced that it would acquire the BNP Paribas Personal Finance branch, specialising in consumer lending. No financial parameters for the transaction were announced, but according to market sources, the price will be in the range of EUR30–50 million. Along with this amount, the

buyer will have to provide EUR70–80 million to cover the decline in capital adequacy, since the branch being sold with about EUR450 million of consumer loans does not include equity.

## *Telecommunications*

After years of searching for a new owner, the shareholders of the largest Bulgarian TV provider, Bulsatcom, finally closed the sale – the buyer is the local businessman Spas Rusev (through the Luxembourg company Viva Corporate). Mr Rusev’s offer, valuing the operator at over EUR120 million, was preferred in 2021, but it took over a year to finalise the deal and it became a fact in September 2022.

## *Technologies*

The largest number of M&A transactions in 2022 were deals in the technology sector (41% of all), most of them medium in size (valued at around EUR50–100 million).

There has been a clear increase in the interest of foreign investors in this sector in recent years. Unlike in many other areas of the economy affected by the war in Ukraine, in the industry’s technology sector, the effect has been exactly the opposite: the onset of the war not only did not weaken the sector, but in certain subsectors, such as software development, for example, there was even a strengthening effect, driven by the relocation of large software companies from Ukraine to our region.

According to local specialists and analysts, part of the explanation for the high activity in the TMT (technology, media and telecommunications) sector is the process of digitalisation of businesses. Many companies realise that, in order to remain competitive, they need to have a technology-oriented organisation, and that organically growing their technological capacity

can be not just too slow, but impossible. Therefore, they choose the faster route, which is to acquire companies that possess such knowledge/assets.

After the turbulent and very dynamic 2022, marked by war in the heart of Europe, which not only Bulgaria but also the whole world faced with crises unseen since the Second World War, the question is what to expect in 2023.

### **“The World is Big and Salvation Lurks Around the Corner”, or what to expect in 2023**

Against the backdrop of deepening geopolitical tensions caused by the military conflict in Ukraine, economic uncertainty, rising inflation, delays and disruptions in the supply chains for various industries, an energy crisis and rising credit interest rates, the common expectations on the Old Continent are pessimistic and foresee a decline in M&A transactions in 2023 in Europe and the rest of the world. It is projected that one-third of the world economy will be in recession this year, including half of the European Union.

Yet, forecasts for the development of the M&A sector in Bulgaria in 2023 are for activity despite deepening crises at all levels, leading to more difficult and more expensive financing of transactions.

The expectations of some experts in the country are that activity in the M&A sector will remain high, despite the deteriorating economic prospects in Europe. Bulgaria has managed to build a stable technological ecosystem that creates increasingly innovative companies, which, with their global scope, will continue to be attractive targets for foreign investors. Other analysts predict a moderate slowdown in M&A activity, but at the same time they believe that good-quality assets that have solid foundations and added

value, including in sectors such as renewable energy, telecommunications and transport infrastructure, agriculture and food, software technology, natural resource utilisation and decarbonisation, will continue to generate interest.

In 2023, the banking sector is preparing for the finalisation of two transactions that were initiated in 2022 – (i) the merger between Reiffeisenbank (Bulgaria), acquired by KBC in 2022, and UBB, owned by the same financial group, and (ii) the acquisition of part of PNB Paribas by Postbank.

According to the experts’ opinions, there are also more initiatives towards moving the production of global companies from China to areas with better security of supply, and therefore production infrastructure in the Balkan EU countries will become an attractive target for acquisition.

Most of the assessments show that when larger deals “come on board”, foreign investors are used to study the political situation in the country in detail. It seems, however, that in foreign investors’ view, political stability is not such a crucial criterion for higher confidence in Bulgaria or the other countries in the region. It is more important for those investors to trust in the long-term intentions, in the country’s general political orientation and in governing formations’ pursuit and adoption of useful reforms, even if the political configuration is uncertain at that particular time.

The analyses point out that recently the political uncertainty with regard to the lack of a regular government did not seem to have a very negative impact on external investors’ attitudes towards Bulgaria as an investment destination, but in the longer term, the possible reformulation of policies and the implementation of actual

Contributed by: Yordan Naydenov, Nevena Dzhurova and Mihail Vashinin, **Boyanov & Co.**

reforms with results would contribute to the general attractiveness of the country.

Bulgaria meets the second quarter of 2023 with another round of parliamentary elections (the fifth in a row for the last two years), with the hope of forming a regular government and stable governance that will catalyse the improvement of the country's business climate and the attraction of both domestic and foreign investment by restoring confidence in the state's ability to control the crises that have broken out by means of specific solutions at all levels.

*This submission includes market information, analysis, assessments and opinions of experts in various practice areas, which were published in Capital (Bulgarian online edition for economic news and analysis from Bulgaria, representing part of the portfolio of Economedica group).*

---

## CHAMBERS GLOBAL PRACTICE GUIDES

---

Chambers Global Practice Guides bring you up-to-date, expert legal commentary on the main practice areas from around the globe. Focusing on the practical legal issues affecting businesses, the guides enable readers to compare legislation and procedure and read trend forecasts from legal experts from across key jurisdictions.

To find out more information about how we select contributors, email [Katie.Burrington@chambers.com](mailto:Katie.Burrington@chambers.com)