Ergun Publication Series: Global Legal Guides

GLOBAL MERGERS & ACQUISITIONS GUIDE

2025

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Foreword

We are delighted to present the 2025 edition of the Global M&A Guide, a refreshed and expanded resource that reflects the dynamic and evolving landscape of mergers and acquisitions worldwide. Building on the strong foundation of previous editions, this volume again brings together a distinguished group of legal professionals from across the globe to provide a comprehensive, comparative overview of M&A frameworks in their respective jurisdictions.

Mergers and acquisitions are inherently complex transactions that demand a deep understanding of the legal, regulatory, and commercial environments in which they take place. In today's interconnected global economy, professionals involved in cross-border M&A must have access to timely and jurisdiction-specific insights to navigate the intricacies of international transactions effectively. This guide aims to serve as a strategic compass for dealmaking.

Each chapter is authored by leading legal experts who generously share their in-depth knowledge, practical experience, and forward-looking perspectives. Their contributions span a wide array of key topics—including fundamental principles, foreign investment, corporate governance, shareholder rights, regulatory approvals, enforceability, and market trends—offering readers both a solid understanding of core legal principles and guidance on the latest developments shaping cross-border M&A.

Our contributors, who are all distinguished legal professionals from leading firms across the globe, have generously shared their jurisdiction-specific knowledge and expertise. Their insights reflect both recent legal developments and practical experience, offering valuable guidance on key aspects of M&A transactions. By comparing similarities and exploring jurisdictional differences, this publication encourages a deeper understanding of the nuanced legal, commercial, and cultural considerations that impact international transactions.

We extend our sincere gratitude to all contributing authors for their time, dedication, and expertise. Their valuable contributions have helped transform this publication into a practical, insightful, and truly global resource.

We hope that this 2025 edition of the Global M&A Guide proves to be an indispensable tool in your international M&A activities, supporting well-informed decisions and strategic execution in an increasingly dynamic and interconnected market

Lara Sezerler
İstanbul, 2025

ALBANIA

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A. General

1. What is the main legal framework applicable to companies in your jurisdiction?

The main legal framework applicable to companies in Albania is composed of:

- "The Law No. 9901 on Entrepreneurs and Commercial Companies dated April 14, 2008" as amended;
- "The Law No. 9723 on Business Registration, dated May 3, 2007" as amended;

Additionally, for listed companies, the following legal acts are also relevant:

- "The Law No. 62/2020 on Capital Markets, dated May 14, 2020 "; and
- "The Law No. 10236 on Takeover of Public Companies, dated February 18, 2010 "However, given the underdevelopment of securities markets in Albania, the first two legal acts currently constitute the most relevant framework in practice.

2. What are the most common types of corporate entities (e.g., joint stock companies, limited liability companies, etc.) used in your jurisdiction? What are the main differences between them (including but not limited to with regard to the shareholders' liability)?

The most common type of company used in Albania is the limited liability company (shoqëri me përgjegjësi të kufizuar) (SHPK). The limited liability company is the most common vehicle involved private acquisitions, as it offers limitation of liability for the shareholders and a flexible convenient internal governance structure. The limited liability company is not allowed to issue securities or trade other debt instruments to the public.

The second most common type of company is the joint stock company (shoqëri aksionare) (SHA), which also offers limitation of liability for the shareholders, but requires a more complex internal governance structure. The joint stock company may issue securities and/or trade other debt instruments to the public. However, given the underdevelopment of securities markets in Albania this feature is not widely used. In practice, a joint stock company is chosen over a limited liability company only when a business activity requires this company type (e.g., banking, insurance and similarly regulated sectors) or when this company type is required based on internal group policies.

Other types of companies available under Albanian law are the general partnership (shoqëri kolektive) and limited partnership (shoqëri komandite) (SHK). These company types are less often chosen, as they do not offer limitation of liability for the owners (in a limited partnership, limitation of liability is offered only for once category of owner).

B. Foreign Investment

3. Are there any restrictions on foreign investors incorporating or acquiring the shares of a company in your jurisdiction?

There are no general restrictions provided by law with respect to the foreign ownership of companies in Albania.

Under Albanian law, foreign investors are generally free to invest in Albania without any investment approval, subject only to the same regulatory requirements and sector permits (e.g., banking, insurance and similarly regulated sectors) applicable to Albanian investors. Foreign investors are legally allowed to hold 100% ownership of local companies and are not required to partner with the state-owned enterprises or local enterprises/persons.

4. Are there any foreign exchange restrictions or conditions applicable to companies such as restrictions to foreign currency shareholder loans?

There are no foreign exchange restrictions or conditions applicable to companies, such as restrictions on foreign currency shareholder loans.

5. Are there any specific considerations for employment of foreign employees in companies incorporated in your jurisdiction?

The employment of foreign employees in companies incorporated in Albania is generally subject to the issuance of a labour permit by the competent Albanian authorities. Simplified procedures apply, among others, to senior management, highly skilled workers and transferees within the company group. Foreign employees who are citizens of certain countries (e.g., EU member states, USA etc.) enjoy special benefits regarding the issuance of labour permits.

C. Corporate Governance

6. What are the standard management structures (e.g., general assembly, board of directors, etc.) in a corporate entity governed in your jurisdiction and the key liability issues relating to these (e.g., liability of the board members and managers)?

Limited liability company (mandatory minimal governance requirements):

- General assembly/sole shareholder;
- One individual managing director;
- No statutory auditor is required, unless certain business thresholds are met.

Joint stock company (mandatory minimal governance requirements):

- General assembly/sole shareholder;
- Supervisory body (Board of Directors or Supervisory Board minimum 3 (three) members, with a majority of independent members)
- Executive body (Board of Directors minimum of 3 (three) members, or in

case of a Supervisory board, at least one individual managing director);

- Mandatory statutory auditor is required.

Members of the management/ supervisory body will generally be liable to the company (qualified creditors and shareholders have a derivative claim) if they fail to:

- perform their duties established by law or articles of association in good faith and in the best interests of the company as a whole, which includes the environmental sustainability of its operations;
- exercise powers granted to them by law or articles of association only for the purposes established therein;
- give adequate consideration to matters to be decided;
- avoid actual and potential conflicts between personal interests and those of the company;
- ensure that approval is given where contracts are concluded in conflict of interest;
- exercise reasonable care and skill in the performance of their functions.

Specific shortcomings that may cause a breach of fiduciary duties (note: some items do not apply for LLCs) include cases where the following actions occur contrary to the law or the articles of association:

- returning contributions to shareholders;
- paying interests or dividends to shareholders;
- subscribing, acquiring, accepting as pledge or withdrawing the company's own shares;
- issuing shares prior to full payment of their par value or a higher issue price;
- distributing the company's assets;
- allowing the company to continue doing business when it should be foreseen that it will not be able to pay its debts;
- in case of an increase in capital, issuing shares contrary to the set purpose or before they have been paid for;
- making payments to board members or managing directors;
- granting loans.

7. What are the audit requirements in corporate entities?

Based on the Law No. 10091, dated March 5, 2009 "On the Legal Audit and Organization of the Professions of Legal Auditor and Certified Accountant", as amended, the mandatory statutory audit requirements applies in the following cases:

- to all companies, regardless of their registration form, that apply International Financial Reporting Standards (**IFRS**);
- to all joint stock companies that apply the National Accounting Standards ("**NAS**");
- to limited liability companies that apply NAS, if at the end of the accounting period of 2 (two) consecutive years, they exceed two of the following three indicators:

o total assets in the statement of financial position as at the end of the accounting period equal or exceed ALL 50,000,000 (approx. EUR 464,000;

o annual turnover from business activities for the accounting period equals or exceeds ALL100,000,000 (approx. EUR 930,000;

o average number of 30 employees during the accounting period.

D. Shareholder Rights

8. What are the privileges that can be granted to shareholders? In particular, is it possible to grant voting privileges to shareholders for appointment of board members?

Limited liability company: All shareholders of a limited liability company shall be the same rights and duties. This company type does not allow the grant voting privileges. Voting rights are based on the shares held in the company. Shareholders may agree among themselves on particular voting arrangements, but this would be a contractual obligation between shareholders and not part of the company governance - i.e., a breach of the shareholders agreement would lead claims for damage compensation but would not the invalidate of the voting process.

Joint stock company: joint stock companies may issue shares of different classes.

Shares carrying the same rights shall constitute one class (ordinary shares, preferential shares, voting shares and non-voting shares). Ordinary shares entitle their holders to exercise their rights in the general meeting and to receive a proportional share of profits and of liquidated assets.

Preferential shares entitle their holders to have a certain amount or percentage of the par value of their shares paid from profits prior to ordinary shareholders if a dividend is declared, priority in the distribution of liquidated assets, and other rights set by the statute.

There is a presumption that the preferential rights established by the articles of association shall be exhaustive.

9. Are there any specific statutory rights available to minority shareholders available in your jurisdiction?

Yes, shareholders owning at least 5% (five percent) (or a lower threshold provided in the articles of association) have certain specified statutory rights, as follows (note: some items do not apply to limited liability companies):

- Request special investigations regarding the activity of the company bodies;
- Start derivative claims for breach of fiduciary duties by the company bodies;
- Convene the general meeting;
- Insert items on the agenda of the general meeting;
- Request special supervisory actions;
- Appoint board members (if provided for in the articles of association).

The articles of association may provide additional minority rights.

10. Is it possible to impose restrictions on share transfers under the corporate documents (e.g., articles of association or its equivalent in your jurisdiction) of a company incorporated in your jurisdiction?

Yes, it is possible to impose restrictions on share transfers under the corporate documents of a Limited liability company and of a joint stock company. These restrictions may include, inter alia, pre-emption rights, rights of first refusal, and approval by the general meeting etc.

11. Are there any specific concerns or other considerations regarding the composition, technical bankruptcy and other insolvency cases in your jurisdiction?

Limited liability companies (Article 82 of the Company Law): the general meeting has to be convened, if the annual or interim accounts show or if it is a danger that the company's assets will not cover its liabilities within the next 3 (three) months. An independent auditor's report shall be presented to the general meeting. In these circumstances, the general meeting may pass an advisory resolution approving or condemning the conduct of the management.

Joint stock companies (Article 136 of the Company Law): the general meeting must be convened, if the annual or interim accounts show or if it is clear that losses amount to 50% of the basic capital, or if there is a danger that the company's assets will not cover its liabilities within the next 3 (three) months. An independent auditor's report shall be presented to the general meeting. In these circumstances, the general meeting may pass an advisory resolution approving or condemning the conduct of the management.

Moreover, based on Article 16 of the Company Law, the individual who is a company member, shareholder, or **representative** of a member or shareholder, a Managing Director or a member of the Board of Directors, that through actions or omissions secures unjust profits for him/herself, or wilfully causes to third parties a loss of property, is personally responsible towards third parties, including public bodies, to pay with his/her property for company obligations, when he/she, amounts others:

- At a time when he/she knew or must have known that the company did not have sufficient capital to meet commitments to third parties, did not take the necessary actions within his/her powers pursuant to the law to prevent, depending on the circumstances, the company to proceed its business and/or to assume new commitments towards third parties, including public authorities.

Additionally, Article 15 of the Law No. 110/2016 on Bankruptcy, provides that, the debtor has the duty to submit a request for the initiation of bankruptcy proceedings, within 60 days from the date on which the debtor knew or should have known that debtor has become unable to pay its creditors. In the case of legal entities, this obligation belongs to each member of the governing body; if these representatives do not submit the request for the initiation of the bankruptcy procedure, they will be personally liable to compensate the creditors for the damages suffered for this reason. The bankruptcy court may also impose a sanction on the debtor or any member of the management body who does not fulfil the obligation, according to this article, excluding them from the right to exercise any activity for a period of 1 (one) to 5 (five) years, depending on the importance of the violation.

If such a request is not submitted jointly by all members of the governing body or all members of the simple company, the request will be allowed by the bankruptcy court if the reasons provided for the initiation of the bankruptcy procedure are sufficient and convincing. The bankruptcy court hears the other members of the governing body and members of the general partnership who have not joined the petition before making a decision.

E. Acquisition

12. Which methods are commonly used to acquire a company, e.g., share transfer, asset transfer, etc.?

The share transfer is by far the preferred method to acquire a business, as it:

- generally, requires limited regulatory approval (i.e., only merger control clearance, if the relevant turnover thresholds are met – specific sectors, such as banking, insurance etc. may require additional preliminary clearance);

- is tax efficient (the transactions Value Added Tax ("**VAT**") exempt and sellers would generally only be liable to capital gains tax on the difference between the equity and the purchase price);

Asset transfers, while may bring benefits in terms of carving-out pre-existing liabilities from the scope of the target, could require significant efforts in addition to the regulatory requirements of a share transfer, such as:

- Requirement of specific governmental approvals (e.g., to transfer business licenses/permits);
- Requirement of specific third-party approvals (e.g., having rights on specific assets);
- Requirement of registration in specific public registers (e.g., in case of real estate);
- Additional employment law implications for the transfer of the staff.

Moreover, to avoid the application of VAT on the transaction value, the scope of the deal must include the transfer of the enterprise as whole; the exception from VAT should be confirmed by a specific ruling of the tax authorities.

Additionally, the capital gain tax must be separately assessed based on an evaluation of the value of the target assets.

13. What are the advantages and disadvantages of a share purchase as opposed to other methods?

The share transfer is advantageous as it:

- generally, requires limited regulatory approval (i.e., only merger control clearance, if the relevant turnover thresholds are met – specific sectors, such as banking, insurance etc. may require additional preliminary clearance);
- is tax efficient (the transactions VAT exempt and sellers would generally only be liable to capital gains tax);

The disadvantages of a share transfer arise from acquiring the target company along with its liabilities. However, business liabilities of the target company can be factored in the purchase price for the shares, and additional protection for the purchaser may be achieved through seller liability for breach of specific representation and warranties.

14. What are the approvals and consents typically required (e.g., corporate, regulatory, sector based and third-party approvals) for private acquisitions in your jurisdiction?

In case of a **share transfer transaction**, the approvals and consents would be typically required only for competition law purposes, if the relevant turnover thresholds are met (specific sectors, such as banking, insurance etc. may require additional preliminary clearance).

Corporate approvals might be necessary only if specifically required under the articles of association of the target company.

In case of an **asset transfer transaction**, typical approvals and consents would include:

- Regulatory approval for the transfer business licenses/permits;
- Regulatory for the transfer of the assets in specific sectors (e.g., banking, insurance, energy etc.);
- Registration of the asset transfer in specific public registers (e.g., in case of real estate);
- Third party approvals (e.g., lenders having security on the assets, sellers having title retention or other rights attached to the asset).

Moreover, for competition law purposes, an approval will be only required if the relevant turnover thresholds are met.

15. What are the regulatory competition law requirements applicable to private acquisitions in your jurisdiction?

Under the Albanian competition law, a prior merger control approval by the Albanian Competition Authority is required for both share and asset transfer transactions, if the participating undertakings (purchaser and target) meet the following turnover thresholds:

- in the preceding business year, the parties' combined worldwide turnover exceeds ALL 7,000,000,000 (seven billion) (approx. EUR 58,830,000, and the individual turnover in Albania of at least one of the participating undertakings exceeds ALL 200,000,000 (approx. EUR 1,680,000); or
- in the preceding business year, the parties' combined Albanian turnover exceeds ALL 400,000,000 (approx. EUR 3,360,000, and the individual turnover in Albania of at least one of the participating undertakings exceeds ALL 200,000,000 exceeding ALL 200,000,000 (approx. EUR 1,680,000).

16. Are there any specific rules applicable for acquisition of public companies in your jurisdiction?

Given the underdevelopment of securities markets in Albania, currently there are no specific rules applicable for the acquisition of public companies.

17. Is there a requirement to disclose a deal, for instance to regulatory authorities? Is it possible to keep a deal confidential?

Yes, a deal must be disclosed to regulatory authorities in certain instances, such as:

- Competition authority, if required turnover thresholds are met; and
- Regulatory authorities of the sector (if the target operates in the regulated sectors, such as banking, insurance, energy etc.).

Moreover, a deal causing the change of control in a company (not applicable for asset transfers), will require the declaration in a specific public register of the new ultimate beneficial owner(s).

18. Can sellers be restricted from shopping around during a negotiation process? Is it possible to include break fee or other penalty clauses in acquisition documents to procure deal exclusivity?

The sellers may be restricted from shopping around during a negotiation process if specifically, so agreed between the parties. It is possible to include break fee or other penalty clauses in acquisition documents to procure deal exclusivity.

19. What are the conditions precedent in a typical acquisition document? Is it common to have conditions to closing such as no material adverse change?

Typical conditions precedent in acquisition document include, without limitation:

- Obtaining regulatory approvals if so required;
- Obtaining the necessary corporate approvals;
- Performing the necessary actions / corrections, with respect to items that may have been identified during the due diligence process.

It is common to have closing conditions such as no material adverse change and/ or omitting actions that go beyond the ordinary course of business, without the purchaser's consent.

20. What are the typical warranties and limitations in acquisition documents? Is it common to obtain warranty insurance?

Typical representations and warranties in acquisition documents include, without limitation:

- Authority to sign valid and binding agreement;
- Title and ownership of the shares;
- Valid incorporation and good standing of the target;
- No encumbrances or no undisclosed encumbrances;
- Compliance by the target with regulatory requirements;
- Accurate accounting, tax returns and financial statements;
- No disputes or no undisclosed disputes;
- Other matters that may have been identified during the due diligence process.

Typical limitation in acquisition documents include:

Up to 100% of the purchase price for breach of warranties on binding agreement, valid incorporation and title on shares, for a period equal to the statutory time limit;

Fraction of the purchase price for breach of other warranties for a typical period of 2 (two) -3 (three) years post-closing, with the exception of warranties on tax liabilities, for which a period equal to the statutory time limit is typically demanded by the purchaser.

It is not common to obtain warranty insurance, as this is not an insurance product generally offered by Albanian insurance companies.

21. Is there a requirement to set a minimum pricing for shares of a target company in an acquisition?

There is no requirement to set a minimum pricing for the shares of a target company in an acquisition.

22. What types of acquisition financing are available for potential buyers in your jurisdiction? Can a company provide financial assistance to a potential buyer of shares in the target company?

Acquisition financing available for potential buyers in Albania is typically limited to the banking sector.

A company may provide financial assistance to a potential buyer of shares in a target company.

23. What are the formalities and procedures for share transfers and how is a share transfer perfected?

Share transfers are not subject to particular formalities and procedures. Only the written form is a mandatory requirement for the validity of a share transfer agreement.

Share transfers are completed in accordance with the terms agreed by the parties, subject to mandatory regulatory approvals.

24. Are there any incentives (such as tax exemptions) available for acquisitions in your jurisdiction?

There are no incentives (such as tax exemptions) available for acquisitions in Albania.

F. Enforceability

25. Can acquisition documents be executed in a foreign language?

Yes, acquisition documents can be executed in a foreign language. However, a certified translation into the Albanian will be required for the filing of the acquisition documents with the company register.

26. Can acquisition documents be governed by a foreign law?

Yes, the acquisition documents may be governed by a foreign law.

27. Are arbitration clauses legally permissible or generally included in acquisition documents?

Yes, arbitration clauses are legally permissible and generally included in acquisition documents.

28. Are there any specific formalities for the execution of acquisition documents? Is it possible to remotely/digitally sign documents?

No specific formalities apply for the purpose of the validity of acquisition documents, as long as they are in written form. Remotely/digitally signed acquisition documents would be valid under Albanian law.

However, for the filing with the company register, additional formalities may apply depending on the circumstances (e.g., notary certification/apostille seal). Please note that these are not validity requirements but rather filing requirements at the administrative level.

G. Trends and Projections

29. What are the main current trends in M&A in your jurisdiction?

As mentioned, given the underdevelopment of securities markets in Albania, the first two legal acts are in practice the norm for private acquisition in Albania. Owing to Albania's small economy, deals for the acquisition of local targets have been less impacted by funding constraints posed by tighter credit markets and rising interest rates. Because of this, there has been a consistent emphasis of M&A activity over the past few years in industries including energy and minerals, IT, real estate and tourism, as well as telecommunications.

30. Are any significant development or change expected in the near future in relation to M&A in your jurisdiction?

There are no significant developments or changes expected in the near future in relation to M&A in Albania.

ARGENTINA

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A. General

1. What is the main legal framework applicable to companies in your jurisdiction?

Argentina has adopted the federal republican representative form of government. Thus, the Argentine Congress, composed of 2 (two) houses called the Senate and the House of Representatives, which constitute the legislative branch, enacts the laws relating to federal legislation and the Civil, Commercial, Criminal, Mining, Labor, and Social Security Codes, applicable throughout the country. Each Province has the power to enact its own Constitution.

The National Constitution and the International Treaties on Human Rights with constitutional hierarchy are placed above the whole legal system, the other international treaties follow immediately after, the laws sanctioned by the National Congress below and finally the provincial legislation and then the municipal legislation, which will be considered valid as long as and insofar as they do not contradict the federal constitutional text.

The activity of companies in Argentina is regulated by the Argentine Civil and Commercial Code ("**ACCC**"), which entered into force on August 1, 2015, unifying the former Civil Code and the Commercial Code, and, in turn, by the General Companies Law No. 19,550 ("**GCL**").

In turn, some companies may be additionally regulated by special laws specific to the activity they carry out, for example, financial institutions, insurance companies, companies authorized to publicly offer their securities, utilities and companies involved in telecommunications, media and airline activities, among others.

2. What are the most common types of corporate entities (e.g., joint stock companies, limited liability companies, etc.) used in your jurisdiction? What are the main differences between them (including but not limited to with regard to the shareholders' liability)?

In accordance with the provisions of the GCL, the following classification of the types of companies in the country can be made as:

1) Partnerships by parts of interest (or of persons): partnerships; limited by simple partnership; of capital and industry; accidental or in participation.
2) Companies by quotas: limited liability companies.
3) Companies by shares (or capital): corporations; limited partnerships; cooperatives; mixed economy companies.

In addition, 2 (two) new variations of corporations have been added in recent years. These are sole shareholder corporations (*Sociedades Anónimas Unipersonales*, hereinafter "**SAU**") and simplified corporations (*Sociedades por Acciones Simplificadas*, hereinafter "**SAS**"). In any case, although the GCL establishes the existence of several different types of companies, the fact is that in practice, all commercial activity of a certain significance is usually channeled mainly through only two types of companies: corporations (*Sociedades Anónimas*, hereinafter "**SA**") and limited liability companies (*Sociedades de Responsabilidad Limitada*, hereinafter "**SRL**").

SRLs have traditionally been considered a suitable vehicle for small companies, while SAs are the investment vehicle normally used by large companies or joint ventures. However, there is currently a growing interest in the use of SRLs by larger companies, mainly because they must comply with fewer corporate formalities and are, in general, easier to administer than SAs. In addition, although SAs, and SRLs are subject to substantially similar tax treatment, some foreign companies may find it advantageous to invest in SRLs due to "pass through" tax benefits.

SAs must be formed with a minimum of 2 (two) shareholders that can be either legal entities or individuals. The corporate capital is divided into shares, which are always of equal face value and expressed in Argentine currency. Its minimum capital required is ARS 30,000,000 and while it must be fully subscribed upon incorporation, only 25% needs to be paid in at the time of subscription of the shares, and the balance within the following 2 (two) years.

Shareholders of SAs are only liable for the obligations incurred by the company to the extent of the shareholders' capital commitments or contributions because the company is a legal entity independent from its shareholders. The shareholders are liable only for the capital they have agreed to contribute to the corporation. Each shareholder is liable only for their own pending capital contribution so shareholders who have fully paid shares are generally not liable for the company's obligations beyond their capital contributions.

Any shareholder with interests in conflict with those of the company has a duty to abstain from voting on any matter that relates to such conflict so if any shareholder does not observe this provision, it will be liable for resulting damages from a final resolution of the matter in conflict, but only if, without the shareholder's vote, the majority vote necessary to adopt such resolution would not have been obtained. Furthermore, all shareholders who vote in favor of a resolution that is subsequently declared void may be jointly and severally liable without limitation, for any consequences resulting therefrom.

The GCL provides that shareholders or those effectively exercising control over a company who cause damage to the company are jointly liable for such damages and cannot set off such damages against profits that their action may have produced in connection with other transactions of the company. The shareholders or those exercising control that use funds or assets of the company in a transaction for their own benefit must contribute any profits to the company and must bear the losses themselves. Also, the actions of the company that conceal the pursuit of extra-corporate purposes and constitute a mere resource to violate the law, public order or good faith or to frustrate the rights of third parties, will be directly imputed to the shareholders or controlling shareholders that made it possible, who will be jointly and unlimitedly liable for the damages caused.

In addition, the bankruptcy of a company can be extended to a controlling shareholder in certain cases, for example, if a shareholder disposes of assets of the company as if they were the shareholder's own, thereby defrauding the company's creditors. A similar result would ensue if any controlling person steered the company's interest in the direction of the controlling shareholder's interest or the economic group to which he or she is a party.

In turn, the SAUs are formed with a single shareholder that can be either a legal entity or an individual. The GCL imposes on SAUs the same incorporation requirements of SAs, including further requisites as follows, among others, SAU: (i) cannot incorporate another SAU; (ii) share capital shall be fully subscribed and paid up upon incorporation; (iii) is subject to permanent government control; (iv) must appoint a supervisory committee (*comisión fiscalizadora*) comprised of at least 1 (one) regular and 1 (one) alternate statutory supervisors; and (v) corporate name shall include the expression "*Sociedad Anónima Unipersonal*", its abbreviation or the acronym SAU.

Finally, SRLs are limited liability companies that may be formed with a minimum of 2 (two) and a maximum of 50 quota holders. Quota holders may be either individuals or corporate legal entities.

There is no minimum capital required to set up an SRL. The capital is divided into quotas (*cuotas*), which are interests in the capital of the company, and which must be expressed in Argentine currency. Quotas must be of equal par value ARS 10 or its multiples and entitle the quota holders to 1 (one) vote each.

While the capital of an SRL must be fully subscribed upon incorporation, only 25% needs to be paid in at the time of subscription of the quotas and the balance within the following 2 (two) years.

SRLs cannot in principle be listed on an official stock exchange.

Quota holders enjoy limited liability up to the capital subscribed in the SRL. However, each quota holder guarantees vis-à-vis third parties, jointly and severally, and without limit: (i) all pending capital contributions, whether pertaining to the holder or not, and whether monetary or non-monetary; and (ii) the overvaluation of non-monetary contributions, whether its own or not.

In the event of a transfer of quotas, the guarantee of the assignor continues to apply to corporate liabilities assumed up to the time of the transfer registration. The purchaser guarantees unlimitedly the capital contributions jointly and severally, and without limitation, with no distinction as to commitments before or after the date of the registration. The assignor who has not paid in full his or her quotas is liable severally and jointly with the assignee for the amount still to be paid in. The company may not demand payment from the assignee without first pursuing the assignor in arrears.

Any quota holder with interests in conflict with those of the company has a duty to abstain from voting on any matter that relates to such conflict. If that quota holder does not observe this provision, the partner will be liable for any resulting damages from a final resolution of the matter in conflict if the majority vote necessary to adopt such resolution would not have been obtained without the quota holder's vote.

Furthermore, all quota holders that vote in favour of a resolution that is subsequently declared void may be jointly liable, without limit, for any consequences resulting therefrom. Also, the actions of the company that conceal the pursuit of extra-corporate purposes and constitute a mere resource to violate the law, public order or good faith or to frustrate the rights of third parties, will be directly imputed to the quota holders or controlling quota holders that made it possible, who will be jointly and unlimitedly liable for the damages caused.

From a tax perspective, as a general principle, all types of Argentine companies are considered Argentine resident taxpayers and subject to the same tax treatment. Thus, from a tax perspective, there are no relevant differences between carrying out businesses in Argentina through any of those vehicles.

B. Foreign Investment

3. Are there any restrictions on foreign investors incorporating or acquiring the shares of a company in your jurisdiction?

In general, foreign investors wishing to invest in Argentina, either by starting up new businesses or by acquiring existing businesses or companies, do not require government approval except for regulated areas or for general applicable regimes such as antitrust regulations. In this sense, the antitrust law requires that notice of certain transactions such as mergers, transfers of businesses, acquisitions of shares or any other rights that confer control to the acquirer on the acquisition of assets of a company that are transferred to a person or economic group must be submitted to the pertinent governmental authority for clearance. However, those regulations apply to both foreign and domestic investors.

However, for foreign companies to incorporate and/or acquire shares in a local company, they must previously prove that they have been incorporated in accordance with the laws of their respective countries and register their articles of incorporation, amendments, and other enabling documentation, as well as that relating to their legal representatives, with the registry of the jurisdiction where the Argentine company is incorporated.

The foreign companies to be registered in the City of Buenos Aires must prove that they are not offshore companies and are not incorporated in an offshore jurisdiction and would be in a position to submit evidence that its main activity is not intended to be performed in Argentina, evidencing that it has significant assets abroad. According to the Public Registry of the City of Buenos Aires ("**IGJ**"), will be considered as offshore companies those foreign companies that, according to the laws of their place of incorporation or registration, are subject to a prohibition or restriction to pursue all or a principal part of their purpose within the jurisdiction of incorporation or registration and offshore jurisdictions means any independent or associated state, territory, island or any other unit or territory, whether independent or not, where all or part of the companies incorporated or registered are subject to a prohibition or legal restriction to pursue all or a principal part of their purpose within the jurisdiction of incorporation or registration.

Also, recently the IGJ has established some additional restrictions such as the registry will deny registration of foreign corporations that are incorporated or registered in countries, domains, jurisdictions, territories, associated states and special tax regimes, considered non-cooperative for the purposes of fiscal transparency and/or categorized as non-cooperative in the fight against Money Laundering and Terrorism Financing of Terrorism, or of low or no taxation, according to the criteria of some national and international organizations such as the United Nations and the FATF, among others.

In general, foreign shareholders may own 100% of the capital of SAs or SRLs, except for those companies regulated by a special law that requires a minimum Argentine participation so there are some specific industries that tend to have more restrictions.

A foreign investment sector that is still restricted to foreign investment is broadcasting. Although are certain Investment Protection Treaties executed between Argentina and third countries that may be construed to supersede such restriction, Law No. 25,750, published in the Official Gazette on July 7, 2003 establishes that foreign ownership of media companies, directly or indirectly, is restricted to up to 30% of its shareholding or voting rights. The said percentage of foreign participation may be increased in case of reciprocity in the percentage permitted by the foreign country for the foreign investment in its own media companies according to its legal framework.

In addition, Law No. 26,737 enacted in December 2011 (the "Rural Lands Law") imposed several restrictions on the ownership or possession of rural lands by foreign individuals or legal entities as follows:

- i No more than 15% of the total amount of 'rural lands' in Argentine territory could be owned or possessed by foreign individuals or legal entities. This percentage was also applicable to the territory of the province or municipality where the relevant lands were located:
- ii Under no circumstance could foreign individuals or legal entities of the same nationality hold or possess more than 30% of the above-stated 15%.
- iii Ownership by the same foreign owner could not exceed 1000 hectares of the 'core area', or the 'equivalent surface' determined by the enforcement agency according to the location of the land.
- iv Foreign legal entities or individuals could not be owners of rural lands that comprised or were located beside permanent and significant bodies of water (such as seas, rivers, streams, lakes, ponds, wetlands, swamps, glaciers, confined aquifers, etc.).

On December 21, 2023, Decree of Necessity and Urgency No. 70/2023 (the "Emergency Decree 70/2023") was published in the Official Gazette, which, among many other reforms, repealed the Rural Lands Law. The Emergency Decree 70/2023 is in force since December 30, 2023; therefore, as from such date the limitations of the Rural Lands Law have been eliminated, and foreigners are able to freely acquire rural lands in Argentina.

Pursuant to the Argentine Constitution and Law 26,122, the Emergency Decree 70/2023 is subject to subsequent legislative control. It will remain in force unless it is rejected by both Houses of the Federal Legislative (i.e., the Senate and the House of Representatives).

However, for the time being, the border security zone regime established in Decree-Law 15,385/1944 is still in force. This means that foreigners seeking to acquire rural—and, in some cases, urban—properties within the Argentine border (150 km when the limit is land and 50 km when the limit is maritime) must obtain the Ministry of Interior's prior approval. Only the Province of Buenos Aires is exempted from this limitation.

4. Are there any foreign exchange restrictions or conditions applicable to companies such as restrictions to foreign currency shareholder loans?

There are currently foreign exchange controls in Argentina, which affects the ability of both Argentine and non-Argentine residents to access the Argentine foreign exchange market at the so-called 'official' exchange rate (currently, approximately USD 1=ARS 1091.25) to acquire and/or transfer foreign currency to and from Argentina.

Historically, the inflow and outflow of funds to and from Argentina has been subject to several restrictions and requirements. Over the course of the last 20 years, Argentina has experienced 2 (two) main periods of exchange controls. The first period began in 2001 and ended in 2015, while the second one started in 2019 and is currently ongoing. Between 2015 and 2019, foreign exchange regulations were substantially relaxed until their complete abrogation in 2017.

Foreign exchange controls affect all industries and cover a wide variety of matters, including, among others, imports and exports of goods and services, financial indebtedness, payment of profits and dividends, and repatriation of investments of non-Argentine residents. The Argentine Central Bank is the regulatory authority in charge of administering the access to the Argentine foreign exchange market by establishing all regulatory requirements, which are all unified under the consolidated text of foreign exchange available at the BCRA's website: http://www.bcra.gob.ar/Pdfs/Texord/t-excbio.pdf. Access to the Argentine foreign exchange market for certain payments abroad (especially those involving related parties) may require prior Argentine Central Bank approval, which may be granted or denied on a discretionary basis.

5. Are there any specific considerations for employment of foreign employees in companies incorporated in your jurisdiction?

Foreign employees must have a work permit/authorization or work visa to be employed in local companies. A first classification shall be made between "transitory" and "temporary" residencies or visas. For both applications, the local company should be sponsor duly registered at the Argentina Immigration Directorate *("Dirección Nacional de Migraciones")*. The applications for the work visa can be made for "transitory residencies" for stays of less than 3 (three) months. It could be for "technical" purposes (30 days of stay, renewable for the same period), or a "work authorization" for almost 90 (ninety) days of stay and it is not renewable. Except for the work authorization of less than 90 days, the transitory residencies can be applied through the Argentina consulate. The mid-term/long residencies are also called "temporary residencies" with a stay for 1 (one) year, renewable for the same period.

There are 2 (two) alternatives to apply for a temporary work visa (mid-term/long residence). One is to apply directly in the country (Argentina) through the Argentina Immigration Department. In this case, foreigners who do not need a visa to enter to Argentina can enter as a tourist, invoking a visa waiver, and then make the conversion to a temporary work visa through the office of the Argentina Immigration Directorate. The other way is to apply through the Argentina consulate from the jurisdiction where the foreigner lives. The foreigners that have a nationality that requires a mandatory visa to enter to Argentina can apply to their request through the

Argentina consulate or through the Argentina Immigration Directorate with an entry permit request.

For Mercosur citizens there is the possibility to be a local employee without needing a sponsor for the application of the visa/permit/authorization. They can apply for a temporary residence or consular visa invoking Mercosur nationality that allows them to live and stay for 2 (two) years in the country as temporary resident. The Mercosur visa allow them to live, work and study during their stay in Argentina.

C. Corporate Governance

6. What are the standard management structures (e.g., general assembly, board of directors, etc.) in a corporate entity governed in your jurisdiction and the key liability issues relating to these (e.g., liability of the board members and managers)?

The SA can be managed by a single director or by a board of directors, as set forth in the by-laws. A minimum of 3 (three) directors is required if the company's capital exceeds the sum of ARS 2,000,000,000. The SA is represented by the President of the board of directors. If the capital of the SA is divided into different classes of shares, the by-laws may provide that each class elect one or more directors and establish the rules for such election.

The directors, who need not be shareholders, are elected by the ordinary shareholders' meeting, to hold office for a period not exceeding 3 (three) fiscal years and may be re-elected indefinitely. The majority of the directors must reside in Argentina, regardless of their nationality and all of them must have a special domicile in Argentina where notices must be given, and process served in all matters relating to the SA.

The board of directors must meet at least once every 3 three) months and its quorum is an absolute majority of the directors. Unless a higher majority is provided for in the by-laws, decisions are taken by the majority of the directors present at any meeting.

Directors of SAs are subject to a standard of loyalty and diligence. Also, non-compliance with this standard results in unlimited, joint and several liability for damages arising therefrom. Directors have the duty (i) to reveal any conflict of interest to the board of directors and the statutory supervisors; (ii) to abstain from any deliberation related thereto; and (iii) to refrain from competing with the company.

Directors are unlimitedly, jointly, and severally liable to the corporation, the shareholders and third parties for negligent performance of their offices, for violations of the law or of the by-laws of the company, and for any other damages caused by the director's fraud, gross negligence or abuse of authority.

Directors, who file in a timely manner written objections to the corporate resolution that caused the damages and promptly give notice to the statutory supervisors before the proceedings are initiated against decisions of the board of directors, are exempt from any consequences arising from the resolution. Directors may be released from liability for certain decisions by a subsequent approval of the shareholders' meeting, provided that such decisions do not violate the law or the by-laws, and that shareholders representing 5% or more of the company's capital do not object.

Shareholders' meetings must take place at the corporate domicile or within the jurisdiction of its legal domicile and are either ordinary (*Asamblea Ordinaria*) or extraordinary (*Asamblea Extraordinaria*). After the pandemic, some registries such as the IGJ have allowed meetings to be held through videoconferences, by means that allow attendees to communicate simultaneously with each other, if such alternative is provided for in the by-laws.

Ordinary meetings must be called at least once a year, within 4 (four) months from the end of the fiscal year, to consider the following matters: (i) financial statements, annual reports, and distribution of profits; and (ii) appointment and removal of directors and statutory supervisors and their performance and fees.

Extraordinary meetings are required to consider the amendment of by-laws and any other matters that are not among those items to be considered by law by ordinary meetings. In particular, extraordinary meetings are empowered to consider: (i) capital increases; (ii) capital reduction and capital refund; (iii) redemptions of shares; (iv) mergers, dissolutions, liquidations and spin-offs; (v) limitation or suspension of pre-emptive rights in subscription for new share issues; (vi) the issuance of debentures and their conversions into shares; and (vii) the issuance of bonds.

Ordinary and extraordinary meetings must be held when called by the directors or statutory supervisors or by shareholders representing 5% of authorized capital unless the by-laws permit a smaller number.

Notices of meetings are given by means of announcements published for 5 (five) days in the Official Gazette, at least 10 (ten) days in advance of the date specified for the holding of the meeting. However, no publications are necessary when all shareholders are present, and decisions are taken unanimously.

Shareholders may be represented by proxy at any meeting. Nevertheless, directors, statutory supervisors and employees of the company may not represent shareholders.

Quorum for ordinary meetings on first call requires the presence of a majority of shares with a right to vote. Ordinary meetings are deemed to be constituted on second call regardless of the number of shares present. Extraordinary meetings require on first call a quorum of 60% of shares with a right to vote unless the by-laws require a higher percentage, and, on a second call, a quorum of 30% of voting shares unless the by-laws require a lower or a higher percentage. A majority of votes present at ordinary or extraordinary meetings is sufficient to carry a resolution unless the by-laws require a higher number. In the case of transformation, extension or redemption, except in the case of companies that have their shares publicly offered or listing of their shares; early dissolution of the company; transfer of the domicile abroad, fundamental change of purpose and total or partial reintegration of the capital, both on the first and second call, resolutions will be adopted by the affirmative vote of the majority of shares with voting rights, without the plurality of votes being applicable. This provision will be applied to decide on mergers and spin-offs, except with respect to the incorporating company, which will be governed by the rules on capital increase. If a quorum is not present at a meeting on the first call, notice for a meeting on second call (which must be held within thirty days of the date on which the first meeting was called), must be given at least 8 (eight) days before the date of the second meeting. The by-laws may authorize that both meetings (on first and on second call) be convened by means of the same notice. In this latter case, if the meeting is convened for the same day, it must be held with an interval of not less than 1 (one) hour between each meeting.

The minutes of all shareholders' meetings, as well as board resolutions, must be transcribed in the official books held by the SA for that purpose. In some cases, copies of the minutes must be filed with the registry (i.e., minutes of the board and shareholders' meetings related to the approval of annual financial statements and appointment of directors of the SA).

Shareholders may at their annual meeting elect one or more statutory supervisors (*síndicos*). They may serve for a period not exceeding 3 (three) fiscal years, with possible re-election. Their functions are to supervise the administration of the company, attend all board and shareholders' meetings and, in general, control the legality of the corporation's decisions. In broad terms, they protect the rights of shareholders and verify that the company abides by the law and its by-laws.

The appointment of statutory supervisors is, in principle, not mandatory. If the company dispenses with the appointment of statutory supervisors, at least one alternate director must be designated.

However, a SA with capital exceeding the sum of ARS 2,000,000,000 must appoint at least one statutory supervisor and one alternate statutory supervisor. Furthermore, if the company is state controlled, publicly offers its shares, operates public concessions or services, performs capitalization or savings operations or operations which in general solicit funds from the public, the law requires that a supervisory committee (*comisión fiscalizadora*) comprised of at least 3 (three) statutory supervisors be appointed.

The same general rules of the Board of Directors of the SA apply for the SAUs. SAUs are subject to permanent government supervision, and they must appoint a supervisory committee (*comisión fiscalizadora*) comprised of at least 3 (three) regular and 3 (three) alternate statutory supervisors, being the committee always comprised by members in odd numbers.

In turn, the quota holders of a SRL may appoint one or more managers to manage and represent the company. The managers may be appointed for either a determinate or indeterminate period, as established in the by-laws or when appointed. Alternate managers may be appointed to replace regular managers in case of a vacancy. The managers represent the company, either individually or jointly as set forth in the by-laws.

As a general rule, the majority of the managers must be Argentine residents, regardless of their nationality and they need not be partners themselves.

Managers are individually or severally liable according to the organization of the management and in the case of plural management, but, as a general rule, they are subject to a standard of loyalty and diligence.

Non-compliance with this standard gives rise to unlimited, joint and several liability for damages arising therefrom. They have the duty (i) to reveal any conflict of interest to the quota holders, the other managers (in case of plural management) and the statutory supervisor/s if appointed, and (ii) to refrain from competing with the company unless it is expressly allowed by the partners by unanimous decision.

The by-laws normally contain the rules for adopting resolutions, but if not, the corporate resolutions adopted by the vote of the quota holders, communicating to the management through any procedure that guarantees their authenticity, within 10 (ten) days of having been simultaneously consulted through a reliable means, or those resulting from a written statement in which all the quota holders express the sense of their vote, are deemed as valid. Also, after the pandemic, some registries such as the IGJ have allowed meetings to be held through videoconferences, by means that allow attendees to communicate simultaneously with each other, if such alternative is provided for in the by-laws.

Resolutions concerning either amendments to the by-laws, or the appointment or removal of managers or statutory supervisors, must be passed by the majority as established in the by-laws, which must consist of at least the affirmative vote of quota holders who represent over 50% of the company's capital. If the by-laws are silent on what constitutes a majority, the affirmative vote of the quota holders that represent over 75% of the company's capital is required. If one quota holder represents the majority vote, another quota holder's vote is also required.

Resolutions concerning issues other than amendments to the by-laws, or the appointment or removal of managers or statutory supervisors, must be passed by the affirmative vote of the quota holders who represent over 50% of the capital participating in such resolution or present in such meeting unless the by-laws provide for a higher majority.

If the company's capital exceeds the sum of ARS 2,000,000,000, the quota holders must hold an annual meeting to consider the financial accounts of the previous year, which must be called within 4 (four) months following the fiscal year-end. Such meetings are validly held on the first call, with the presence of quota holders representing the majority of quotas of the company's capital; on the second call with the presence of any quota holders regardless of the number of quotas they represent. In both cases, resolutions must be passed by the affirmative vote of the absolute majority of votes present. In the case of transformation, extension or redemption (except in the case of companies that have their shares publicly offered or are listing their shares); early dissolution of the company; transfer of the domicile abroad, fundamental change of purpose and total or partial reintegration of the capital, both on the first and second call, resolutions will be adopted by the affirmative vote of the majority of shares with voting rights, without the plurality of votes being applicable. This provision will be applied to decide on mergers and spin-offs, except with respect to the incorporating company, which will be governed by the rules on capital increase.

If a quorum is not available in a meeting on the first call, a notice for a meeting on second call, (which must be held within thirty days of the date for which the first meeting was called), must be given at least 8 (eight) days before the date of the second meeting. The by-laws may authorize that both meetings (on first and on second call) are convened by means of the same notice. In this latter case, if the meeting is convened for the same day, it must be held with an interval of not less than 1 (one) hour between each meeting. All quota holders' resolutions must be transcribed into a minute book and signed.

SRLs whose capital exceeds the sum of ARS 2,000,000,000 must appoint at least one regular and one alternate statutory supervisor (*síndico*). They may serve for a period not exceeding three fiscal years, with possible re-election and their functions are to supervise the administration of the company, attend managers' and quota holders' meetings and, in general, control the legality of the company's decisions. In broad terms, they protect the rights of partners and verify that the company abides by the law and its by-laws.

7. What are the audit requirements in corporate entities?

The SAs must file their annual financial statements with the registry drafted by the Board of Directors, and if applicable, with the participation of the statutory supervisor. Additionally, SAs with corporate capital exceeding the sum of ARS 2,000,000,000 must notify the registry of its annual ordinary shareholders' meeting prior to holding any such meeting. All financial statements must be audited by an accounting firm.

SAs must keep the following corporate books: Share Registry Book, Attendance Record Book of Shareholders' Meetings, Minutes Book of the Board of Directors and of Shareholders, and, if applicable, Minutes Book of the Supervisory Committee. In addition, accounting books must be kept.

Shareholders may at their annual meeting appoint one or more statutory supervisors (*síndicos*) who must be Argentine residents and must be attorneys or accountants duly registered to practice. They may serve for a period not exceeding 3 (three) fiscal years, with possible re-election. Their functions are to supervise the administration of the company, attend all board and shareholders' meetings and, in general, control the legality of the corporation's decisions. In broad terms, they protect the rights of shareholders and verify that the company abides by the law and its by-laws.

The appointment of statutory supervisors is, in principle, not mandatory. However, if the company dispenses with the appointment of statutory supervisors, at least one alternate director must be appointed.

SAs subject to permanent governmental supervision must appoint at least 3 effective and 3 alternate statutory supervisors except when the company's capital exceeds ARS 2,000,000,000. In this case, the company must appoint at least 1 effective and 1 alternate statutory supervisor.

In turn, in the SRLs the appointment of statutory supervisors is optional but those in which capital exceeds the sum of ARS 2,000,000,000 must appoint at least one regular and one alternate statutory supervisor (*síndico*). Statutory supervisors have the same requirements as those mentioned above.

D. Shareholder Rights

8. What are the privileges that can be granted to shareholders? In particular, is it possible to grant voting privileges to shareholders for appointment of board members?

The shares of SAs will always be of equal value, expressed in Argentine currency. The bylaws may provide for different classes with different rights. SAs may have different classes of shares with different rights attached to each class, which, in turn, may be common (ordinary shares) or preferred (preferred shares). Within each class, the shares shall confer the same rights. Any provision to the contrary is null and void.

Common shares may carry the right to cast from 1 (one) to 5 (five) votes, as provided in the bylaws. However, the issuance of common shares giving the right to cast multiple votes (up to five) is incompatible with equity preferences. Preferred voting shares may not be issued after the company has been authorized to make a public offering of its shares.

Preferred shares may have no voting rights, except with respect to decisions on certain important matters, such as the extension of the company's term, conversion into another type of entity, except in the case of listed companies, fundamental change of corporate purpose and transfer of the company's domicile to another country, without prejudice to their right to attend meetings with the right to speak.

Likewise, non-voting shares acquire the right to vote during the period in which the company is in default as regards the benefits linked to their preference, or if the company is listed on a stock exchange, during the period in which the listing is suspended or withdrawn.

In the event of a capital increase, the holder of existing shares of a particular class (or ordinary shares if the capital is not divided into classes of shares) has a preemptive right (except in listed companies) to subscribe for a number of shares of the same class sufficient to maintain the holder's existing proportionate interest in shares of that class. The preemptive right also applies to the issue of convertible securities.

Shareholders who have exercised their preemptive rights are entitled to accretion in proportion to their respective holdings of non-preemptive shares.

When there are several classes of shares, the bylaws may provide for each class to elect one or more directors, for which purpose the bylaws shall regulate the election.

9. Are there any specific statutory rights available to minority shareholders available in your jurisdiction?

With respect to minority shareholders, there is basically no legal action to object to an acquisition other than that based on the grounds of fraudulent conveyance or breach of fiduciary duties of the directors.

Beyond this, the GCL contains certain rules intended to provide protection to minority shareholders (e.g., cumulative votes, right to withdraw, information rights). Minority shareholders who dissent from certain decisions may withdraw from the corporation and are entitled to reimbursement of the book value of their shares.

Such decisions include, among others: change of corporate form, extension or renewal of the company's duration; transfer of domicile abroad; fundamental change of corporate purpose; total or partial repayment of capital; mergers and divestments (except with regard to the surviving company); and capital increases decided by extraordinary shareholders meetings which involve disbursements by such shareholders.

In addition, other rights may be granted contractually and not necessarily reflected in the company's bylaws.

10. Is it possible to impose restrictions on share transfers under the corporate documents (e.g., articles of association or its equivalent in your jurisdiction) of a company incorporated in your jurisdiction?

As a general rule, transfers of shares or quotas are not usually restricted, but the bylaws may include restrictions as long as in practice they do not completely prevent transfers of shares.

The quotas of SRLs are freely transferable unless otherwise provided for in the articles of incorporation. The articles of incorporation may limit the transferability of shares, but not prohibit it.

The clauses that require the majority or unanimous consent of the partners or that confer a preferential right to the partners or to the company if the latter acquires the quotas with available profits or reserves or reduces its capital are lawful. Thus, it is not appropriate to require the unanimous approval of the partners with respect to the assignment of the corporate quotas.

For these clauses to be valid, the contract must establish the procedures to be followed for the granting of the approval or the exercise of the purchase option, but the term for notifying the decision to the partner proposing the assignment may not exceed 30 days from the date on which the latter informed the management of the name of the interested party and the price. Upon expiration of such period, the agreement shall be deemed to have been agreed and the preference shall be deemed not to have been exercised.

On the other hand, the transfer of shares of SAs is free. The bylaws may limit the transferability of registered or book-entry shares, without prohibiting their transfer. The limitation must be stated in the title or in the entries in the account.

The right to transfer the share is non-derogable and takes the form of the right to freely dispose of it when its use is not expressly limited by the bylaws or by law. Consequently, it can be stated that the transferability of the share is an essential principle of any corporation, not only because the capital is divided into shares in order to give the shareholder the incentive of its transferability, but also because - according to the legal structure of the corporation - the personal conditions of the shareholders seem to be irrelevant.

In practice, provisions are often included in joint ventures that give existing shareholders a preferential right to purchase the shares offered for transfer. These provisions do not apply to transfers of shares in listed companies.

In addition, even when a company's articles of association do not provide for restrictions on transferability, there are often shareholders' agreements, under which shareholders regulate the manner in which they may exercise their voting rights and grant first refusal rights to the other parties to the agreement in the event of a proposed transfer of company shares.

Shareholders' agreements are binding only on the contracting parties and are therefore not enforceable against third parties unless they are fully reflected in the company's bylaws. Shareholders' agreements whose clauses are not included in the articles of association of the company will, as a general rule, give rise to a claim for damages.

11. Are there any specific concerns or other considerations regarding the composition, technical bankruptcy and other insolvency cases in your jurisdiction?

The Argentine Insolvency and Bankruptcy Law does not specifically refer to the share purchase agreement of a company subject to an insolvency proceeding. As a general rule, shareholders are allowed to sell their shares in a company even if the company is subject to bankruptcy proceedings.

However, if the sale is made in any way to the detriment of creditors, it would become an invalid act (requiring proof) through a bankruptcy revocation action. If it is a donation, for example, it is unenforceable as a matter of law and the court usually declares it as such.

In addition, if a shareholder exercises the right of separation at the time the insolvency of the company began, it must return the amount it received from the company.

Finally, as explained in Query 26, Argentine law recognizes that the parties to a share purchase agreement may choose a jurisdiction other than Argentina for the resolution of their disputes, provided that the matter is of an international nature and concerns pecuniary rights. However, insolvency proceedings relating to debtors domiciled in Argentina or whose principal place of business is in Argentina are an exception to the rule and in such cases, Argentine courts retain exclusive jurisdiction.

In practice, it is not common to find in Argentine transactions an indemnity clause on accounts receivable in case of unexpected insolvency of the debtors, but in general, this would depend on the bargaining power of the parties.

E. Acquisition

12. Which methods are commonly used to acquire a company, e.g., share transfer, asset transfer, etc.?

In general, ownership of a company may be acquired by acquiring the target company's capital stock, purchasing the assets of the target company as a going concern, or through a merger.

Strictly speaking, the only way to acquire an Argentine company is to obtain control of the voting capital of the target company. What constitutes a controlling interest in the target company is a question of fact and will depend on its shareholding structure. Control is considered to be the power, direct or indirect, through the capital stock that grants the necessary votes to govern the corporate will in the bodies and meetings of the company, or to exercise a dominant influence.

Due to the specific characteristics of the market, the pursuit of such an objective in the open market has very little chance of success. Hostile acquisitions are rare and public mergers and acquisitions are in fact almost non-existent. A buyer in the open market can, at best, acquire enough shares to obtain a seat on the company's board of directors.

In contrast, private off-exchange mergers and acquisitions are usual. They occur between companies of all sizes and involve both local and foreign investors. Acquisitions of unlisted companies usually involve a transaction negotiated directly by the interested buyer and all or the majority shareholders of the target company. In a competitive process, a typical acquisition will be initiated by an investment bank or by the buyer's contact with the target company's management, which usually includes one or more individuals with a controlling interest, and the submission of an offer.

Acquisitions usually involve meticulous audit and due diligence procedures, with an emphasis on the target company's tax and labor obligations (taxes, social security, etc.) and foreign exchange matters, among all other aspects usually considered in any due diligence process outside Argentina. It is common to request that special financial statements be drawn up at the time of closing. A share purchase agreement will require careful drafting to cover all agreed terms and will include representation and warranties from the target company's shareholders in favor of the buyer.

Mergers may consist of (i) consolidations, in which two or more companies transfer their assets and liabilities to a new company which, as consideration, issues shares to the shareholders of the merged companies, which are then dissolved, or (ii) mergers by absorption, in which one or more companies transfer their assets and liabilities to an existing company which, as consideration, issues shares to the shareholders of the absorbed company/companies, which are then dissolved.

In turn, Argentine law defines a spin-off as an operation by which a company: separates part of its assets and liabilities from its existing assets and liabilities and: (i) creates (together with another company) a new company to which such assets or liabilities are transferred; (ii) merges such assets and liabilities with one or more existing companies (in the latter case the rules applicable to mergers will apply); (iii) separates part of its assets and liabilities from its existing assets and liabilities and creates one or more companies to which such assets and liabilities are transferred; and (iv) creates new companies to which all of its assets and liabilities are transferred.

After that, the companies to which the

assets and liabilities have been transferred issue shares to the shareholders of the company that has spun off the assets and liabilities.

As in the case of mergers, the spin-off procedure requires the relevant company to approve the operation, the spin-off balance sheets, the issuance and distribution of shares and the relevant amendments to the bylaws.

Finally, asset transfer agreements are regulated by the Law on the Transfer of Commercial and Industrial Establishments No. 11,867, which establishes a procedure aimed primarily at protecting the seller's creditors. In addition, the procedure established by the Law is also aimed at protecting the bona fide transferee in case the debts exceed the claims of the going concern. Following the procedure provided by the above-mentioned law is not mandatory and, in many cases, it is not followed as it does not provide any protection regarding taxes and labor obligations, which are usually one of the most relevant concerns in a M&A project in Argentina.

13. What are the advantages and disadvantages of a share purchase as opposed to other methods?

In general, it is argued that a share purchase agreement, as opposed to other methods such as the transfer of assets, is usually much more efficient for the seller, especially regarding its tax treatment.

While in a share purchase transaction, the taxes to be paid are usually around 15% of the agreed price, in an asset transfer transaction, the tax rates can reach up to 35% of the agreed price and other taxes are added to this.

Likewise, the share purchase agreement, as long as it takes place under relatively normal circumstances, allows transactions to be closed much faster than the transfer of assets, and at the same time, having to face much lower costs.

Finally, provided that the assets constitute a going concern, there is no relevant difference for the buyer in terms of liabilities since the successor liability applies in case of an acquisition of a business through a new investment vehicle.

14. What are the approvals and consents typically required (e.g., corporate, regulatory, sector based and third-party approvals) for private acquisitions in your jurisdiction?

In general, private merger and acquisition transactions are not legally subject to prior substantive approval and/or review by governmental authorities, except where they involve specific industries.

If the company's activity is a regulated activity, additional requirements and regulations may apply. For example, financial institutions, insurance companies, companies authorized to publicly offer their securities, public utility companies and companies engaged in telecommunications are subject to specific regulation, supervision or prior approval by the relevant government agencies with respect to the transfer of their shares.

The parties to a transaction with effects in Argentina may be required to seek the approval of the antitrust authorities if they fall within the scope of antitrust law.

15. What are the regulatory competition law requirements applicable to private acquisitions in your jurisdiction?

In order to determine if a given transaction must be notified before the Antitrust Commission for clearance, there are 3 (three) main issues that must be assessed, namely: (i) If the transaction entails an economic concentration pursuant to the

Argentine Antitrust Law No. 27,442 (the "**Antitrust Law**"); (ii) If the volume of business of the companies involved in the transaction exceeds the threshold set out by the Antitrust Law; and (iii) If any of the exemptions set out by the Antitrust Law are applicable.

(i) *If the transaction entails an economic concentration pursuant to the Antitrust Law.*

The Antitrust Law states that certain transactions require, under certain circumstances, the prior approval of the Antitrust Commission. In this sense, transactions are deemed as economic concentrations when they result in the **assumption of control** of one or more companies by means of any of the following acts:

(a) Mergers.

(b) Transfers of businesses.

(c) Acquisitions of shares or equity interests, any interest thereto, convertible debt securities or securities that grant to the acquirer the control of, or a substantial influence over the issuer.

(d) Any other agreement or act through which assets of a company are transferred to a person or economic group or which gives decision-making control over the ordinary or extraordinary decisions of management of a company.

The Antitrust Commission has defined control as the ability to determine the strategic commercial policy of a company and has classified it as exclusive and joint, relying on the European Commission's interpretations. It has also determined that transactions that entail a change in the nature of control (from joint control to exclusive control or vice versa) are also deemed to be economic concentrations.

As to the acquisition of assets, the Antitrust Law has assimilated it to the acquisition of a company in those cases in which the transferred assets "*allow the performance of one or several activities, to which an independent volume of business can be allocated, with its own clients and own value generated in the possibility of generating matters of economic nature*".

(ii) *If the volume of business of the companies involved in the transaction exceeds the threshold set out by the Antitrust Law.*

If requirement (i) is met, the parties should then assess if their turnover in Argentina surpasses the legal threshold.

The Antitrust Law stipulates that, in order to determine whether an economic concentration is subject to mandatory notification before the Antitrust Commission, the involved companies' aggregate volume of business generated in Argentina (i.e., buyer's group and target company) must exceed a threshold of **100,000,000 adjustable units** (equivalent to ARS 110,228,000,000[1] approximately USD 104,729,691 at the relevant exchange rate)[2].

The **volume of business** is defined as the combined gross sales of products and services during the fiscal year prior to the closing of the transaction arising from ordinary businesses, net of discount sales, value added tax and other taxes directly related to the volume of business.

The volume of business to be considered

1 Please note that the value of the adjustable unit is updated on a yearly basis. The adjustable unit value corresponding to 2025 has been established in ARS 1102,28.

2 The applicable exchange rate for the conversion of the volume of business threshold will be the one applicable on the closing date of the last approved financial statements prior to the transaction's closing. For your reference, the exchange rate available on December 31, 2024, was USD 1 = ARS 1052,50.

for the threshold calculation is the one arising from economic **activities in Argentina** (either by sales carried out by local subsidiaries or sales from exports): worldwide turnover is not considered for these purposes.

(iii) *If any of the exemptions set out by the Antitrust Law are applicable.*

However, even if the volume of business threshold described above is surpassed, the economic concentration may not be subject to mandatory merger control if any of the exemptions set out in Section 11 of the Antitrust Law are applicable[3].

Transactions exempted from notification are:

(a) Acquisitions of companies, when the purchaser already holds more than 50% of the shares, provided that it does not entail a change in the nature of control.

(b) Acquisitions of bonds, debentures, non-voting shares or debt securities of companies.

(c) Acquisitions of only one company by only one foreign company that does not have any assets or shares of other companies in Argentina (known as the 'first landing' exemption). In case the foreign company is active in the country by means of exports, the 'first landing' exception could still be invoked if such exports were not substantial, regular and predictable during the last 36 months, but a case-by-case analysis should be carried out.

(d) Acquisition of companies that have not registered activity in Argentina in the last year, provided that the main activities of the target company and the buyer do not overlap.

(e) Acquisition of a company if its total local assets and the local value of the transaction do not exceed, each of them, respectively, the amount equivalent to 20,000,000 adjustable units (equivalent to ARS 20,045,600,000 approximately USD 20,202,153), at the relevant exchange rate, unless within the preceding twelve months transactions had been carried out exceeding such amount, or the amount equivalent to 60,000,000 adjustable units (equivalent to ARS 66.136.800.000 approximately USD 60,606,460) at the relevant exchange rate in the last 36 months, whenever in both cases the same market is involved.

16. Are there any specific rules applicable for acquisition of public companies in your jurisdiction?

Takeover bids of companies authorized to list their shares publicly are governed by the Securities Law and other specific rules of the National Securities Exchange Commission ("Comisión Nacional de Valores"; "**CNV**"). These rules set forth the requirements that need to be complied with in both voluntary and mandatory tender offers. The stock exchanges have not issued specific rules governing tender offers. However, in case of listed companies, any information regarding a tender offer submitted to the CNV must also be filed with the stock exchange on which the company in question is listed.

The CNV Rules must be complied with by any individual seeking to obtain control of a company making a public offer of its shares for the purposes of a takeover bid. The Securities Law and the CNV Rules apply to both tender offers and share exchange offers.

17. Is there a requirement to disclose a deal, for instance to regulatory

3 Please note that if the total amount of the volume of business is lower than 100,000,000 adjustable units, the transaction does not require filing and no further analysis in needed, since the principal threshold provided in the Antitrust Law has not been met.

authorities? Is it possible to keep a deal confidential?

As a general rule, it is possible to keep a deal of a private company confidential since there is no requirement to disclose a deal.

However, this principle may be altered depending on the activity of the target company and the regulatory bodies that supervise and control it. This is the case, for example, if the company's activity is a heavily regulated one, such as financial institutions, insurance companies, companies authorized to publicly offer their securities, utilities and telecommunications companies, among other industries.

Also, it is not possible to keep the transaction confidential if buyer needs to seek the approval of the transaction by the antitrust authorities.

From a tax point of view, any transfer of shares, quotas or other participations in Argentine entities must be notified to the tax authorities within ten (10) days from the date of transfer.

18. Can sellers be restricted from shopping around during a negotiation process? Is it possible to include break fee or other penalty clauses in acquisition documents to procure deal exclusivity?

Sellers may be restricted from comparing prices during a negotiation process. Due to the time and resources invested by both parties in negotiating a potential acquisition, it is common for one (or both) of the parties to try to obtain exclusivity rights over the transaction during certain period estimated for the negotiation process.

This is usually implemented through the inclusion of exclusivity, penalty or other deal-breaking clauses. These could include a breakup fee or some form of compensation if the agreed exclusivity is breached.

However, violation of the agreed exclusivity clause can often be very difficult to prove, especially if the negotiated transaction with a third party never closes.

Non-solicitation clauses are also common to prevent potential buyers from hiring the target company's personnel if the acquisition is not finally concluded.

Finally, it is also possible and recurrent for the parties to include non-liability clauses for retiring from the negotiations at any time of the process, provided that this right is exercised in good faith.

19. What are the conditions precedent in a typical acquisition document? Is it common to have conditions to closing such as no material adverse change?

In Argentina, it is customary to establish conditions for closing. However, in most cases, in order to avoid discussions, conditions precedent are strictly limited to obtaining prior approval by the competent regulatory authorities, when such authorization is required.

This will generally depend on the industry in which the target company is engaged. Transfers of shares in certain regulated industries (i.e., banks, insurance companies, utility concessionaires, etc.) usually require the authorization of the regulatory authority as a condition for closing when the transactions involve a change of control or a significant change in the shareholding structure of the company.

Unlike in transactions negotiated in other countries, material adverse changes that prevent or materially impair the Seller's ability to consummate the transaction are usually interpreted much more restrictively.

Also, many situations that would likely in other countries be considered material adverse changes are generally expressly excluded, e.g., changes in applicable regulatory standards, changes in national, provincial, or local political conditions or general economic, business or market conditions, including currency restrictions, devaluation and inflation), among others. This is because such situations tend to occur much more frequently in Argentina than in other countries.

Finally, a distinctive feature of Argentina in this matter is that antitrust approval is, at least until now, not a condition precedent.

20. What are the typical warranties and limitations in acquisition documents? Is it common to obtain warranty insurance?

Warranties and limitations in acquisition documents are usually the same as those included in other countries. Among the most common ones are the fundamental representations and warranties and those related to financial statements, the business, labour and tax matters, and compliance with laws, among others.

Also, in terms of indemnification, the statute of limitations of the different obligations is usually taken into account and it is very common to include different terms for indemnification depending on the nature of a claim question (contractual, labor, tax). Just to give you an example, the statute of limitation for certain tax matters is of 10 years.

Furthermore, despite the hard work that insurance companies have been developing lately on this issue, so far it is not common at all to obtain warranty insurance in the context of a share purchase agreement.

This is mainly due to the exclusions that would apply, incremental costs and delays in negotiating this type of insurance in transactions in Argentina due to its great complexity of regulatory matters and the constantly changing economic environment.

21. Is there a requirement to set a minimum pricing for shares of a target company in an acquisition?

From a tax point of view, the purchase price must represent the "fair market value" of the shares. Otherwise, the tax authorities may challenge the fixed price.

In turn, from a general civil law point of view, the price must bear a reasonable relation to the real value of the shares to be transferred in order to avoid any question in this respect. This means that the price cannot be derisory, simulated, fictitious or vile.

In short, the consideration agreed for the transaction must be consistent with market value. If not, it could be challenged by the tax authorities and even by one of the parties if the price is considered vile.

Likewise, a fictitious or simulated price is not considered a serious price, nor is there a serious price when the seller, in the contract, renounces to receive it, or when it is demonstrated that the price was not paid or that it was destined to fulfill purposes other than those proper to it.

The price is derisory when it is notoriously disproportionate -in less- with respect to the real value of the thing. Due to its gross disproportion, it is said that this price -strictly speaking- is not a price.

"Vile" price could give rise to the revision or nullity of the contract.

It is presumed, unless proven otherwise, that there is such exploitation in case of significant disproportion of the benefits. The affected party has the option to sue for the nullity or an equitable readjustment of the agreement, but the first of these actions must be transformed into an action for readjustment if the latter is offered by the defendant when answering the claim.

22. What types of acquisition financing are available for potential buyers in your jurisdiction? Can a company provide financial assistance to a potential buyer of shares in the target company?

Financing for acquisitions taking place in Argentina is usually provided mainly by third parties or even by the seller itself. In this sense, the most common type of financing is usually paying the purchase price in installments.

Additionally in Argentina, any company that has a financial corporate purpose may provide financing to acquire shares.

23. What are the formalities and procedures for share transfers and how is a share transfer perfected?

In SRLs the quotas are freely transferable unless otherwise provided in the bylaws.

The transfer of the quotas is effective against the company as soon as the transferor or the acquirer delivers to the management a copy of the title of the assignment or transfer, with authentication of the signatures if it is a private instrument.

On the other hand, the transfer of the quotas is enforceable against third parties as soon as it is recorded in the Register in which the company is registered. This registration may be required by the company and may also be requested by the transferor or the acquirer by exhibiting the title of the transfer and reliable proof of its communication to the management.

In SAs, on the other hand, the transfer of shares does not have to be registered at the Registry.

The share transfer must be notified in writing to the company and recorded in the Share/Shareholders' Register Book. It is upon such notification that the transfer becomes effective against the company.

24. Are there any incentives (such as tax exemptions) available for acquisitions in your jurisdiction?

There is a tax exemption on capital gains obtained by Argentine resident individuals and non-Argentine residents (as long as they do not reside in a "non-cooperative jurisdiction") resulting from the transfer of shares, securities representing shares and certificates of deposit of shares carried out through stock exchanges or stock markets authorized by the Argentine Securities and Exchange Commission.

In addition, it is worth noting that on June 27, 2024, the Argentine Congress approved a law denominated as "Bases and Starting Points for the Freedom of the Argentinians" ("Basis Law"), which entered into force on July 8, 2024, when it was published in the Official Gazette.

Even though the Basis Law is a wide-ranging law, including unprecedented changes in legal, commercial, regulatory, and social relationships in Argentina, with the aim of simplifying rules and obstacles to promote free market, competition and private initiative, and limit state intervention, one of its most relevant features is the creation of an Incentive Regime for Large Investments ("RIGI" after its acronym in Spanish), which provides for a comprehensive and very attractive system of tax, customs, and foreign exchange incentives, as well as guarantees and stability for foreign and local investments.

The RIGI will be applicable in the entire Argentine territory and deadline for joining the regime is of two years as of the entry into force of the Basis Law (this is until July 2026). Such term may be extended for one additional year by the Executive Branch. The term of the benefits under the regime is 30 years.

Adhesion to RIGI must be structured through a single project vehicle registered in Argentina holding a project that qualifies as a "Large Investment" (i.e., a project involving a long-term investment equal to or higher than USD 200,000,000 up to USD 900,000,000, depending on the promoted productive sector) in certain promoted productive sectors. Those sectors are mining, energy, oil and gas, steel, technology, agroforestry, tourism, and infrastructure. Moreover, the RIGI is compatible with other promotional regimes existing in Argentina, such as the "Promotional regime of the knowledge economy", which is a very popular tax incentive program among Argentine IT Companies and companies engaged in the performance of activities associated with the knowledge economy.

F. Enforceability

25. Can acquisition documents be executed in a foreign language?

The share purchase agreement is not expressly regulated in the GCL and is governed by the applicable law agreed by the parties, as long as it does not affect rights protected by general public policy.

As a general principle, civil and commercial contracts are not required to be drafted or translated into Spanish in order to be valid, except for contracts that must be executed by means of a public deed. Consequently, it is perfectly valid if by agreement of the parties is to sign the acquisition documents in a foreign language.

It should be noted that in case any filing is required before applicable authorities (such as the antitrust authorities), an official translation shall be required to such extent. In addition, in case of litigation before Argentine courts, an official translation of the contract into Spanish shall be required.

26. Can acquisition documents be governed by a foreign law?

Argentine law generally allows the parties to choose the law that will govern share purchase agreements, as long as there is some connection to the system of law that is selected (although certain matters are governed exclusively by local law).

Finally, the applicable provisions of foreign law must be excluded when they lead to solutions incompatible with the fundamental principles of public order that inspire the Argentine legal system. Public order is the classic way to exclude the application of foreign law in proceedings when the foreign law is incompatible with the fundamental principles and values of the community and the State.

27. Are arbitration clauses legally permissible or generally included in acquisition documents?

Dispute resolution (or arbitration) agreements are clauses that are usually included in share purchase agreements.

In principle, local courts will accept the choice of a foreign jurisdiction or arbitration in an international contract if certain requirements are met, such as (a) the dispute that motivates the litigation is related to pecuniary rights; (b) the dispute does not refer to any matter reserved to the exclusive jurisdiction of Argentine courts; and (c) the dispute does not violate any principle of public policy of Argentine law.

28. Are there any specific formalities for the execution of acquisition

documents? Is it possible to remotely/digitally sign documents?

There are no specific formalities for share purchase agreements to be validly executed, so that freedom of form prevails. Consequently, the parties may use the form they deem convenient and are free to determine the terms of the contract as long as they are not contrary to the law, public order, morality and good customs.

Contracts may be concluded by means of a single instrument executed by all parties or by means of an offer and acceptance documented in separate instruments.

In general terms, remote execution is valid if it is carried out through means by which all parties can (with certainty) express their consent to the contract and, if in writing, the counterparties are then exchanged.

Under the principle of freedom of form, contracts can generally be concluded with a digital or electronic signature. An electronic contract can be used to satisfy a writing requirement and, provided the system meets certain requirements (digital signature), it can even be used to satisfy a private instrument requirement.

In this regard, Argentine law distinguishes between digital signatures and electronic signatures.

Digital signatures, which are governed by the Digital Signature Law (Law 25,506), have the same legal effects as "wet ink" signatures. Digital signatures enjoy a rebuttable presumption of validity, authorship and integrity.

Electronic Signatures, on the other hand, are defined by Law 25,506 as a "set of electronic data integrated, linked or logically associated with other electronic data, used by the signatory as his means of identification, which does not meet the legal requirements to be considered a digital signature."

In general, it is understood that, for purposes of the CCCN, a contract executed with a digital signature meets the private instrument requirement, while a contract executed with an electronic signature does not. Contracts that must have a specific execution date cannot be executed with either an electronic signature or a digital signature.

During the COVID-19 pandemic, parties have been forced to find alternatives to provide legal certainty when performing virtual closings. For example, acquisition documents have been signed by the parties during a videoconference with the presence of a notary who issued some form of certification. In some cases, there was also a post-signing commitment to complete any missing paperwork in person.

G. Trends and Projections

29. What are the main current trends in M&A in your jurisdiction?

When it comes to main current M&A trends in Argentina, in 2024 Argentina experienced a significant rebound in M&A activity, registering about 100 transactions with a total value exceeding US$ 8.9 billion. The year ended as the most active in M&A since 2019 in terms of deal volume and the highest in transaction value since 2017. The second half of the year, in particular, saw record activity, marking the busiest six-month period for M&A since 2012. This uptick has been largely driven by the government's pro-market policies and ongoing economic normalization, which have boosted investor confidence and set a positive outlook for 2025.

While foreign buyers (both new entrants and those already present in Argentina) accounted for 51% of total transaction volume, domestic investors have played an increasingly important role. This suggests that local players, who tend to better anticipate economic cycles, are becoming more confident in the country's recovery.

Additionally, the energy sector took center stage during 2024, accounting for 30% of total deals and over 70% of transaction value, especially in operations involving mining, particularly lithium leading the activity, followed by Oil & Gas, where transactions were concentrated in the upstream assets. The truth is that, given the enormous worldwide demand for minerals and taking into account the need to guarantee access to strategic resources, Argentina could become a major investment target for countries seeking to strengthen their position in this regard.

Another industry that played a leading role in the last year was the technology sector, particularly in software & IT, fintech, biotech and blockchain. In the past few years, Argentina has seen a huge growth in the private capital sector, where private capital investment was mostly allocated to technology companies. This is also due to the vast talent and ability of Argentine entrepreneurs to provide disruptive and creative solutions.

It is also important to mention the Draft Bill, submitted to the Congress for the first time in 2022, in order to amend the Personal Data Protection Law. The aforementioned amendment seek to facilitate technological development and innovation as well as digital economy, and to strengthen data protection at a national level. The Bill was praised by the European Commission earlier this year when that body endorsed Argentina's status as a country suitable for the free flow of personal data across borders.

Finally, another sector that recorded activity was the food and agribusiness, an industry that is more than competitive in Argentina and continues to attract foreign investment, positioning itself as a natural generator of transactions. This is because, as it happens with the mining, oil & gas and technology industries, foreign investors consider access to these resources or markets to be of greater importance, than the local economic context or country risk.

Other industries that experienced a surge in transactions include pharma and healthcare, as well as construction, primarily in building materials and engineering.

30. Are any significant development or change expected in the near future in relation to M&A in your jurisdiction?

After a period characterized by an extremely volatile political and economic context, 2024 has been a year of new beginnings and strategic initiatives aimed at attracting foreign investment as well as to enhance the opening of Argentine markets. This shift driven by the change of government and the promotion of macroeconomic policies aligned with greater internationa trade exposure, has created a much more encouraging and investor-friendly scenario for M&A activity.

The first electoral year of a party with a liberal approach implied the adoption of measures intended to soften the prevailing restrictions and achieving a better integration with the rest of the world and, consequently, an optimistic business environment for the implementation of agreements and transactions during the coming years might be achieved. This became evident from the very beginning of the new government's term through the enactment of regulations such as the Decree of Necessity and Urgency No. 70/23, which introduced a broad legislative amendment aimed at deregulating the economy and limiting state intervention. Additionally, the administration submitted to the Congress a Draft Bill entitled "Ley de Bases y Puntos de Partida para la Libertad de los Argentinos" commonly known as the Omnibus Law, which proposes a comprehensive overhaul of numerous regulations and restrictions adopted in the past, seeking to end state intervention in the national economy and, therefore, strengthen a free-market system.

Although some provisions of the original Bill were modified during the negotiations to obtain the Congress´ approval, one of the most important measures that will definitely affect M&A is the amendment to the Antitrust Law in order to increase by 66% (to USD 85 billion) the minimum amount at which companies must inform the Antitrust Commission the acquisition of another competing company. The Draft Bill also states that, in the event that antitrust authorities approve an economic concentration, the merger cannot be objected before an administrative court. This could indicate the government's intention to promote M&As within the country.

Although approval of the Omnibus Bill is still under discussion, it is clear that the current government aims to facilitate foreign investment, boost imports and exports, and reduce the exchange restrictions imposed by the previous administration.

In light of this, Argentina's M&A market is set for continued growth in 2025, driven by economic stabilization, lower country risk, market-friendly policies, rising investor confidence, and expanding opportunities across key sectors. As economic and political stability strengthen—along with Argentina's favorable regional positioning—investment activity is expected to accelerate, reinforcing a positive outlook for M&A in the near future.

AUSTRALIA

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A. General

1. What is the main legal framework applicable to companies in your jurisdiction?

The *Corporations Act 2001* (Cth) ("**Corporations Act**") sets out the main legal framework in which companies operate in Australia. The Corporations Act is generally administered by the Australian Securities and Investment Commission ("**ASIC**"), which is an independent Australian Government body and acts as Australia's corporate, markets, financial services and consumer credit regulator.

Other key legislation and rules for companies include the:

- *Competition and Consumer Act 2010* (Cth) ("**CCA"**);
- *Foreign Acquisitions and Takeovers Act 1975* (Cth) ("**FATA"**); and
- *Listing Rules of ASX Limited* ("**ASX Listing Rules"**), for Australian Securities Exchange ("**ASX"**) listed entities.

2. What are the most common types of corporate entities (e.g., joint stock companies, limited liability companies, etc.) used in your jurisdiction? What are the main differences between them (including but not limited to with regard to the shareholders' liability)?

The most common company structures in Australia are:

- proprietary companies limited by shares; and
- public companies limited by shares (which may or may not be listed on the ASX).

Companies limited by shares are limited liability structures, meaning that each shareholder's liability is limited to their capital contribution to the company, and the directors will not be made personally liable for the losses of the company (except in limited circumstances).

Key differences between a proprietary company and a public company include:

- proprietary companies must have no more than 50 non-employee shareholders, whereas there is no limit on the number of shareholders a public company can have;
- proprietary companies must have at least 1 (one) director who must ordinarily reside in Australia, whereas public companies must have a minimum of 3 (three) directors, at least two of which must ordinarily reside in Australia and at least 1 (one) secretary who must ordinarily reside in Australia; and
- public companies generally have more onerous financial reporting, disclosure and regulatory compliance obligations (for example, listed public companies also have to comply with the ASX Listing Rules) and are subject to more onerous takeover rules.

There are also other, less common, business structures in Australia, including companies limited by guarantee, partnerships, no liability companies and trusts.

B. Foreign Investment

3. Are there any restrictions on foreign investors incorporating or acquiring the shares of a company in your jurisdiction?

Australia's foreign investment approval regime regulates certain types of investment by foreign persons of equity interests in Australian companies, trusts and interests in Australian businesses and real property.

The Australian Treasurer (the "**Treasurer**"), who is advised by the Australian Government's Foreign Investment Review Board ("**FIRB**"), has the power to review, to block certain types of foreign investment, apply conditions or require disposal of an investment into Australia. Foreign investment proposals are assessed on whether it is contrary to Australia's national interest or national security.

There is a compulsory notification regime which applies to: an action which is a "notifiable action" and a "significant action", or an action which is a "notifiable national security action". The Treasurer has power to re-review actions notified after January 1, 2021 on national security grounds in certain limited circumstances.

There is also a voluntary notification regime which applies to: "significant action" or a "reviewable national security action". If prior approval is not sought for these types of actions, the transaction will be subject to the Treasurer's power to call in for review of the transaction and make adverse orders (such as requiring disposal) for 10 (ten) years after the transaction.

Key actions that constitute "notifiable actions" and "significant actions" include foreign investors:

- acquiring a substantial interest (generally at least 20% but can be 10% or lower if the acquirer is a foreign government investor or associate or the target is a national security business, agribusiness, media business or land rich) in an Australian entity that is valued above the relevant monetary threshold; and
- acquiring an interest in Australian land valued above the relevant monetary threshold.

A "notifiable national security action" includes a foreign person:

- acquiring at least 10% (and in some cases less) in a "national security business";

- starting a "national security business"; or
- acquiring an interest in national security land.

A "national security business" is generally 1 (one), which is publicly known, or could be known upon the making of reasonable inquiries, to be connected with a "critical infrastructure asset", telecommunications, Australian or a foreign intelligence community or its supply chains. A "critical infrastructure asset" captures certain assets within the following sectors: communications, data storage or processing, defence, energy, financial services and markets, food and grocery, health care and medical, higher education and research, space technology, transport, and water and sewerage.

A foreign person is generally an entity that is a foreign government investor or in which a foreign person holds a substantial interest of at least 20% or where at least 2 (two) foreign persons hold an aggregate interest of at least 40%. When calculating whether a foreign person holds a substantial interest, the interests of an associate of the foreign person are included in the calculation. Tracing can apply to interests of at least 20% through a chain of companies, trusts and limited partnerships, so that entities can qualify as foreign persons based on upstream ownership interests.

4. Are there any foreign exchange restrictions or conditions applicable to companies such as restrictions to foreign currency shareholder loans?

Currency exchange controls are not usually seen in Australia. However, for the purposes of countering money laundering and tax evasion, there are cash reporting obligations for foreign currency transfers over a certain threshold.

5. Are there any specific considerations for employment of foreign employees in companies incorporated in your jurisdiction?

It is the responsibility of an employer in Australia that an employee is eligible to work in Australia. There is a free online government service Visa Entitlement Verification Online system ("**VEVO**") that enables these checks. In addition, an employer must ensure that superannuation contributions will be made to a complying superannuation fund on behalf of the employee, as well as deductions of appropriate tax. There is no limitation on the number of foreign employees in a company.

C. Corporate Governance

6. What are the standard management structures (e.g., general assembly, board of directors, etc.) in a corporate entity governed in your jurisdiction and the key liability issues relating to these (e.g., liability of the board members and managers)?

A board of directors generally has oversight of the operations of a company in Australia. While certain directors, such as executive directors and non-executive directors, are appointed by the company to the board, other directors, such as de-facto directors (*i.e.,* individuals who act as directors) or shadow directors (*i.e.,* individuals upon whose instruction the board is accustomed to acting), may not be formally appointed. Importantly, Australian law does not distinguish between these types of directors, whether they are formally appointed or not.

Directors exercise the powers of the company in accordance with the company's constitution and the Corporations Act. While the board of directors are empowered to act for the company generally, there are certain matters which the board must refer to the shareholders for approval (please see question 9 for further details).

Executive management is generally responsible for implementing the decisions of the board of directors and running the day-to-day operations of the company.

The Corporations Act imposes duties on "officers", which includes directors, company secretaries or persons who participate in making decisions that affect the whole or a substantial part of the business of the company or who has the capacity to significantly affect the company's financial standing. These duties include the duty to act in the best interests of the company and for a proper purpose and not to use their position and/or information improperly to gain an advantage or cause detriment to the company.

Officers may face civil liability for breaches of these duties, which may involve the imposition of a pecuniary penalty or disqualification from managing a company. Officers may also commit a criminal offence (punishable by imprisonment and/or a pecuniary penalty) if they are reckless or dishonest and breach the duty to act in good faith or if they are dishonest in the use of information or of their position.

Directors also have a duty to prevent insolvent trading by the company. Subject to exceptions, directors may be personally liable for the company's debts where they are incurred when the company is insolvent.

There are also duties and responsibilities imposed on directors in other federal and state statutes, common law and equity. While some of the duties overlap, they are not identical and the consequences for breaching the duties may be different.

7. What are the audit requirements in corporate entities?

While all Australian companies are required to keep financial records, the requirement to prepare financial reports and have those reports audited will vary depending on the type of company in question. This response will focus on the most common companies in the context of M&A in Australia, being public companies and proprietary companies.

Public companies and 'large' proprietary companies (defined below) are required to lodge a financial report and a directors' report for each financial year. Unless ASIC grants relief, the accounts of these companies must be audited.

A large proprietary company is a company that meets at least two of the following criteria:

- the consolidated revenue for the financial year of the company and the entities it controls (if any) is at least AUD 50,000,000 (fifty million);
- the consolidated gross assets at the end of the financial year of the company and the entities it controls (if any) is at least AUD 25,000,000 (twenty-five million); and
- the company and any entities it control (if any) have at least 100 employees at the end of the financial year.

'Small' proprietary companies, being proprietary companies that do not meet at least two of the above criteria, are generally not required to prepare and lodge audited financial statements annually. However, certain exceptions exist, including where the company is directed to do so by ASIC or where the company is controlled by a foreign company in certain circumstances.

D. Shareholder Rights

8. What are the privileges that can be granted to shareholders? In particular, is it possible to grant voting privileges to shareholders for appointment of board members?

The company's constitution sets out the rights and limits attached to shares.

If a private company has more than one shareholder, rights and obligations of shareholders may also be included in a shareholders' agreement. Different share classes may attach different rights. Shareholder rights may include the right of the shareholders to appoint board members, the right to attend and vote at general meetings, the right to receive a dividend, veto rights in respect of specified matters, drag-along rights and tag-along rights.

Shareholder rights for public companies and proprietary companies may differ. For example, an ASX listed public company generally only has 1 (one) class of ordinary shares, unless ASX approves an additional class.

9. Are there any specific statutory rights available to minority shareholders available in your jurisdiction?

Under the Corporations Act, certain matters must be decided by shareholders holding at least 75% of the votes, including:

- adoption of a constitution after the registration of the company;
- amendment or repeal of the constitution;
- change of company name;
- change of company type;
- variation of rights attached to shares in a class of shares where a company does not have a constitution, or has a constitution that does not set out the procedure for varying those rights;
- a selective capital reduction;
- a selective buy-back of shares;
- the giving of financial assistance by a company for the acquisition of its shares; and
- a voluntary winding up.

Shareholders also have the right to determine the following matters:

- shareholders holding at least 5% of voting rights in the company can call a general meeting; and
- shareholders holding at least 5% of voting rights can prevent a general meeting (other than the annual general meeting) being held on short notice.

Minority shareholders also have the right to bring a claim for oppressive or unfairly prejudicial conduct.

10. Is it possible to impose restrictions on share transfers under the corporate documents (e.g., articles of association or its equivalent in your jurisdiction) of a company incorporated in your jurisdiction?

Proprietary companies can impose share transfer restrictions. These are often provided for in the constitution and shareholders' agreement (if applicable).

Shares in public companies must generally be freely tradeable, with transfer restrictions only in rare circumstances.

11. Are there any specific concerns or other considerations regarding the composition, technical bankruptcy and other insolvency cases in your jurisdiction?

Directors of Australian companies are under a specific statutory duty not to trade while insolvent. If a director suspects that the company is, or may become insolvent, they should take mitigating steps including avoiding the incurrence of additional debts, commencing a "safe harbour" process (discussed below), or placing the company into an insolvency process. In addition to insolvent trading liability, directors must consider the interests of the company's creditors to a greater degree in discharging their directors' duties of care and diligence and good faith.

Insolvent trading or breach of directors' duties claims can expose directors to significant personal, and potentially criminal (although this is uncommon) liability if proven.

The "safe harbour" process is a defence to insolvent trading claims (but not directors' duty and other claims) which can be invoked by directors if they are developing or implementing a restructuring plan. There are several conditions which must be met to take advantage of safe harbour, including the appointment of an appropriately qualified advisor. A "safe harbour" process is not a formal insolvency process and can be flexible and private. In implementing any restructuring plan, directors should take advice to ensure they comply with the relevant provisions of the Corporations Act, including prohibitions on creditor-defeating dispositions and on transactions reducing the amount of assets available to pay employee entitlements when they fall due.

Alternatively, if the company's financial situation is more dire, the directors can consider placing the company in voluntary administration, the most common insolvency process for restructuring, or potentially other insolvency processes.

E. Acquisition

12. Which methods are commonly used to acquire a company, e.g., share transfer, asset transfer, etc.?

The most common methods for acquiring proprietary companies in Australia are share acquisitions and business acquisitions.

Public company acquisitions commonly occur via a scheme of arrangement or an off-market takeover bid. Most friendly deals are undertaken via a scheme of arrangement, largely given its all-or-nothing outcome.

13. What are the advantages and disadvantages of a share purchase as opposed to other methods?

The main advantage of a share purchase over other acquisition methods is that the share purchase process is relatively straightforward. An acquisition of all of the shares in a company means that a purchaser does not generally need to arrange for the transfer of specific assets of the company (although the company's contracts may be subject to change of control provisions granting third parties the right to terminate if consent is not obtained) and no new offers of employment are required for the employees.

Another key advantage of share purchases is that they are, in most cases, more cost efficient from a tax perspective.

One disadvantage of the share purchase is that the purchaser will acquire exposure to all of the liabilities of the target company along with all of the assets, through the value of the target company shares. For example, if a target company was involved in litigation, the buyer would have exposure to a potential decrease in value of the shares given the litigation liability of the target company. Purchasers considering a share purchase should always ensure that they carry out a thorough due diligence process on the target company and negotiate sufficient protection against liabilities in the transaction documents.

On the other hand, the sale of assets involves selecting specific assets and liabilities in the target company to be transferred and specifying the transfer process for each asset class, as well as making new offers of employment to staff (where applicable).

14. What are the approvals and consents typically required (e.g., corporate, regulatory, sector based and third-party approvals) for private acquisitions in your jurisdiction?

Two of most common approvals that may be required for private acquisitions are from the Treasurer under Australia's foreign investment regime (please see question 3 for further details) and the Australian Competition and Consumer Commission ("**ACCC**") (please see question 15 for further details).

Acquisitions of target companies in certain sectors in Australia require government or regulatory approval to implement an acquisition, including banking, insurance, trustees of registrable superannuation entities, and media / telecommunications. There are also specific ownership restrictions for foreigners in certain Australian airports and for Australian ships. Acquisitions of certain assets may also attract government or regulatory consent, including under Australian State and Territory electricity, mining and gas legislation.

On a share sale, the consent or wavier of third parties to material contracts may be required to avoid termination rights on a change of control, depending on the terms of the contract. Shareholder approval may also be required for a share sale, depending on the terms of the constitution and shareholders' agreement (if applicable).

On an asset sale, the consent of third parties to material contracts is generally required to formally assign or novate the contract to the buyer.

It is customary for the buyer and seller to agree to workarounds for contractual counterparty consent for less material contracts.

15. What are the regulatory competition law requirements applicable to private acquisitions in your jurisdiction?

The current Australian merger control regime is voluntary (i.e., there is no obligation to notify a transaction to the ACCC) and non-suspensory. However, a new mandatory and suspensory regime will take effect from 1 January 2026, with parties having the option of notifying the ACCC under the new regime on a voluntary basis from 1 July 2026, which they will mainly do to avoid the risk of having to renotify a transaction if ACCC clearance is not received by 31 December 2025. More information about the new regime is provided in response to Question 30 below.

Under the current regime, parties may proceed to complete transactions without notification or clearance. However, the Competition and Consumer Act 2010 (Cth) (CCA) prohibits acquisitions of shares or assets that would have the likely effect of substantially lessening competition in an Australian market. The ACCC has the power to investigate any acquisition of shares or assets pre- or post-completion, but cannot seek injunctions, penalties or divestiture orders without bringing proceedings in the Australian Federal Court.

Parties can seek to de-risk completion in three ways. First, by applying to the ACCC for 'informal clearance' (the route used in the significant majority of transactions). If the ACCC considers that the transaction will not have the likely effect of substantially lessening competition, it will provide a 'comfort letter' indicating that it will not oppose the transaction. The ACCC recommends that parties notify if their products or services are substitutes or complements and their combined market shares are above 20%. Second, parties can seek 'merger authorisation'. If the ACCC is satisfied that a transaction would not be likely to substantially lessen competition or would be likely to result in a net public benefit that outweighs any public detriment (including any lessening of competition) it can grant a statutory immunity from ACCC or third-party action. Finally, parties may make an application to the Federal Court for a declaration that a transaction will not substantially lessen competition.

16. Are there any specific rules applicable for acquisition of public companies in your jurisdiction?

Acquisitions of (i) listed companies, (ii) listed Australian managed investment schemes or (iii) unlisted companies with more than 50 shareholders, are subject to Australian takeover rules, which are a combination of legislation and regulatory policy.

In broad terms, a person cannot acquire a relevant interest in the voting securities of an entity subject to the takeover rules if the consequence is a person's voting power exceeding 20%, unless an exception applies. The common exceptions include (i) acquisitions of relevant interests under a scheme of arrangement, (ii) takeover bids, (iii) acquisitions with target securityholder approval, (iv) creep acquisitions (3% every 6 (six) months), (v) downstream acquisitions (acquisition of listed securities in an entity that holds securities in the target), (vi) rights issues or (vii) exercising security interests.

Other key shareholder thresholds for an ASX listed company are:

- at least 5%: triggers an obligation to file a substantial holder notice, which is publicly available;
- more than 25%: provides the ability to block a shareholders' special resolution and scheme of arrangement;
- more than 50%: provides the ability to pass an ordinary resolution;
- at least 75%: provides the ability to pass a special resolution; and
- at least 90%: gives rise to an entitlement to undertake a compulsory acquisition process to acquire complete ownership.

17. Is there a requirement to disclose a deal, for instance to regulatory authorities? Is it possible to keep a deal confidential?

Listed companies have an obligation to immediately disclose to the ASX any information concerning it that a reasonable person would expect to have a material effect on the price or value of the securities of the listed company. One exception to this requirement is for confidential information related to incomplete proposals or negotiations. A confidential indicative proposal for a control transaction is likely to fall within this exception, provided there are no leaks.

Public company M&A transactions that have retained confidentiality are typically announced on ASX once the target company board determines to accept the offer.

All transactions which require regulatory approval would be required to be notified to the relevant regulator. Regulatory approvals are generally sought once a public M&A transaction has been announced to the market.

Private M&A transactions are typically kept confidential between the transacting parties excluding where disclosure is required for any regulatory or third-party consents.

18. Can sellers be restricted from shopping around during a negotiation process? Is it possible to include break fee or other penalty clauses in acquisition documents to procure deal exclusivity?

It is common in Australia for the parties to a transaction to enter into exclusivity agreements, pursuant to which the seller agrees not to negotiate with any prospective third-party purchaser for a specified period of time. In private M&A transactions, exclusivity obligations are often included as a binding clause within the term sheet.

In public M&A transactions, a no-shop restriction preventing the target soliciting alternatives is generally permissible. On the other hand, a no-talk restriction preventing a target negotiating with any potential competing bidder and a restriction on providing due diligence to a competing bidder is generally only agreed provided there is a fiduciary out which allows target directors to fully exercise their fiduciary duties without unreasonable constraints. There is also the Takeovers Panel (“**Panel**”) guidance on when notification obligations and matching rights for a competing proposal may give rise to unacceptable circumstances.

Break fees are legally permissible provided it does not constitute a penalty. In public M&A transactions the Panel provides general guidance that a break fee payable by a target less than 1% of the equity value of the target is generally not unacceptable in the absence of other factors.

19. What are the conditions precedent in a typical acquisition document? Is it common to have conditions to closing such as no material adverse change?

A typical acquisition document would include conditions precedent for regulatory approvals (if applicable) and in a private company context, material third party consents to be obtained.

In private M&A transactions, a no Material Adverse Change (“**MAC”**) condition precedent is becoming increasingly more common, and in public M&A transactions, a no MAC condition precedent is typical.

Under Australian private company sale agreements, it would be highly unusual for the obligations of the parties to consummate a transaction to be subject to the continued accuracy of the warranties and covenants. If there is a breach of a warranty or covenant between signing and completion, unless the breach triggers a “no MAC” condition precedent, the parties must still close the transaction and a post-closing claim can be made for breach.

20. What are the typical warranties and limitations in acquisition documents? Is it common to obtain warranty insurance?

Most private M&A transactions in Australia involve a broad suite of warranties, which are provided for in the main transaction document. The warranties provided will often depend on the bargaining positions of the parties involved, however, a typical suite of seller share sale warranties might include (i) warranties relating to title and capacity, (ii) the information provided in respect of the target company as part of the transaction, (iii) the accounts of the target company, (iv) the legal and regulatory compliance of the target company, (v) the employees, (vi) the assets (contracts, properties, IP, IT, etc.) and (vii) liabilities of the target company.

Tax liabilities are generally addressed in the warranties, as well as in a separate tax indemnity which is included in a separate clause under the sale agreement. This separate clause generally provides indemnity for the target’s pre-completion unpaid or unreserved tax liabilities.

The typical remedy for a breach of warranty by the seller is for the purchaser to bring a claim under the terms of, and subject to the limitations contained in, the transaction documents. These limitations typically include time periods within which claims must be made (with such time periods varying depending on the warranty that is breached), the imposition of a maximum liability cap, de minimis and basket. Sale agreement warranties are almost always qualified by reference to the full contents of a data room (which disclose against all of the warranties) and frequently, also a disclosure letter for specific matters.

Warranties are also often qualified by "general disclosure", such as information discoverable by making searches of online public registers. Although the scope of materials qualifying the warranties is very broad, a disclosure will generally only be effective in qualifying the relevant warranty to the extent that sufficient facts and circumstances are "fairly disclosed" (as defined in the sale agreement).

W&I insurance is present in about 30% of private M&A transactions in Australia. It would most commonly be seen in transactions above AUD 10,000,000 (10 million) involving private equity exits, private seller (e.g., family trust) exits, sellers staying on with the target company, and multiple sellers.

Warranties are not generally provided in public M&A transactions.

21. Is there a requirement to set a minimum pricing for shares of a target company in an acquisition?

There is a requirement to set a minimum price for shares, however, this only applies in respect of takeover bids for listed companies. In this regard, the consideration offered for shares in the bid class must equal or exceed the highest price paid, or agreed to be paid, by the bidder or any of its associates for a share in the bid class during the 4 (four) months before the bid.

22. What types of acquisition financing are available for potential buyers in your jurisdiction? Can a company provide financial assistance to a potential buyer of shares in the target company?

The principal types of acquisition finance available for potential buyers in Australia are senior debt, unitranche debt and term loan B debt. Other types of finance include subordinated debt provided at the operating company level and mezzanine holdco debt which is structurally subordinated to the senior debt.

A company may provide financial assistance to a potential buyer of shares in the target company or its holding company if the financial assistance would not materially prejudice shareholders or creditors of the relevant companies. Alternatively, the Corporation Act provides for a shareholder approval regime, commonly referred to as a financial assistance 'whitewash process'. Under this regime the financial assistance may be provided if approved by the requisite threshold of shareholders of the company giving the financial assistance and the shareholders of the company which will, on completion of the acquisition, be the target's ultimate Australian holding company.

23. What are the formalities and procedures for share transfers and how is a share transfer perfected?

In private M&A transactions, shares are transferred by way of a share transfer form, which is signed by the buyer and seller and exchanged on the completion of the transaction. At completion, the seller must hand back their original share certificate to the company for cancellation. If the seller does not have its original share certificate, a buyer should request an indemnity in respect of its lost share certificate. Once the share transfer form has been signed, stamp duty must be paid (if applicable). The register of members of the target must be updated to reflect the purchaser as the new holder of the shares on completion of the transaction. Once the register of members has been updated, a new share certificate can be issued to the purchaser. Finally, ASIC must be notified of certain details of the share transfer so that the public companies register can be updated.

In M&A transactions involving listed companies, shares are transferred in accordance with the ASX rules. These transfers are generally perfected on an electronic register.

24. Are there any incentives (such as tax exemptions) available for acquisitions in your jurisdiction?

Non-resident shareholders are generally exempt from Australian capital gains tax on sale of shares in an Australian resident company, provided that the shares do not constitute an "indirect Australian real property interest" and do not relate to a business carried on by the foreign resident through a permanent establishment in Australia. An "indirect Australian real property interest" generally includes an interest of 10% or more in a company, the underlying value of which is principally derived from Australian real property.

F. Enforceability

25. Can acquisition documents be executed in a foreign language?

Yes, Australian contract law does not prohibit contracts being executed or expressed in a foreign language. However, if a contract in a foreign language is to be relied on in court proceedings, or provided to an Australian Government authority, it will be necessary to provide the court or authority with an English translation, typically prepared by an appropriately qualified translator (e.g., accredited by the National Accreditation Authority for Translators and Interpreters ("**NAATI**")).

26. Can acquisition documents be governed by a foreign law?

Yes. Australian contract law respects party autonomy in choice of governing law provided the parties' choice is *bona fide*, legal and not contrary to public policy. There may also be certain "mandatory laws of the forum" (typically, statutes) that an Australian court will apply to the contract irrespective of the parties' choice of law.

27. Are arbitration clauses legally permissible or generally included in acquisition documents?

Yes, arbitration clauses are permissible, but the vast majority of M&A deals in Australia typically refer disputes to courts (as a last resort). However, it is more common to use arbitration clauses for deals in the construction sector or for deals involving foreign parties.

28. Are there any specific formalities for the execution of acquisition documents? Is it possible to remotely/digitally sign documents?

If the sale agreement includes a power of attorney or there is a lack of consideration, the sale agreement will need to be executed as a deed which requires specific formalities.

Generally speaking, it is possible for companies to sign acquisition documents (including deeds) electronically. The law of execution draws on federal and state legislation and as such, tailored legal advice should be obtained where electronic signing is proposed by a party as the requirements may differ depending on the Australian State or Territory in which signing occurs and the type of document signed.

G. Trends and Projections

29. What are the main current trends in M&A in your jurisdiction?

2024 has been a year marked by macroeconomic uncertainties, geopolitical tensions and raising interest rates, which contributed to a market riddled with unpredictability and risks. Despite that, Australia continues to be a significant attraction for foreign bidders. In 2024, public M&A deals in Australia were higher compared to previous years but the overall deal value has dropped whereas deal volume in private M&A deals has not recovered as hoped at the start of 2024. The top three industries with the most M&A activities in 2024 in Australia were energy, mining & utilises, followed by financial services and TMT in joint second place. Despite inflation easing and interest rates stabilising, cash remains the preferred consideration across the board.

30. Are any significant development or change expected in the near future in relation to M&A in your jurisdiction?

As a result of the Treasury Laws Amendment (Mergers and Acquisitions Reform) Act 2024 (Cth), which makes a number of amendments to the CCA, a new Australian merger control regime will apply from 1 January 2026.

While a number of details regarding the new regime are still to be confirmed, the new regime introduces an obligation to notify the ACCC of acquisitions of shares (that result in a change of control) or assets that exceed prescribed monetary thresholds (based on the merger parties' turnover and/or the transaction value) and to suspend completion pending receipt of ACCC approval. The Government may also designate classes of acquisitions (for example in certain industry sectors) that are notifiable irrespective of whether the monetary thresholds are satisfied.

The monetary thresholds will be confirmed by the Government in secondary legislation, which at the time of writing has not been passed. The Government has previously suggested that there will be three sets of thresholds, and a merger will be notifiable where either one of them is met, as set out below. However, as confirmation of the thresholds is expected at any time, merger parties should check the current position:

- 'Economy-wide': the target has a material connection to Australia; and the combined Australian turnover of the merger parties (including the acquirer group) is at least $200 million; and either the Australian turnover of each of at least two of the merger parties is at least $50 million or the global transaction value it at least $250 million; OR
- 'Very large acquirers': the acquirer group's Australian turnover is at least $500 million; and the Australian turnover of each of at least two of the merger parties is at least $10 million; OR
- 'Cumulative turnover': either (i) the combined Australian turnover of the merger parties (including the acquirer group) is at least $200 million, and the cumulative Australian turnover from acquisitions by the merger parties involving the same or substitutable goods or services over the previous three-year period is at least $50 million; or (ii) the acquirer group's Australian turnover is at least $500 million, and the cumulative Australian turnover from acquisitions by the merger parties in the same or substitutable goods or services over a three-year period is at least $10 million.[1]

1 Under both cumulative tests, there is a de minimis exception for acquisitions of entities or assets with less than $2 million Australian turnover and a further exception for previously notified acquisitions.

Each contravention of the obligations to notify and suspend completion is subject to maximum penalties of $50 million, three times the gain from the contravention or 30% of the corporation's Australian turnover during the relevant period.

Merger parties may notify an acquisition to the ACCC on a voluntary basis in a transitional period from 1 July 2025, which they may elect to do to avoid the risk of having to renotify where approval under the current regime remains outstanding as at 1 January 2026.

The legal test has not significantly changed and remains whether the transaction would be likely to have the effect of substantially lessening competition in any market in Australia, although the test has been clarified to include acquisition that would be likely to have the effect of creating, strengthening or entrenching a substantial degree of power in a market.

A 'Phase I' investigation will last up to 30 business days and a 'Phase II' investigation will last up to 90 business days. If the ACCC concludes after Phase II that an acquisition will have the likely effect of substantially lessening competition, the merger parties may apply for a determination that the acquisition results in a public benefit, which the ACCC will consider in 'Phase III' lasting up to 50 business days.

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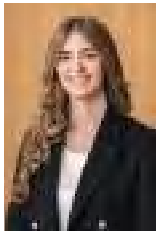

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A. General

1. What is the main legal framework applicable to companies in your jurisdiction?

There is no single law regulating companies in Austria. In principle, the Austrian Civil Code (*Allgemeines Bürgerliches Gesetzbuch*; *ABGB*) and the Austrian Commercial Code (*Unternehmensgesetzbuch*; *UGB*) set forth the basic legal framework applicable to companies. In addition, specific laws apply depending on the company form, such as the Act on Limited Liability Companies (*GmbH-Gesetz*; *GmbHG*) for limited liability companies (*Gesellschaften mit beschränkter Haftung; GmbH*), the Act on Flexible Companies (*Flexible Kapitalgesellschafts-Gesetz*; *FlexKapGG*) for flexible companies (*Flexible Kapitalgesellschaften or* FlexCo) or the Austrian Stock Corporation Act (*Aktiengesetz*; *AktG*) for joint stock corporations (*Aktiengesellschaften; AG*).

In particular, the following additional laws are relevant for Austrian companies:

- Act on the Societas Europea (*SE-G*);
- Demerger Act (*SpaltG*);
- Corporate Transformation Act (*UmwG*);
- Reorganisation Tax Act (*UmgrStG*);
- EU Reorganisation Act (*EU-UmgrG*);
- Minority Shareholder Squeeze-Out Act (*GesAusG*);
- Stock Exchange Act (*BörseG*);
- Takeover Act (*ÜbG*);
- Investment Control Act (*InvKG*)
- Cartel Act (*KartellG*);
- Labour Constitution Act (*AVRAG*)

2. What are the most common types of corporate entities (e.g., joint stock companies, limited liability companies, etc.) used in your jurisdiction? What are the main differences between them (including but not limited to with regard to the shareholders' liability)?

In principle, the Austrian legal system distinguishes between partnerships (*Personengesellschaften*) and corporations (*Kapitalgesellschaften*).

The majority of companies in Austria are corporations with the 2 (two) main types being limited liability companies (*Gesellschaften mit beschränkter Haftung*) and joint stock corporations (*Aktiengesellschaften*). As of January 1, 2024, the FlexCo (*Flexible Kapitalgesellschaft*) has been introduced as a new legal entity. Corporations acquire legal personality through registration with the Austrian companies' register (*Firmenbuch*). The shareholders of corporations are generally not personally liable for the company's obligations and liabilities (there are only few exceptions to such principle).

By far the most prominent company form in Austria is the limited liability company. The limited liability company has – since January 1, 2024 – a minimum share capital of EUR 10,000, of which EUR 5,000 need to be paid in. The minimum share capital contribution of each shareholder must amount to at least EUR 70. Limited liability companies are represented by their managing directors, who are bound by directives (*Weisungen*) of the company's shareholders, which results in a strong control over the company by the shareholders. Further, shareholders of a limited liability company benefit from substantial (minority) shareholder rights.

The minimum share capital of joint stock corporations is EUR 70,000, which is divided into shares held by the company's shareholders. The corporation's governance consists of a two-tier structure: A joint stock corporation is represented by its board of directors, appointed by the supervisory board which is, in turn, appointed by the shareholders. Neither the supervisory board nor the shareholders can issue binding instructions to the board of directors. Certain reserved matters require the approval of the supervisory board.

Generally, the FlexCo is based on the limited liability company, but comes with certain elements that have been reserved for joint stock corporations so far. Therefore, the FlexCo can be classified as a "hybrid" between the limited liability company and the joint stock corporation. FlexCos are represented by their managing directors, who are bound by directives (*Weisungen*) of the company's shareholders. Shareholders benefit from substantial (minority) shareholder rights. In contrast to the limited liability company, the FlexCo offers capital measures like contingent capital (*bedingtes Kapital*) or authorized capital (*genehmigtes Kapital*), which have been reserved for the joint stock corporation thus far. Further, the minimum share capital contribution of each share quota amounts to EUR 1.00 and certain formalities have been eased (e.g., FlexCo shares can be transferred without a notarial deed, if a private deed before a lawyer or a notary is set up).

In general partnerships (*Offene Gesellschaft; OG*), shareholders are personally liable for the company's obligations and liabilities. The same applies to the general partner (*Komplementär*) of limited partnerships (*Kommanditgesellschaft*, *KG*). However, a limited partnership also includes at least 1 (one) limited partner (*Kommanditist*), whose liability does not go beyond the registered capital contribution. In a limited partnership, the general partner can also be a limited liability company (*GmbH & Co KG*).

B. Foreign Investment

3. Are there any restrictions on foreign investors incorporating or acquiring the shares of a company in your jurisdiction?

The acquisition of a shareholding exceeding certain thresholds or a controlling influence by non-EU/EEA/Swiss nationals) in an Austrian target requires prior approval under the Austrian Foreign Investment Control Act (*Investitionskontrollgesetz*, "**ICA**"), if, *inter alia*, the Austrian target is active in certain sectors. In addition to certain "highly sensitive" sectors, the ICA contains a demonstrative list of other sectors, in which prior approval is required if the relevant activities/areas are considered critical infrastructure, critical technology or concern the supply with critical resources.

The competent authority applies a very broad interpretation to the scope of application of the ICA, with the effect that the sectors explicitly listed in the Austrian Foreign Investment Control Act are *per se* considered to be critical (with the degree of criticality being irrelevant for purposes of determining a filing requirement exists). In practice, this has resulted in every M&A transaction involving the investment by a foreign person in a sector which is explicitly listed in the ICA being notified to the competent authority (which is currently the Austrian Ministry for Labor and Economy; *Bundesministerium für Arbeit und Wirtschaft*, "**BMAW**").

The approval process under the ICA takes approx. 9 (nine) weeks (following an EU-wide consultation mechanism of 35 calendar days, the BMAW has to decide within 1 (one) month whether to approve the transaction or initiate an in-depth examination) – if a transaction is subject to the ICA, closing may only take place once such approval has been granted.

However, the acquirer may apply for a clearance certificate (*Unbedenklichkeitsbescheinigung*) to clarify whether a transaction actually requires approval (this can be done any time before the acquisition). While the BMAW has a period of 2 (two) months to decide upon such application, the BMAW typically decides prior to the expiry of such period.

4. Are there any foreign exchange restrictions or conditions applicable to companies such as restrictions to foreign currency shareholder loans?

The capital contribution of limited liability companies, FlexCo's or joint stock corporations must be paid in Euro. Apart from that, there are no foreign exchange restrictions.

5. Are there any specific considerations for employment of foreign employees in companies incorporated in your jurisdiction?

Non-EEA citizens require a work and residence permit. However, this does not apply to non-EU/EEA/Swiss citizens, who must only register with the Austrian authorities within 4 (four) months after entering Austrian territory.

C. Corporate Governance

6. What are the standard management structures (e.g., general assembly, board of directors, etc.) in a corporate entity governed in your jurisdiction and the key liability issues relating to these (e.g., liability of the board members and managers)?

a) Limited Liability Companies

A limited liability company is represented by 1 (one) or more managing directors with sole or joint power of representation. The scope of the power of representation is prescribed by law and cannot be changed in the articles of association or by a shareholders' resolution towards third parties. The managing director is bound by the shareholders' instructions. The general assembly consists of all shareholders and is the supreme decision-making body. Its main task consists of reviewing and approving the annual financial statements, the distribution of retained earnings and other structural measures of the company.

The managing director is obliged to exercise the due care of a prudent businessman. Therefore, the managing director is fully liable to the company for a willful or negligent breach of such duty. Several managing directors are jointly and severally liable. Only in exceptional cases, such as in case of violation of legal provisions that aim to protect creditors, the managing director may be held liable vis-à-vis creditors. In principle, there is no obligation for limited liability companies to establish a supervisory board. However, the law provides for a compulsory supervisory board in case certain size requirements are met (essentially (i) a share quota of more than EUR 70,000 and more than 50 shareholders or (ii) more than 300 employees) which does not have great practical significance. The same standard of liability applies to members of the supervisory as for managing directors, however, restricted to their scope of duties.

b) Flexible Companies

The statements set out in item a) above also apply to FlexCos.

However, the obligation to establish a supervisory board already applies if a FlexCo qualifies as a medium-sized company pursuant to section 221 paragraph 2 and 4 Austrian Commercial Code. FlexCos are considered medium-sized companies if two of the following criteria are met: (i) EUR 5 million in balance sheet total, (ii) EUR 10 million in revenues and/or (iii) an annual average of 50 employees.

c) Joint Stock corporations

In a joint stock corporation, the management board consists of at least 1 (one) member that represents the corporation externally and oversees the company's internal operations. If the management board consists of several members, in general all members represent the corporation jointly. The management board is obliged to provide regular reports to the supervisory board. Further, it is responsible for the preparation of annual financial statements and the arrangement of general meetings. The management board is not bound by instructions of the supervisory board or the shareholders. The general meeting consists of all shareholders and is the highest body of the company. Certain decisions are to be made exclusively by the general meeting, such as among others, adopting the annual financial statements, appropriating the balance sheet profit, electing the supervisory board members.

The management board has a duty to the company to exercise the due care of a prudent businessman. Members of the management board who violate their obligations are jointly and severally liable to compensate the company for any resulting damage. In principle it is possible to define business fields, however, there are certain major obligations (*Kardinalpflichten*) for which all board members are responsible. The same standard of liability applies for members of the supervisory board, but is restricted to their scope of duties.

7. What are the audit requirements in corporate entities?

Generally, limited liability companies and FlexCos are obliged to have their annual financial statements audited by an external auditor. Only limited liability companies and FlexCos not meeting certain revenue thresholds are exempt from this obligation, unless they are required by law to establish a supervisory board (see Question 6). The auditor is elected by the shareholders; if a supervisory board exists, it must submit a proposal for the election.

Joint stock corporations are obliged to have their financial statements audited by an independent auditor, which is elected by the general meeting based on a proposal of the supervisory board.

D. Shareholder Rights

8. What are the privileges that can be granted to shareholders? In particular, is it possible to grant voting privileges to shareholders for appointment of board members?

There are no different share classes in limited liability companies. However, the Act on Limited Liability Companies is quite flexible in this respect. It is possible and quite common in practice to contractually establish different share classes by granting certain preferential rights to specific shareholders, such as the right to preferential profit distribution, to nominate managing directors or to veto certain specific corporate or operative measures (e.g., capital increases, reorganization measures, etc.).

FlexCos may issue fractional shares and have different share classes. Thus, FlexCo shareholders can hold several shares of different share classes (e.g., common-shares and series-A shares) and dispose of them separately. Furthermore, shareholders with multiple votes can engage in split voting, which can be especially advantageous in case of trusteeships. In addition, a new share class concept – the company value shares (*Unternehmenswert-Anteile*, "**CVS**") – has been introduced. CVS are primarily designed for (but not limited to) employee participation in early-stage companies (start-ups). With a corresponding legal basis in the articles of association, CVS may be issued up to a maximum of 25% of the FlexCo's share capital. CVS grant a right to participate in the net profit and liquidation proceeds of the FlexCo, but unlike ordinary shares – in principle – do not have voting rights. However, CVS come with participation rights in shareholder meetings as well as information and inspection rights.

In joint stock corporations, the board members are not appointed by the shareholders. In practice, however, shareholders can influence the appointment of board members via the supervisory board, which is appointed by the shareholders. Under Austrian law it is feasible to grant shareholders preferential rights to nominate members of the supervisory board.

9. Are there any specific statutory rights available to minority shareholders available in your jurisdiction?

Both the Act on Limited Liability Companies as well as the Joint Stock Corporations Act provide for certain minority rights depending on the shareholding.

a) Limited Liability Companies and FlexCos

In the case of limited liability companies and FlexCos, shareholders holding at least one third of the company's outstanding share capital are entitled to appoint a minority representative to the supervisory board (if established). Shareholders holding at least 10% of the outstanding share capital may convene general meetings or place a specific item on the agenda of the same. In addition, shareholders holding more than 25% of the outstanding share capital form a so-called blocking minority with respect to matters that – pursuant to law – require a majority decision of at least 75%.

b) Joint stock corporations

Regarding joint stock corporations, a minority shareholder or a collective of shareholders holding a minimum of 5% of the outstanding share capital are entitled to request the convocation of a shareholders' meeting or the addition of a specific matter to the agenda of such a meeting. Further, a minority representing at least 10% of the outstanding share capital can demand the removal of a member from the supervisory board for cause through a court ruling. Similar to limited liability companies, decisions on particular issues that require a 75% majority are subject to a blocking minority, when 25% plus 1 (one) vote of the capital stock is attained.

10. Is it possible to impose restrictions on share transfers under the corporate documents (e.g., articles of association or its equivalent in your jurisdiction) of a company incorporated in your jurisdiction?

The articles of association of a limited liability company, FlexCo or a joint stock corporation may restrict the transfer of shares. Further, syndicate agreements may subject a share transfer to prior consent of all or certain shareholders or lay out formal requirements which must be complied with.

11. Are there any specific concerns or other considerations regarding the composition, technical bankruptcy and other insolvency cases in your jurisdiction?

N/A

E. Acquisition

12. Which methods are commonly used to acquire a company, e.g., share transfer, asset transfer, etc.?

Share transfers are the most common acquisition method in Austria, while asset transfers are less frequent. The choice of the transfer method generally depends on various considerations such as tax implications, the scope and complexity of the target business and liability risks connected with the acquisition. Usually only smaller transactions and those involving a limited number of assets are structured as an asset deal.

13. What are the advantages and disadvantages of a share purchase as opposed to other methods?

When acquiring a company through a share deal the legal entity of the target remains unchanged. All rights and obligations of the target company are transferred by way of universal succession (*Gesamtrechtsnachfolge*) to the acquirer. While this makes the share deal generally the easiest option to acquire a company it also comes with some risk, because, in particular, the company is acquired with all its obligations and contingencies. However, there will be no direct liability for the acquirer since in a limited liability company only the company itself but not the shareholders are liable for company obligations. Further, in Austria the transfer of shares requires a notarial deed. Consequently, for a share deal involving a limited liability company, a public notary is required which comes with additional costs. However, the transfer of shares in a FlexCo can be documented through a private deed (*Privaturkunde*) executed by either an attorney-at-law or a public notary – a notarial deed is not required.

In asset deals, on the other hand, assets are transferred by way of singular succession (*Einzelrechtsnachfolge*) which means they must be identified individually and for each asset the right transfer act (*Verfügungsgeschäft*) must be executed. The main advantage of an asset deal consists in choosing whether to acquire certain or all assets including liabilities attached thereto.

However, Austrian mandatory law provides for special liability provisions applicable to asset deals pursuant to which certain contracts (e.g., employment contracts) or liabilities attached to the acquired business are transferred to the acquirer. Under such provisions, the acquirer's liability is generally limited with the purchase price. Asset deals are entered into with the target company. Unless the asset deal is to be considered an extraordinary measure or the articles of association subject the transfer of assets to the shareholders' approval the permission of the shareholders is not required.

14. What are the approvals and consents typically required (e.g., corporate, regulatory, sector based and third-party approvals) for private acquisitions in your jurisdiction?

a) Corporate approval

Asset deals are carried out by the respective representative body of the company, the managing director in a limited liability company and in a FlexCo, or the management board in a joint stock corporation. However, depending on the corporate governance of the respective company, certain transactions may require the approval of the company's shareholders or the supervisory board. In particular, the acquisition or sale of subsidiaries requires the approval of the supervisory board of a joint stock corporation.

Share deals, on the other hand, are entered into by the respective shareholders.

b) Regulatory/sector based approval

Depending on the industry of the acquired company, the prior approval by or notification to a regulatory authority may be required.

There are regulatory control provisions in certain sectors such as the banking, insurance, utilities, gambling and telecommunications industries and other highly regulated sectors, that may influence the process of an acquisition. Changes of target ownership will usually require advance notification to the relevant government agencies in cases where certain thresholds of stake ownership are reached or exceeded. For example, transactions involving Austrian banks require the approval of the Financial Market Authority (*Finanzmarktaufsicht*).

Under the ICA, the direct or indirect acquisition by foreign investors requires in some cases the advance approval by the Austrian Minister of Economy and Labor (see Question 3).

15. What are the regulatory competition law requirements applicable to private acquisitions in your jurisdiction?

Transactions not exceeding the transaction volumes of the EC Merger Control Regulation but exceeding the following thresholds prescribed by Austrian cartel law are subject to approval by the Federal Competition Authority (*Bundeswettbewerbsbehörde*, "**FCA**"):

- the undertakings participating in the acquisition had a turnover in the business year prior to the merger of more than EUR 300 million worldwide,
- the undertakings participating in the acquisition had a turnover in the business year prior to the merger of more than EUR 30 million in Austria,
- at least 2 (two) of the undertakings each had a turnover of more than EUR 5 million worldwide.

Or the following cumulative conditions:

- the combined turnover of the

undertaking must be at least EUR 300 million worldwide and EUR 15 million domestically,

- the "value of consideration" for the transaction must be above EUR 200 million (new transaction value element),
- the target must be active in Austria to a significant degree.

Austrian cartel law prohibits completing notifiable transactions before being cleared by the authority. The FCA examines within a 4 (four) week period whether the planned transaction will create or strengthen a dominant position and, thus, could have the effect of restricting competition.

16. Are there any specific rules applicable for acquisition of public companies in your jurisdiction?

The Austrian Takeover Act (*Übernahmegesetz,* "**ATA**") regulates both voluntary and mandatory public takeover bids for shares of a joint stock corporation or a Societas Europea based in Austria, provided that the shares are admitted to trading on the Vienna Stock Exchange at a regulated market. The Takeover Commission (*Übernahmekommission*) is the competent authority.

Austrian law recognizes mandatory offers, voluntary offers aimed at control and voluntary offers:

- Mandatory offers are triggered if a controlling shareholding is acquired. Control is defined as a shareholding of more than 30% of the voting rights. A mandatory offer is subject to minimum pricing rules, it must be an unconditional offer (except for legal conditions like regulatory approvals) and requires a cash offer (but can have a paper alternative in addition) and sufficient funds. It must be made to all other shareholders to acquire their shares.
- Voluntary offers aimed at control are triggered if a non-controlling shareholder (i.e., with a shareholding of less than 30%) submits an offer aimed at control. Such offers are subject to the rules on mandatory bids (Equal-Treatment-Rule), particularly on cash offers and minimum price. However, voluntary offers aimed at control are subject to a mandatory statutory 50% acceptance threshold. However, voluntary offers aimed at control may be subject to conditions, particularly upon reaching or exceeding a higher acceptance threshold.
- Voluntary offers (which are not aimed at control or launched by an already controlling shareholder) are not subject to minimum pricing rules and the mandatory cash offer rule does not apply. As in case of offers aimed at control, partial offers may be subject to conditions.

There are no minimum pricing rules or cash requirements in voluntary bids. However, in a mandatory offer and a voluntary bid aimed at control, the price shall not be lower than the highest consideration of the:

- average share price during the 6 (six) month period prior to the announcement of the offer and
- highest price paid or offered for target shares by the bidder in the 12 months before the offer is filed with the TC.

17. Is there a requirement to disclose a deal, for instance to regulatory authorities? Is it possible to keep a deal confidential?

a) Merger Control

A deal must be disclosed to the FCA if the criteria of a merger control are met (see Question 15).

b) Public Takeover

A public takeover must be disclosed if the transaction falls under the scope of the ATA, which is only applicable for acquisition of a controlling interest in a listed joint stock corporation. This is the case if any person acquires a direct or indirect controlling interest in a target company, whereas a direct or indirect controlling interest exists if at least 30% are reached or exceeded directly or via another company. If this threshold is met, the Takeover Commission must be informed about the acquisition of the controlling interest in the target company. In addition, the acquirer must make a public offer for all equity securities of the target company.

18. Can sellers be restricted from shopping around during a negotiation process? Is it possible to include break fee or other penalty clauses in acquisition documents to procure deal exclusivity?

Since Austrian law is based on the principle of freedom of contract, the transaction parties are free to seek any type of security measures as long as they do not violate moral principles (*Sittenwidrigkeit*). Exclusivity clauses are usually included as part of a legally (non) binding letter of intent or term sheet. However, exclusivity agreements can also be concluded as stand-alone agreements. Even without an agreement on a break fee, under Austrian law, breaking off negotiations without cause may entitle negotiating partners to reimbursement of frustrated costs which, however, has no great practical significance.

In public M&A transactions, break fees are not prohibited but are not quite common because the payment of a break fee must be disclosed in the offer document and, if excessive, may violate the ATA, if they hinder competing offers.

19. What are the conditions precedent in a typical acquisition document? Is it common to have conditions to closing such as no material adverse change?

Conditions precedent are fairly common. Besides merger control clearance, which regularly must be covered by conditions precedent, the transaction agreement may also be subject to the obtaining of certain (legally required) approvals (e.g., by authorities or shareholders) or no-occurrence of certain material adverse changes prior to completion of the transaction.

20. What are the typical warranties and limitations in acquisition documents? Is it common to obtain warranty insurance?

In principle, the practice distinguishes between fundamental warranties covering authority, capacity and title and business warranties relating to aspects of the operational business of the target. The liability for warranty breaches is typically limited in time and amount (usually, caps, hurdles, and baskets are agreed upon). Further, the warranties are typically subject to additional limitations (such a disclosure concept) and a defined process for the enforcement of liability claims.

Warranty and indemnity (commonly known as W&I) insurance is frequently used on larger transactions. To ensure coverage, the agreed warranties must be included in the share purchase agreement. W&I insurance is becoming increasingly important in Austria.

If the acquisition documents do not outline specific remedies, the general warranty rules of the Austrian Civil Code apply.

21. Is there a requirement to set a minimum pricing for shares of a target company in an acquisition?

Generally, there is no obligation to set a minimum price for the shares of a company. However, in case the target company is a stock listed corporation, mandatory offers and voluntary offers aimed at acquiring control are subject to statutory minimum price rules (see Question 16).

22. What types of acquisition financing are available for potential buyers in your jurisdiction? Can a company provide financial assistance to a potential buyer of shares in the target company?

The type of financing depends on the size of the transaction and whether the acquirer is strategic or private equity. In practice, financing is often provided through equity or bank financing, or a mixture of both. However, alternative sources of financing such as debt funds are becoming more common.

In principle, security is provided by equity and debt commitment letters, corporate guarantees and bank guarantees.

Due to strict capital maintenance rules and prohibitions on financial assistance in Austria, target companies are, apart from few exceptions, restricted from providing financial assistance in the acquisition of their own shares.

23. What are the formalities and procedures for share transfers and how is a share transfer perfected?

The transfer of shares in a limited liability company requires the execution of a share transfer agreement in the form of a notarial deed (physical or electronic), whereby the involvement of a public notary is required. However, the transfer of shares in a FlexCo has been simplified and can be documented through a private deed (*Privaturkunde*) executed by either an attorney-at-law or a public notary – a notarial deed is not required. The change of the shareholders must be registered with the Austrian companies' register (*Firmenbuch*), whereby the registration of the share transfer is only declarative and does not affect the legal ownership of the shares.

No specific form requirements apply to the transfer of joint stock corporation shares. Shares in non-listed companies must be issued in the form of registered shares (*Namensaktien*). Registered shares are transferred by means of written endorsement by the seller. The company must be notified of the transfer of registered shares. However, the transfer may require the consent of the company.

24. Are there any incentives (such as tax exemptions) available for acquisitions in your jurisdiction?

Equity contributions of a direct shareholder in its Austrian subsidiary are not taxable. However, waivers on impaired receivables may trigger corporate income tax at the level of the Austrian company. A merger may be exempt, under certain conditions, from capital transfer tax and value added tax (VAT) and the rate of the real estate transfer tax (RETT) may be lowered.

F. Enforceability

25. Can acquisition documents be executed in a foreign language?

In general, acquisition documents can be executed in any language, however, if the involvement of a notary is required, the certifying notary also has to be a court-certified translator in the language of the respective acquisition document. Further, certain documents which need to be submitted to the Companies' Register Court (*Firmenbuchgericht*) or to other (supervisory) authorities must be translated into or provided in German language.

26. Can acquisition documents be governed by a foreign law?

Acquisition documents are not required to be governed by Austrian law. However, if governed by foreign law, certain mandatory provisions of Austrian law apply to the acquisition (e.g., the requirement of an execution of the share transfer purchase agreement in form of a notarial deed).

27. Are arbitration clauses legally permissible or generally included in acquisition documents?

Arbitration clauses are legally permissible in Austria. In principle, arbitration clauses are not included in acquisition documents, however, especially in cross-border transactions international investors tend to prefer arbitration proceedings.

28. Are there any specific formalities for the execution of acquisition documents? Is it possible to remotely/digitally sign documents?

When concluding transactions, the freedom of form applies, unless otherwise provided by law (e.g., guarantee contract) or contract. This means that legal transactions can be concluded in writing, orally or by conclusive behaviour.

However, the involvement of a public notary is required for the transfer of shares in limited liability companies since the share transfer purchase agreement must be executed in form of notarial deed. This can also be done via online notarial services (pursuant to Section 90a Notarial Code. (*NotaktsG*)) and therefore acquisitions can usually be concluded completely remotely.

G. Trends and Projections

29. What are the main current trends in M&A in your jurisdiction?

Despite the general downward trend in the M&A market and the influence of macroeconomic factors such as geopolitical tensions, rising inflation, high energy prices and production costs, the Austrian M&A market continues to develop in a relatively stable manner.

Accordingly, the number of transactions with Austrian parties involved has increased compared to the previous year, whereas the transaction volume on the international market has decreased. Although company valuations remain at a high level, they have declined compared with the previous year due to the high level of interest rates and uncertainty about future economic developments.

In the domestic market, the main trend is towards increasing internationalization. This is reflected in the rising number of outbound transactions, in which Austrian companies take over target companies abroad.

In general, high interest rates and financing costs tend to slow M&A activity down, but on the other hand private equity funds that have accumulated liquidity are on the lookout for investment opportunities and, thus, are expected to become more active.

The outlook seems particularly good with respect to companies in the pharmaceutical and healthcare sectors, technology companies, companies concerned with energy, sustainability and the environment and online retailers. Investor demand is likely to increase in these areas. In the future, environmental, social and governance ("**ESG**") issues will also come to the fore, as due diligence request lists regularly target ESG risks.

30. Are any significant development or change expected in the near future in relation to M&A in your jurisdiction?

N/A

AZERBAIJAN

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A. General

1. What is the main legal framework applicable to companies in your jurisdiction?

In Azerbaijan, the primary legal framework governing companies, including aspects related to mergers and acquisitions, is established by several key legislative documents. These include:

- The Civil Code of the Republic of Azerbaijan dated December 28, 1999 (the "**Civil Code**");
- Law of the Republic of Azerbaijan on *State registration and state registry of legal entities* dated December 12, 2003 (the **"Law on State Registration"**);
- Law of the Republic of Azerbaijan on *Securities Market* dated May 15, 2015 (**"Law on Securities Market")**

2. What are the most common types of corporate entities (e.g., joint stock companies, limited liability companies, etc.) used in your jurisdiction? What are the main differences between them (including but not limited to with regard to the shareholders' liability)?

There are four types of companies available: Limited Liability Company "**LLC**", Open Joint Stock Company "**OJSC"**, Closed Joint Stock Company "**CJSC"** and Additional Liability Company.

Notably, among various types of companies, the limited liability company emerges as the most frequently established entity in Azerbaijan.

Limited Liability Company (LLC): Established by one or several individuals (natural and/or legal persons), the charter capital of an LLC is divided into shares as determined by the charter. Participants do not bear responsibility for the company's obligations and risks associated with the company's activities limited to the extent of value of their share capital contributions.

Additional Liability Company: Similar to LLCs, but with shareholders assuming a higher degree of liability. The participants jointly bear subsidiary liability for the company's obligations with their property, which amounts to a multiple of the value of their contributions as specified in the company's charter. This is rarely used for of legal entity.

A joint-stock company (JSC) is a business entity characterized by a share capital that is segmented into a specified quantity of stock units. Exclusively, JSCs possess the privilege to the sale of stock shares through stock exchange. These companies can be structured as either an Open Joint Stock Company (OJSC) or a Closed Joint Stock Company (CJSC). Shareholders are safeguarded from personal liability relating to the company's obligations.

B. Foreign Investment

3. Are there any restrictions on foreign investors incorporating or acquiring the shares of a company in your jurisdiction?

In accordance with the legislative framework established by the Law of the Republic of Azerbaijan on Investment Activities, dated April 22, 2022 (the **"Law on Investment"**) foreign investors are generally granted a favorable environment for investment in the country. This law stipulates the foreign investors and their investments are to be treated under a national regime, which ensures that they are not subjected to less favorable conditions compared to local investors and their respective investments.

Apart from a specific provision outlined in the Law of the Republic of Azerbaijan on Insurance Activity dated December 25, 2007 (the "**Law on Insurance"**), the Azerbaijani legal framework does not impose any other restrictions on foreign investors when it comes to establishing or acquiring shares in a company within the country. According to the Law on Insurance, with the exception of international financial organizations to which the Republic of Azerbaijan is a member, foreign insurers, as well as foreign institutional investors (banking and credit organizations, pension funds, investment funds), the total share of foreign legal entities in the authorized charter capital of the insurer shall be less than 50 percent of the shares. The share of one foreign individual in the authorized capital of the insurer shall not exceed 10 percent of shares, and the total volume of shares owned by foreign individuals shall not exceed 30 percent thereof.

4. Are there any foreign exchange restrictions or conditions applicable to companies such as restrictions to foreign currency shareholder loans?

In Azerbaijan, the governance of foreign currency transactions, including those pertaining to shareholder loans, is primarily regulated by the Decision of the Management Board of the Central Bank of the Republic of Azerbaijan No. 45/1 on the approval of the *Rules on conducting foreign currency operations by residents, as well as foreign currency operations by non-residents of the Republic of Azerbaijan* (the **"Currency Regulations"**). Under Currency Regulations, a specific list of operations (i.e., transactions on funds transferred by residents and non-residents for the payment of goods and services imported to the Republic of Azerbaijan, including those paid in advance) has been characterized as permitted transfers in foreign currency to bank accounts situated outside the Republic of Azerbaijan. The transactions that fall outside the scope of the listed operations are not authorized to be conducted in foreign currency to overseas bank accounts, as per the provisions of the Currency Regulations. Beyond the restrictions outlined in the Currency Regulations, there are no further restrictions imposed by the Azerbaijani legal framework on the inflow of foreign currency into Azerbaijan. Furthermore, it is important to highlight that when it comes to shareholder loans, the Azerbaijani legal framework does not impose any restrictions on transactions conducted in foreign currency.

5. Are there any specific considerations for employment of foreign employees in companies incorporated in your jurisdiction?

In Azerbaijan, the employment of foreign nationals in locally incorporated companies is primarily governed by provisions outlined in the Migration Code of Azerbaijan dated July 2, 2013 (the **"Migration Code"**). Two crucial aspects to consider for the employment of foreign employees in companies incorporated in Azerbaijan are these:

Work Permits. According to the Migration Code foreign nationals who wish to temporarily live in the territory of the Republic of Azerbaijan and engage in paid labor activities must obtain a work permit in addition to a temporary residence permit. A work permit is an official document that allows foreigners and stateless persons to engage in paid labor activities in the territory of the Republic of Azerbaijan.

Quota. The employment of foreign workers is also regulated through a quota system, which is applied with the aim of effective use of local labor resources and increasing the effectiveness of work in the field of regulating labor migration processes. Quota information on types of economic activity about foreigners engaged in paid labor activities in the country is determined annually by the Cabinet of Ministers of the Republic of Azerbaijan (the **"Cabinet of Ministers"**).

Moreover, it is vital to underscore that in Azerbaijan, local content requirements also play a significant role, under the Production Sharing Agreements (PSAs) signed for development of major oil and gas fields. They often delineate specific percentages or preferences for the employment of local personnel, thereby fostering a collaborative environment that encourages the growth and development of local expertise and resources.

C. Corporate Governance

6. What are the standard management structures (e.g., general assembly, board of directors, etc.) in a corporate entity governed in your jurisdiction and the key liability issues relating to these (e.g., liability of the board members and managers)?

In Azerbaijan, corporate entities generally adopt the following standard management structures, each having its own set of responsibilities.

The general meeting of participants (shareholders) is the supreme governing body of the company. The general meeting is the main form of exercising the management powers and voting rights of shareholders on significant corporate matters such as mergers, acquisitions, and other major business decisions.

The chief executive officer or the management board primarily handles the day-to-day business operations. While a board of directors is a common feature, it is not mandatory for privately held companies. The board of directors, if present, is generally responsible for overseeing the company's strategic direction and governance, and it operates under the supervision of the shareholders.

When it comes to liability, those acting on behalf of the company, including directors and officers, are bound by specific duties. They must act in good faith, conduct themselves in a professional manner, and take decisions which are in interests of the company. Board members, managers, and the chief executive officer are bound by fiduciary duties to act in the best interests of the company and its shareholders. They are obligated to act in good faith and best interests of the company. In other words, they should not prioritize their own interests over those of the company while performing their duties. Legal repercussions can arise if these duties are not upheld. In cases of financial mismanagement or bankruptcy, board members and managers may be held financially liable. Conflicts of interest are another area requiring careful management; individuals in positions of authority must disclose any conflicts and generally abstain from decision-making in related matters.

Under the Civil Code, in the event that the value of transaction with related party is equal or exceeds 5% of the relevant legal entity's assets, such transaction requires an opinion of the independent auditor to be engaged by the legal entity in addition to issuance of resolution of the general meeting of shareholders approving such transaction.

In the banking sector, The Central Bank of Azerbaijan (the "**Central Bank**") has established corporate governance standards for banks in accordance with the Law of the Republic of Azerbaijan on Banks dated January 16, 2004 (the **"Law on Banks"**) and international best practices. These standards are applicable to local branches of foreign banks and mandate the creation of an efficient organizational structure, compliance with International Financial Reporting Standards, and the establishment of internal audit and risk management functions.

7. What are the audit requirements in corporate entities?

External Auditing. Both LLCs (except for micro and small enterprises) and JSCs are mandated to engage an external auditor for their annual financial review.

Internal Auditing. In joint stock companies with more than fifty shareholders, an audit commission is established by the board of directors (supervisory board) for the preparation and implementation of the internal audit policy and strategy and organization of auditor control.

Optionally, JSCs with fewer than 50 shareholders and LLCs can also elect an audit commission.

The primary role of auditors is to oversee the company's financial operations. The internal auditors are granted the authority to review all financial and economic documents of the company. They can also request any necessary documentation from company officers and other organizational bodies.

D. Shareholder Rights

8. What are the privileges that can be granted to shareholders? In particular, is it possible to grant voting privileges to shareholders for appointment of board members?

In Azerbaijan, shareholders have a set of rights defined in the company's charter and the Civil Code. These rights include making significant decisions about the company, receiving regular financial updates, participating in profit distribution, and overseeing the company's transactions.

According to the Azerbaijani Corporate Governance Standards approved by the Decree of the minister of Economic

Development of Azerbaijan Republic dated January 28, 2011 (the "**Corporate Governance Standards**") shareholders enjoy the following rights:

- Right to receive dividends
- Right to participate and vote in general meetings
- Equal voting rights
- Right to elect and be elected
- Right to information regarding the actions of the company
- Right to request share redemption
- Right to request company examination
- Preemptive right to purchase new shares
- Right to participate in liquidation residue

In accordance with the Civil Code, the general meeting of shareholders holds the exclusive authority to appoint members to the board of directors. Additionally, if there is a specific shareholder agreement in place, it may provide alternative mechanisms for board appointments. For example, the agreement could stipulate that certain shareholders have the right to appoint a specified number of members to the board of directors. Therefore, while the formal appointment of board members is generally conducted by the general meeting of shareholders, there are avenues through which shareholders can influence this process, either by proposing candidates or through provisions in a shareholder agreement.

9. Are there any specific statutory rights available to minority shareholders available in your jurisdiction?

In Azerbaijan, minority shareholders are afforded specific statutory rights to safeguard their interests, particularly when there is a change in majority ownership. As per the Civil Code, if an individual or entity acquires more than 50% of the shares in a limited liability company, they are obligated to extend an offer to all other participants.

Furthermore, any participant owning at least 5% of the charter capital of a legal entity can hold those acting on behalf of the legal entity and the board of directors or the executive body of the entity is accountable for any breach of the director's duties speficied in the Civil Code.

10. Is it possible to impose restrictions on share transfers under the corporate documents (e.g., articles of association or its equivalent in your jurisdiction) of a company incorporated in your jurisdiction?

Under the Civil Code, a shareholder company can alienate its shares to third parties. However, other shareholders of the company (except for open joint stock companies) and the company itself (for closed joint stock companies) can use their pre-emptive rights, which give them the first opportunity to buy shares before the owner sells them to an external third party. Other mechanisms can also be stipulated in the shareholders' agreement. However, it is not uncommon to see the provisions such as put and call options in shareholder agreements of local companies. It remains to be seen how such provisions be interpreted by local judges in practice.

11. Are there any specific concerns or other considerations regarding the composition, technical bankruptcy and other insolvency cases in your jurisdiction?

In Azerbaijan, the insolvency and bankruptcy landscape are governed by a complex set of legal procedures, with distinct rules for banks and other entities. While banks are subject to a special procedure outlined in the Law on Banks, other entities fall under the Law of the Republic of Azerbaijan on Insolvency and bankruptcy dated June 13, 1997 (the **"Law on Insolvency and bankruptcy"**).

Once insolvency proceedings are underway, the debtor's operational flexibility becomes significantly limited. For instance, the debtor is restricted from disposing of any assets without prior court authorization or approval from a property administrator.

On bankruptcy of companies other than banks, funds available to meet unsecured claims are applied in the following order of priority: (1) bankruptcy costs; (2) claims arising out of an injury and death of a person and claims on alimony; (3) claims of employees related to the payment of salaries and allowances, and claims of persons related to copyrights fees; (4) payments to state and municipal budgets and budget of social security fund falling due during the period beginning one year before the bankrupt debtor was declared bankrupt; and amounts owed to banks and other credit organizations in respect of loans and interest thereon (including those of non-residents) that arose before 13 June 1997 (i.e., before the date of the enactment of the Law of the Republic of Azerbaijan on Insolvency and Bankruptcy); (5) other unsecured claims; and (6) claims of the entity's owners. However, creditors of the same category can change their order of priority within the category by entering into an agreement.

E. Acquisition

12. Which methods are commonly used to acquire a company, e.g., share transfer, asset transfer, etc.?

In Azerbaijan, the most commonly used method for acquiring a company is through a share transfer.

13. What are the advantages and disadvantages of a share purchase as opposed to other methods?

Opting for a share purchase can simplify the acquisition process. This method is generally more straightforward and involves fewer steps and less documentation compared to asset purchases. The continuity is particularly beneficial as there's no need to transfer individual assets, licenses, or contracts, which can be both time-consuming and costly.

From a tax perspective, share purchases offer significant advantages. In a share purchase, only the seller is liable for taxes for any profit margin made as a result of share sale, while the buyer is generally exempt from any tax obligations. This contrasts sharply with asset purchases, where large assets could be subject to Value Added Tax (VAT), thereby increasing the financial burden on the buyer. Therefore, from a tax standpoint, a share purchase is often the more favorable option.

One significant concern regarding share purchase is the inheritance of all the company's liabilities, both known and unknown. This could include debts, legal issues, or other financial obligations.

14. What are the approvals and consents typically required (e.g., corporate, regulatory, sector based and third-party approvals) for private acquisitions in your jurisdiction?

In Azerbaijan, the requirement for approvals and consents in the context of private acquisitions varies depending on the type of company involved and the specifics of the transaction. For regulated market participants (i.e., banks, investment fonds, insurance companies, etc.) approval from the Central Bank of the Republic of Azerbaijan (the **"Central Bank"**) is generally required. However, for most other types of companies, there are no such regulatory approvals mandated, except when the transaction falls under the ambit of Azerbaijani antitrust laws.

15. What are the regulatory competition law requirements applicable to private acquisitions in your jurisdiction?

The new Competition Code of the Republic of Azerbaijan, approved by the President, was published on January 23, 2024, and came into force on July 1, 2024. This Code replaces the previous laws "On Antimonopoly Activities," "On Unfair Competition," and "On Natural Monopolies."

What constitutes a concentration is depicted under the article 26 of the Competition Code of the Republic of Azerbaijan, these include:

Merger of Independent Entities: This includes the merger or combination of two or more independent economic entities or their specific parts (e.g., fields of activity), including the merger and acquisition of legal entities (Article 26.1.1).

Acquisition of Control over Shares or Stakes:

- Acquiring the right to dispose of more than 25% of the voting shares in a joint stock company by an entity that previously did not own such shares or had control over up to 25% (Article 26.1.2.1).
- Acquiring control over more than 50% of the voting shares if previously holding more than 25% but not more than 50% (Article 26.1.2.2).
- Acquiring control over more than 75% of the voting shares if previously holding more than 50% but not more than 75% (Article 26.1.2.3).
- Similar provisions apply to limited liability companies, with thresholds set at one-third, 50%, and 75% of the charter capital (Articles 26.1.2.4 to 26.1.2.6).

Transfer of Significant Assets: The transfer of more than 20% of the balance value of main assets, including main production means and intangible assets, from one economic entity to another (Article 26.1.2.7).

Rights over Key Assets: Entering into long-term or indefinite contracts granting rights over the use, lease, management, or influence on decisions of key assets (Article 26.1.2.8).

Acquisition of Financial Institution Assets: Acquiring significant assets (excluding cash) of a financial institution by another financial institution (Article 26.1.2.9).

Entrepreneurial and Executive Functions: Acquiring rights to perform entrepreneurial activities or executive functions of another economic entity (Article 26.1.2.10).

Foreign Entities: Acquiring the right to dispose of more than 50% of the voting shares or stakes in a legal entity registered abroad operating in the same or related field (Article 26.1.2.11).

Joint Management: Participation of individuals in executive or management bodies capable of determining the market behavior of two or more economic entities (Article 26.1.2.12).

Joint Ventures: Creation of a new jointly controlled economic entity, where control and management are based on joint decisions of the founders (joint ventures, Article 26.1.3).

Article 27 of the Competition Code of the Republic of Azerbaijan provides the thresholds for the concentration to be notified to the Competition Authority.

Following the notification, a consent must also be obtained from the Competition Authority. Please note that a concentration must be notified if any of the following thresholds are met:

1. One of the economic entities participating in the concentration holds a dominant position in the relevant market (27.1.1)
2. The resale of shares (stakes) by financial institutions, considering the requirements of Article 26.2 (Financial institutions are prohibited from exercising voting rights to acquire shares (stocks) of any undertaking for the purpose of resale within one year from the date of acquisition), is not possible. (27.1.2)
3. The total turnover of one of the economic entities participating in the concentration or the economic entity that will be formed as a result of the concentration exceeds 25 million manats. (27.1.3)
4. The total turnover of the economic entities participating in the concentration in the last reporting year within the country and abroad exceeds 35 million manats. (27.1.4)
5. The turnover of one of the economic entities participating in the concentration within the country in the last reporting year exceeds 15 million manats, and the turnover of other participating undertakings exceeds 5 million manats domestically in their last financial year. (27.1.5)
6. When the combined turnover of all participating undertakings in their last financial year is less than the specified amounts set out in Article 27.1.4 and 27.1.5 (points 4 and 5, respectively) of the Competition Code, but exceeds 20% of the total turnover in the relevant market.

16. Are there any specific rules applicable for acquisition of public companies in your jurisdiction?

In Azerbaijan, the acquisition of public companies is subject to specific regulations, particularly when it involves entities classified as natural monopolies. According to the Competition Code the anti-monopoly authority has oversight over certain types of transactions involving natural monopoly entities.

According to Article 39.5 of the Competition Code, if a person who has the right up to 10 percent of the voting shares (or interest) (acquired as a result of the acquisition of shares (or interest) in the charter capital of natural monopoly entities or other transactions (pledge, assignment of management, etc.)) subsequently disposes its voting shares to a person who as a result of this disposal acquires more than ten percent of the voting shares (or interest) in the natural monopoly shall in its turn inform the competition authority about it within 15 (fifteen) days.

Article 39.2.3 outlines conditions under which the transfer of ownership or usage rights of main assets of natural monopoly subjects to other economic entitites must be regulated. Specifically, if the value of main asset exceeds 0,5% of the balance sheet value of the natural monopoly subject's assets at the beginning of the current year, such transactions should be closely monitored to avoid anti-competitive outcomes.

17. Is there a requirement to disclose a deal, for instance to regulatory authorities? Is it possible to keep a deal confidential?

According to Article 45.2 of the Competition Code, if a deal falls within the scope of the Competition Code, parties involved may need to provide necessary information to the competition authority, including confidential or proprietary information. Such disclosures can include trade secrets, financial data, and other sensitive information. However, the confidentiality of the disclosed information is protected by law, and the competition authority is required to handle such information in accordance with legal requirements for confidentiality (e.g., laws governing state secrets, statistical secrets, commercial secrets, tax, customs, and banking confidentiality).

18. Can sellers be restricted from shopping around during a negotiation process? Is it possible to include break fee or other penalty clauses in acquisition documents to procure deal exclusivity?

In Azerbaijan, there are no statutory restrictions preventing sellers from shopping around during a negotiation process for a merger or acquisition. It is possible to include terms in a preliminary agreement to restrict the seller from engaging with other potential buyers during the negotiation phase. Such terms could be designed to secure deal exclusivity. These terms could stipulate that the seller is not allowed to engage in negotiations with other potential buyers for a specified period. Additionally, break fees or other penalty clauses can also be incorporated into acquisition documents to ensure commitment from both parties.

19. What are the conditions precedent in a typical acquisition document? Is it common to have conditions to closing such as no material adverse change?

In a typical acquisition document such as share sale agreement in Azerbaijan, there are certain conditions precedent incorporated that must be met before the deal can be finalized. Such conditions would include obtaining two specific tax references from the tax authority including:

– A reference concerning the turnover of the entity involved.

– A reference confirming whether or not there are any encumbrances on the shares of the company.

If an immovable property is part of the acquisition, a certificate must be obtained from the state registry; this certificate will confirm whether the entity in question owns immovable properties.

For joint-stock companies, an additional requirement is to obtain a certificate from the National Depository Center. This certificate will provide information about any encumbrances or limitations on the shares being acquired.

It's important to note that these conditions are specific to contracts signed in Azerbaijan and are in line with the requirements set forth by the Azerbaijani notaries.

In Azerbaijan, it is not common to have conditions related to closing, such as clauses stipulating that there should be no material adverse change affecting the transaction or default conditions.

20. What are the typical warranties and limitations in acquisition documents? Is it common to obtain warranty insurance?

There are no standard set of warranties and limitations which are typically used in local acquisition contracts.

While warranty insurance can be used when English law governs the acquisition, it's worth noting that this is not a common requirement in Azerbaijan. The practice in Azerbaijan tends to be different. Specifically, obtaining warranty insurance is not commonly done in our jurisdiction.

In some English law governed contracts, one can across the following warranties in respect of selling shareholder:

(a) he has full power, unrestricted legal capacity and authority to enter into and perform his obligations under the Agreement, and that this Agreement constitutes binding obligations on the Controlling Shareholder in accordance with its terms;

(b) he has obtained all permits and spousal consents, required to empower him to enter into and to perform his obligations under the Agreement and there are no actions by or before any competent governmental authority pending or threatened in any written notice, against the shareholder that, if adversely determined, would prohibit the consummation of the transactions contemplated by this Agreement;

(c) neither the entry into this Agreement nor the implementation of the transactions contemplated by this Agreement by the selling shareholder will:

  (i) violate or breach any law, regulation, lien, order, decree or judgment of any court or governmental or regulatory authority applicable to the selling shareholder;

  (ii) result in a breach of, or constitute a default under, any agreement or instrument to which the shareholder is a party or by which it is is bound;

(d) he is not insolvent (bankrupt) or unable to pay his debts within the meaning of applicable law;

(e) at completion, the shares will be free from any encumbrance;

(f) the shares are not and at completion will not be subject to any litigation, arbitration or similar proceedings or investigation; and

(g) such information relating to target as is known to the shareholder and which is material to be known by the buying shareholder has been disclosed in writing to the latter before the date of the agreement, the selling shareholder shall provide such further information of which it becomes aware.

21. Is there a requirement to set a minimum pricing for shares of a target company in an acquisition?

In Azerbaijan, generally, there’s no such requirement of setting a minimum pricing for shares. The rules for setting a minimum price for shares during an acquisition are nuanced and depend on the specifics of the transaction.

When shares are acquired from an existing shareholder, the parties can agree that a minimum price should be established as the remaining shareholders have a preemptive right to acquire the shares at such minimum price. Conversely, in scenarios where the entire company is the subject of acquisition, there exists no legal requirement to establish a minimum price for the shares, thereby providing greater latitude in the negotiation of transaction terms.

Furthermore, according to the Civil Code, mandatory offer must be extended to all existing shareholders beforehand if third party individual or entity seeks to acquire a majority stake, defined as 50% or more of the limited liability company’s shares. This requirement is non-negotiable and serves as a constant regulatory feature in majority-stake acquisitions.

22. What types of acquisition financing are available for potential buyers in your jurisdiction? Can a company provide financial assistance to a potential buyer of shares in the target company?

In Azerbaijan, potential buyers interested in acquisitions generally have 2 (two) primary financing avenues: equity financing and debt financing. Equity financing involves the buyer using their own capital to fund the acquisition, a straightforward approach that avoids the complexities of debt obligations. On the other hand, debt financing allows the buyer to borrow the necessary funds, usually from a financial institution, to complete the acquisition.

Azerbaijani law imposes specific constraints on acquisition financing. As per the Civil Code, the conversion of loans into equity is explicitly prohibited.[1] The lender cannot lend for the purpose of buying a share in authorized capital of a legal entity.

As for the possibility of the target company providing financial assistance to a potential buyer, there is no explicit prohibition against this in Azerbaijani law although we have not come across to such financing in practice.

23. What are the formalities and procedures for share transfers and how is a share transfer perfected?

In Azerbaijan, the formalities and procedures for share transfers are governed by specific legal requirements to ensure the validity and legality of the transaction. One of the primary requirements is that the share transfer must be executed in a notarial form. This means that the transfer agreement must be notarized to be legally binding.

Even if the share transfer takes place outside of Azerbaijan, it is imperative that the transaction be registered within the state register of commercial entities in Azerbaijan to validate and perfect the transfer.

For joint-stock companies, an additional layer of formality is required. The share transfer must be registered with the National Depository Center at the stock exchange. This registration is a crucial step in the share purchase and sale process, serving to validate the transaction and provide an official record of the change in ownership.

24. Are there any incentives (such as tax exemptions) available for acquisitions in your jurisdiction?

In Azerbaijan, tax incentives available for acquisitions are in relation to Value Added Tax (VAT). According to the Tax Code of the Republic of Azerbaijan dated July 11, 2000 (the **"Tax Code"**), certain types of transactions are exempt from VAT, including the provision as to alienation of shares by legal entities.

F. Enforceability

25. Can acquisition documents be executed in a foreign language?

Yes, there are no language restrictions imposed by law, however, it is required to have an official translation of the documents into Azerbaijani for purposes of their filing to state registration authorities.

26. Can acquisition documents be governed by a foreign law?

The governing law for acquisition documents can be a foreign law, offering flexibility to parties involved in cross-border transactions. Conversely, if both parties to the transaction are Azerbaijani entities or individuals, then the governing law must be Azerbaijani law.

27. Are arbitration clauses legally permissible or generally included in acquisition documents?

In Azerbaijan, arbitration clauses are both legally permissible and can be included in acquisition documents.

1 Article 90.3 of the Civil Code

28. Are there any specific formalities for the execution of acquisition documents? Is it possible to remotely/digitally sign documents?

One of the primary requirements is that the documents must be executed in a notarial form meaning that acquisition documents must be notarized to be legally binding, ensuring their validity and enforceability.

When the acquisition is concluded at the stock exchange, the requirement for notarization is waived. In such cases involving joint-stock companies, the registration of the share transfer is carried out at the National Depository Center, and the shares are recorded in a depository account.

Currently, digital or remote signing of acquisition documents is generally not exercised in Azerbaijan primarily because of the requirement for notarization.

G. Trends and Projections

29. What are the main current trends in M&A in your jurisdiction?

In Azerbaijan, the mergers and acquisitions (M&A) landscape is evolving, driven by recent legislative changes and economic developments. The introduction of the new Competition Code has significantly impacted the M&A environment, shaping the trends and projections for the market.

The new Competition Code, which consists of 12 chapters and 84 articles, provides a comprehensive legal framework regulating competition, antitrust issues, monopolistic practices, and the rights and duties of market participants. The Code introduces new rules and concepts, leading to increased scrutiny of M&A transactions, especially in sectors prone to monopolistic behavior. This trend reflects a shift towards a more regulated and transparent market, where compliance with antitrust laws is a critical consideration for M&A deals.

There is an emphasis on regulating economic concentration to prevent anti-competitive practices. The Competition Code provides detailed regulations regarding horizontal and vertical agreements, aiming to restrict transactions that could lead to significant market dominance. Companies engaging in M&A activities must now carefully assess the potential competitive impact of their transactions to comply with the new rules. The Code also strengthens the enforcement of rules against unfair competition, establishing penalties for violations.

30. Are any significant development or change expected in the near future in relation to M&A in your jurisdiction?

Significant developments are expected in the M&A landscape in Azerbaijan, largely driven by the ongoing implementation of the new Competition Code. Within six months of its implementation, the Cabinet of Ministers must approve regulations concerning exceptions and limitations to the Competition Code, criteria for assessing the restrictive effects of agreements, exclusions for technology transfer, market research, and development agreements, procedures for calculating market shares and determining market boundaries, market concentration limits and assessment rules, inspection rules for market entities and natural monopolies, rules for handling goods taken for inspection, and criteria and rules for financial sanctions.

These upcoming regulations aim to modernize competition law in Azerbaijan, creating a more detailed and structured regulatory environment. This shift is expected to significantly impact M&A activities as companies will need to adapt to the new requirements, ensuring compliance with the updated rules and potentially making strategic adjustments to their transactions.

BAHRAIN

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A. General

1. What is the main legal framework applicable to companies in your jurisdiction?

The main legal framework applicable to companies registered in Bahrain is Law Decree No. (21) of 2001 promulgating the Commercial Companies Law as amended ("**Companies Law**"). Companies Law relates to company formation, shareholders' rights and obligations, management, mergers, and termination of companies.

2. What are the most common types of corporate entities (e.g., joint stock companies, limited liability companies, etc.) used in your jurisdiction? What are the main differences between them (including but not limited to with regard to the shareholders' liability)?

The corporate entities specified under the Companies Law are:

a. With Limited Liability companies (W.L.L.) which is the most commonly used type of company in Bahrain;
b. Public Joint Stock Companies BSC;
c. Closed Joint Stock companies BSC (c);
d. Branch of Foreign Companies;
e. General Partnership Companies;
f. Limited Partnership Companies;
g. Limited Partnership by Shares;
h. Protected Cells Company; and
i. Non-Profit Companies.

A Limited Liability Company allows a single person ownership to the company with a maximum number of 50 partners. The liability of a shareholder is limited to the value of its share in the company with respect to the company's liabilities and debts. Furthermore, not all activities are allowed to be assumed when using a limited liability company such as the activities of banking and insurance.

A Public Joint Stock Company is a public company whose shares are listed on the BH Bourse. The shareholders are liable for the company's debts and obligations to the extent of the value of their shares only. In contrast to limited liability companies (W.L.L.) and general partnership company where the minimum capital requirement is BHD50, a minimum capital of BHD1 million is required to establish the company.

A Privately Held Joint Stock Company does not generally permit a public offering of shares via BH Bourse (unless a specific application is made) and requires at least two shareholders. Moreover, the minimum requirement of capital is BHD 250,000 for non-financial related activities.

Both privately held and public joint stock companies must adhere to the applicable Corporate Governance Code.

Foreign companies that undertake business in Bahrain are encouraged to register under the umbrella of a branch of a foreign company, in which no local partner is required. Foreign branch companies do not require minimum capital. The parent company is required to guarantee the obligations and liabilities of the foreign branch companies.

A protected cell company is a single legal entity which consists of a core and one or more parts which are referred to as cells, which can hold each asset and liabilities thereby segregating the assets of one cell from the 'laboratory' of another. A protected cell company can have an unlimited number of cells. The approval of the Central Bank of Bahrain ("**CBB**") is required for the registration of a protected cell company.

B. Foreign Investment

3. Are there any restrictions on foreign investors incorporating or acquiring the shares of a company in your jurisdiction?

The Companies Law states that provided the company satisfies all prerequisites of the Companies Law, on the whole, it is permissible for companies with full foreign ownership to fully incorporate in Bahrain. There are certain activities that a company can only undertake with Bahraini ownership or partnership. This list of reserved activities has been shrinking in recent years and the Council of Ministers may grant exemptions for projects of strategic importance.

4. Are there any foreign exchange restrictions or conditions applicable to companies such as restrictions to foreign currency shareholder loans?

Currently, no foreign exchange restrictions are applicable, including those on foreign currency shareholder loans. Banks in Bahrain are required to verify the source of funds for transactions exceeding BHD 6,000.

5. Are there any specific considerations for employment of foreign employees in companies incorporated in your jurisdiction?

A foreign employee working in Bahrain will be required to enroll with the Labour Market Regulatory Authority, upon arrival of the employee in Bahrain where the employee would be required to provide their fingerprints, picture, work permit and passport to be issued an ID Card. This process can either be done upon arrival or one month following arrival. When applying for the work permit a fee of BHD100 is required. A foreign employee is subject to the Labour Law for the Private sector (Law No. 36 of 2012) just like Bahraini employees.

C. Corporate Governance

6. What are the standard management structures (e.g., general assembly, board of directors, etc.) in a corporate

entity governed in your jurisdiction and the key liability issues relating to these (e.g., liability of the board members and managers)?

With Limited Liability Company (W.L.L.)

In limited liability companies, a general manager must be appointed to manage the company and has the role and responsibilities of a director in a joint stock company. The manager shall be liable towards the company, partners and third parties for any mismanagement of the company or breach of the law or the constitutional documents of the company.

If a limited liability company has more than ten shareholders, then a board of managers or a control board consisting of representatives of at least three partners shall be appointed. A general assembly consisting of all partners shall convene at least once a year within four months following the company's financial year.

Public and Closed Joint Stock Companies

Public joint stock companies shall have a board of directors consisting of at least five members, whilst closed joint stock companies shall have a board of directors consisting of at least three members for a three-year term and will meet at least four times during a financial year. The board members shall be jointly liable to the company and to the shareholders for any misuse of power, fraud, or mismanagement. The joint liability of the directors can be personal and the company has the right to file an action of liability against board members who cause damage to the shareholders.

The corporate governance code requires such companies to establish audit, remuneration, nomination and corporate governance committees.

7. What are the audit requirements in corporate entities?

Public and closed joint stock companies are required to submit an annual audited financial statement of the company to the Ministry of Industry and Commerce. The appointed auditors are required to be licensed auditors.

D. Shareholder Rights

8. What are the privileges that can be granted to shareholders? In particular, is it possible to grant voting privileges to shareholders for appointment of board members?

In public joint stock companies, a shareholder that owns shares with a nominal value of at least BHD 10,000 or owns at least 1% of the shares has the right to become a board member. Whereas the shareholders who own 10% or more of the capital have the right to appoint a person to represent them in the board, and if there is a remaining percentage that is not enough to appoint another member the shareholder may use this percentage in voting.

Law No. 28 of 2020, which amended the Companies Law has expanded on the provisions that allow the issuance of preference shares and ordinary shares subject to the company's constitutional documents permitting such change whereby a company may issue preference shares subject to obtaining approval of the extraordinary general assembly. The new preference shares shall be issued in accordance with CBB Law and Financial Institutions promulgated by Law No. 64 of 2006 to the current holders of preference shares first. If there are more than one type of classification, the holders of these classes shall have the priority right to subscribe into the new preference shares within the same class.

9. Are there any specific statutory rights available to minority shareholders available in your jurisdiction?

A shareholder in a joint stock company may file a lawsuit or declaration that any resolution passed by the general assembly or by the board of directors is null and void on the basis that it contravenes the law, public order or constitutional documents. A shareholder in a joint stock company may file a claim against the company where the shareholder believes the company's operations are being conducted in a manner prejudicial to the shareholders.

Shareholders in joint stock companies who hold at least 10% of the capital are entitled to access documents relating to conflicts of interest of the directors.

10. Is it possible to impose restrictions on share transfers under the corporate documents (e.g., articles of association or its equivalent in your jurisdiction) of a company incorporated in your jurisdiction?

It is possible to impose restrictions on share transfer under the memorandum of association and articles of association in Bahrain, provided that such restrictions do not conflict with applicable laws (i.e., they may be more restrictive than law but not less).

11. Are there any specific concerns or other considerations regarding the composition, technical bankruptcy and other insolvency cases in your jurisdiction?

The Bahrain Law No. 22 of 2018 concerning Restructuring and Insolvency Law allows both the debtor and its creditor to commence insolvency proceedings when the debtor is unable to pay debts within thirty days of their maturity, or when the financial obligations exceed the value of its assets.

The above law allows for a reorganization whilst managing the company and the trustee oversees the transactions and management of the debtors.

E. Acquisition

12. Which methods are commonly used to acquire a company, e.g., share transfer, asset transfer, etc.?

We have seen both forms of acquisition commonly used in share transfer.

13. What are the advantages and disadvantages of a share purchase as opposed to other methods?

A share purchase is more straightforward in Bahrain than asset acquisition as there is no statute transfer process and therefore each asset and liability needs to be provided for. Specifically, with asset acquision, employment must be terminated and employees must be rehired as there is no automatic transfer.

14. What are the approvals and consents typically required (e.g., corporate, regulatory, sector based and third-party approvals) for private acquisitions in your jurisdiction?

All share transfers require approval from the Ministry of Industry, Commerce and Tourism ("**MOICT**"). If the entity is a financial institution, then the consent of the CBB is required. Also, consent of the related regulatory authority may be required, depending on the sector and whether there is a land transfer.

15. What are the regulatory competition law requirements applicable to private acquisitions in your jurisdiction?

The requirements for acquisitions, competition concerns are stated in Law No. 31 of 2018 with respect to the promotion and protection of competition. The law outlines that, prior to any acquisition with a potential company concerned, the party or its representatives (i.e., the company) must submit to the relevant authority a request to obtain its approval, which may be accepted or rejected within 90 days.

16. Are there any specific rules applicable for acquisition of public companies in your jurisdiction?

Acquisitions of interests in publicly listed companies in Bahrain are governed by the rules set out in the CBB Rule Book under the Take-over, Mergers and Acquisitions Module of Volume 6 ("**TMA**"). This module is the governing regulation for mergers and acquisitions of publicly listed companies in Bahrain. It sets out the process for acquisition or increase of an interest in a listed entity, as well as the disclosure requirements.

17. Is there a requirement to disclose a deal, for instance to regulatory authorities? Is it possible to keep a deal confidential?

If the deal involves a listed entity, then there are strict requirements in respect of announcements and regulatory consent. Any announcements related to listed entities must also comply with these requirements.

18. Can sellers be restricted from shopping around during a negotiation process? Is it possible to include break fee or other penalty clauses in acquisition documents to procure deal exclusivity?

It is possible to include such terms in MoUs or head of agreements.

On the other hand, it is unclear whether break fee clauses and penalties are permissible and enforceable in the Bahraini courts due to the absence of clear laws and regulations concerning the acquisition of non-listed companies.

19. What are the conditions precedent in a typical acquisition document? Is it common to have conditions to closing such as no material adverse change?

The conditions precedent will depend upon whether the target is a public or private entity. If a public takeover offer is being made, then the conditions will need to be approved by the CBB. We have seen deals more recently where public acquisitions have included material adverse change as a condition. Deals in relation to non-listed companies usually contain full suite of conditions precedents including material adverse change and obtaining regulatory approvals due to the requirements for split exchange and compliance.

20. What are the typical warranties and limitations in acquisition documents? Is it common to obtain warranty insurance?

Acquisition documents typically have extensive warranties in deals we have worked on. This will vary depending on the sector of the target, but usually we see warranties around compliance trading and litigation, as key to previous deals. We have not commonly seen warranty insurance.

21. Is there a requirement to set a minimum pricing for shares of a target company in an acquisition?

Yes, there is. In accordance with article 2.22 of the TMA, when the offer is made for each class of shares of a publicly listed company, the offer price must not be less than the highest price paid by the offeror during the offer period and within 6 months prior to the commencement.

22. What types of acquisition financing are available for potential buyers in your jurisdiction? Can a company provide financial assistance to a potential buyer of shares in the target company?

The major source of acquisition finance in Bahrain is debt from traditional banking institutions. Companies may also finance acquisitions via debt securities, but these are only open to certain types of companies in Bahrain. Private Equity deals are regularly seen in Bahrain. In terms of financial assistance to potential buyers, there are restrictions for public joint stock companies, but we have not seen similar restrictions for other forms of corporate entities.

23. What are the formalities and procedures for share transfers and how is a share transfer perfected?

Yes, there are certain formalities to be followed. They would be subject to MOICT pre-approval, then it would have to be notarized before a notary, the documents will have to be lodged and then it would have to be registered in Sijilat.

24. Are there any incentives (such as tax exemptions) available for acquisitions in your jurisdiction?

No tax applicable to acquisition.

F. Enforceability

25. Can acquisition documents be executed in a foreign language?

Yes, it can be executed in any language but it needs to be accompanied by a translation for the notary and the MOICT. The Notary and the MOICT usually accept Arabic and English dual text documents.

26. Can acquisition documents be governed by a foreign law?

Yes.

27. Are arbitration clauses legally permissible or generally included in acquisition documents?

Yes, arbitration clauses are generally included in acquisition documents.

28. Are there any specific formalities for the execution of acquisition documents? Is it possible to remotely/digitally sign documents?

Yes, according to Legislative Decree No.54 of 2018 promulgating the Electronic Communications and Transactions Law, Article 7, it is permissible for documents to be signed remotely. However, any documents required to be notarized must be signed in person before a notary.

G. Trends and Projections

29. What are the main current trends in M&A in your jurisdiction?

We are seeing an era of consolidation within the Bahrain marketplace, particularly within the financial services and banking section. This is driven by the instructions of the CBB. The government is also providing a boost to investment by reducing the burden of regulation in certain areas, as well as innovation to improve ease of business.

30. Are any significant development or change expected in the near future in relation to M&A in your jurisdiction?

There are plans by the government in Bahrain for more companies in Bahrain to be listed on the Bourse, as well as continued consolidation in the marketplace where companies are taking advantage of strong balance sheets built up in recent years, especially because of Covid.

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A. General

1. What is the main legal framework applicable to companies in your jurisdiction?

The Companies Act, 1994 of Bangladesh (the "**Companies Act**") governs all Bangladeshi companies from incorporation up to winding-up and dissolution. Pursuant to the Companies Act, private companies are required to have a minimum of two shareholders and two directors whereas public companies are required to have a minimum of seven shareholders and three directors. The Companies Act also requires the companies, among other things, to hold directors' meeting quarterly and one annual general meeting every year followed by filing of annual return along with audited accounts with the Registrar of Joint Stock Companies and Firms (the "**RJSC**"). The Companies Act also sets out the procedures for passing special and extraordinary resolutions, transfer of shares, maintenance of books, accounts and registers, and issue of capital.

Companies are incorporated in Bangladesh with an authorised share capital as set out in their memorandum of association. The authorised share capital represents the total share capital that companies may issue to their shareholders. Out of the authorised share capital, the actual share capital, which is issued to the shareholders is called the "issued" or "subscribed" share capital, and the total amount paid and received by the company on those issued shares is called "paid-up" capital of the company. There is no minimum capitalisation requirement for the initial equity injection in a company under the Companies Act. As such, a company can be incorporated with minimum paid-up capital. There is no requirement on the minimum authorised capital that a company may have at the time of incorporation. For foreign investors capital can either be contributed in cash through banking channel or in form of capital machinery.

Any investment activities conducted by foreign investors in Bangladesh are subject to the Guidelines to Foreign Exchange Transactions 2009 ("**GFET**") issued by the Bangladesh Bank ("**BB**") - the central Bank of Bangladesh, pursuant to the Foreign Exchange Regulation Act, 1947 (the "**FERA**"). According to GFET, foreign investments are allowed in all commercial and industrial sectors in Bangladesh, except for certain reserved sectors those restricted by applicable Bangladesh laws or regulations.

Inward remittance of foreign investment, encashment of foreign exchange, repatriation of dividend by non-residents, remittance of royalty, technical and consultancy fees etc., obtaining credit facilities or loans, opening and operation of foreign currency accounts by non-residents in a bank in Bangladesh, etc. are regulated by BB under FERA and GFET and various circulars issued by the Bangladesh Bank from time to time.

Bangladesh has a strict foreign exchange control regime in force. Dealings in foreign currency are strictly regulated by the Bangladesh Bank and only authorised dealers, that are licensed bank branches, are allowed to remit foreign currency out of Bangladesh. Further, no other person may deal in foreign exchange without the prior consent of the Bangladesh Bank. Remittance of money out of Bangladesh is allowed only under specific circumstances and is required to be supported by appropriate documentation.

Other important laws applicable in this context include Labour Act, 2006 read with Labour Rules, 2015, The Environmental Conservation Act, 1995 read with Environmental Conservation Rules, 1997 and so on.

2. What are the most common types of corporate entities (e.g., joint stock companies, limited liability companies, etc.) used in your jurisdiction? What are the main differences between them (including but not limited to with regard to the shareholders' liability)?

The main business vehicles used include the following:

- Proprietorship.
- Partnership.
- Limited liability company (public and private limited).
- Branch office (foreign company).
- Liaison office.
- Societies.
- Associations (not for profit).

A trust can be created under the Trusts Act 1882 for any lawful purpose and is seldom used as a business vehicle other than as a tax planning instrument.

Limited companies (private limited and public limited), branch and liaison offices are most commonly used due to their:

Limited liability nature.

Flexible corporate structure.

Well-defined governance framework.

Branches of foreign companies are only allowed in commercial service sectors. Functions of liaison offices are further limited to local liaison, facilitation of sales, marketing, research and exhibition. Liaison offices cannot generate revenue or perform commercial activities.

The Companies Act, 1994 regulates all types of companies and branch of foreign companies in Bangladesh. There is not that much difference between public and private limited companies as far as shareholder liabilities are concerned. A limited company is treated as a separate legal entity with limited liability for its shareholders. As contrasted to a public limited company, a private limited company has the following features:

- It can restrict transfer of its shares by its shareholders;
- It cannot invite the public to subscribe for its shares or debenture; and
- The upper-limit of the number of its shareholders is fifty.

For a private limited company, minimum number of shareholders is 2 and maximum number of shareholders is 50. In terms of number of shareholders of a public limited company, minimum is 7 and maximum is unlimited. One third of the directors need to resign in public limited every year and in addition in every year statutory auditor needs to be changed in a public limited company.

Private limited companies are most used as SPV or project company for foreign direct investment ("**FDI**") in Bangladesh due to their autonomy, less corporate governance requirements and less oversight by authorities.

B. Foreign Investment

3. Are there any restrictions on foreign investors incorporating or acquiring the shares of a company in your jurisdiction?

In general, there are no restrictions on foreign investors incorporating or acquiring the shares of a company in Bangladesh. The major policy related to foreign investment in Bangladesh is the Bangladesh industrial policy 2016. Foreign and domestic private entities can establish and own, operate, and dispose of interests in most types of business enterprises. Four sectors, however, are reserved for government investment:

- Arms and ammunition and other defense equipment and machinery;
- Forest plantation and mechanized extraction within the bounds of reserved forests;
- Production of nuclear energy; and
- Security printing.

In addition to the four sectors reserved for government investment, there are 17 controlled sectors that require prior clearance/ permission from the respective line ministries/authorities (by way of public procurement or licensing or public private partnership) and indirectly this is being used for a few sectors to maintain Government monopoly such as power (electricity) transmission and distribution. These are:

- Fishing in the deep sea
- Bank/financial institutions in the private sector
- Insurance companies in the private sector
- Generation, supply, and distribution of power in the private sector
- Exploration, extraction, and supply of natural gas/oil
- Exploration, extraction, and supply of coal
- Exploration, extraction, and supply of other mineral resources
- Large-scale infrastructure projects (e.g. flyover, elevated expressway, monorail, economic zone, inland container depot/ container freight station)
- Crude oil refinery (recycling/refining of lube oil used as fuel)
- Medium and large industries using natural gas/condensate and other minerals as raw material

- Telecommunications service (mobile/cellular and land phone)
- Satellite channels
- Cargo/passenger aviation
- Sea-bound ship transport
- Seaports/deep seaports
- VOIP/IP telephone
- Industries using heavy minerals accumulated from sea beaches

While discrimination against foreign investors is not widespread, the government frequently promotes local industries, and some discriminatory policies and regulations exist. For example, the government requires majority or more than majority local ownership of new shipping, logistics, freight forwarding, banking and insurance etc. companies, albeit with exemptions for existing foreign-owned firms, following a prime ministerial directive.

The Competition Commission of Bangladesh, constituted under the Competition Act, 2012, ("**Competition Act**") is responsible for supervising M&A activity in Bangladesh. However, the provisions set out in the Competition Act are currently operating in reactive mode pending the incorporation of the underlying competition rules needed to impose proactive measures.

Any combination (including any M&A transaction) that would have an adverse effect on competition is prohibited. The commission has wide powers, among other things, to investigate any combination, either on its own motion or following a complaint from any third party. Statutory and regulatory authorities can seek a reference from the commission to determine whether a proposed combination is anti-competitive. The commission will issue its decision within 60 days.

The commission is yet to quantify the meaning of a 'significant adverse effect' and the relevant thresholds for mandatory approval. Until these rules have been set out, the commission enjoys the discretion to decide on the possible effects of any combination. If, during or after the completion of an investigation, the respondent, the commission, and the complainant agree on the terms of an appropriate order, the commission will confirm the agreement as a consent order, subject to:

- publication of the order in the *Official Gazette* within seven working days for comments within a period of 30 days;
- the commission receiving, reviewing and hearing representations from third parties with material interest;
- the consent order being made as agreed and proposed with or without changes; and
- the commission's refusal to issue the order if additional information warrants this.

4. Are there any foreign exchange restrictions or conditions applicable to companies such as restrictions to foreign currency shareholder loans?

Any investment activities conducted by foreign investors in Bangladesh are subject to the Guidelines to Foreign Exchange Transactions 2009 ("**GFET**") issued by the Bangladesh Bank ("**BB**") - the central Bank of Bangladesh, pursuant to the Foreign Exchange Regulation Act, 1947 (the "**FERA**"). According to GFET, foreign investments are allowed in all commercial and industrial sectors in Bangladesh, except for certain reserved sectors those restricted by applicable Bangladesh laws or regulations.

Inward remittance of foreign investment, encashment of foreign exchange, repatriation of dividend by non-residents, remittance of royalty, technical and consultancy fees etc., obtaining credit facilities or loans, opening and operation of foreign currency accounts by non-residents in a bank in Bangladesh, etc. are regulated by BB under FERA and GFET and various circulars issued by the Bangladesh Bank from time to time.

Bangladesh has a strict foreign exchange control regime in force. Dealings in foreign currency are strictly regulated by the Bangladesh Bank and only authorised dealers, that are licensed bank branches, are allowed to remit foreign currency out of Bangladesh. Further, no other person may deal in foreign exchange without the prior consent of the Bangladesh Bank. Remittance of money out of Bangladesh is allowed only under specific circumstances and is required to be supported by appropriate documentation.

Restrictions in dealing with foreign currency

The FERA and the GFET stipulate that, without a general or special permission from the Bangladesh Bank, a company incorporated in Bangladesh cannot make any payment to, or for the credit of, any person who is resident outside Bangladesh, or draw, issue or negotiate any bill of exchange or promissory note, or acknowledge any debt, which would mean that a right to receive a payment is created or transferred in favour of any person residing outside Bangladesh. The FERA also restricts the creation or transfer of a security interest to any place outside of Bangladesh without general or special permission from the Bangladesh Bank.

Repatriation of investment proceeds

The Government guarantees all foreign investors repatriation of investment proceeds from Bangladesh businesses. Accordingly, dividends, sale of share proceeds and liquidation residuals are freely repatriable subject to meeting taxation and other compliances as applicable. Transfer of shares involving non-residents is required to be at fair value determined by an accredited auditor as per central bank guidelines. In addition, approval is needed from BB for non-resident to resident transfers, especially for repatriation of purchase price. However, such prior approval has been exempted for sale price below BDT100million and fair price valuation has been exempted in case a net asset value approach is adopted under certification from the auditors.

Foreign Currency Borrowing & Accounts

Foreign currency borrowing for industrial enterprises is allowed under due permission from BB as facilitated and processed by BEPZA. There is a well-established approval process for loans obtained from foreign lenders. This approval allows Bangladeshi borrowers to remit interest payment and principal amounts. Shareholders' loans are as working capital is also allowed without any further BB approval and is repayable in maximum of six years bearing maximum 3% interest.

Transfer of Shares

Whereas there are no restrictions under the foreign exchange regime on general acquisitions and issue of shares of a target. However, all transfers involving foreign shareholders must take place at a fair price. In the case of foreign sellers up to BDT 10 million sale proceed may be repatriated without valuation and up to BDT 100 million sale proceed may be repatriated by the bank based on valuation by a chartered accountant / merchant bank without central bank approval. Prior approval must be sought from the central bank for repatriable sale proceed over BDT 100 million. In other cases involving local shareholder to foreign buyer transfer and foreign seller to foreign buyer transfer, a simple post-closing notification to the central bank along with the valuation report shall suffice.

The fair market valuation must be conducted by an accredited chartered account or a licensed bank, following an approximate mix of the asset-based, market value and income approaches. However, such valuation is exempted to repatriate the sale proceeds if the fair value of the shares is determined based on the net asset value ("**NAV**") approach, based on the latest audited financial statements together with tax returns without any consideration to tangible assets. Under such circumstances an undertaking is issued by the target specifying that the impairment of assets have been adjusted in arriving at the NAV; and the remitting bank is satisfied that there is no abnormal growth in total assets in any of the last three years, particularly in the last year.

5. Are there any specific considerations for employment of foreign employees in companies incorporated in your jurisdiction?

Expatriates must have a work permit to work in Bangladesh, with separate residency permits required for family members. The following conditions apply in relation to issuing a work permit:

- Nationals of countries recognised by Bangladesh are considered for employment (that is, only nationals of those countries can apply for a work permit).
- Employment must be in establishments registered by the appropriate authority (that is, the RJSC and/or the BIDA).
- Local experts/technicians are not available.
- Persons below 18 years of age are not eligible for a work permit.
- The number of expatriates should not exceed 5% in the industrial sector and 20% in the commercial sector.
- The initial work permit is for two years, extendable on a case-by-case basis.
- Security clearance is required from the Ministry of Home Affairs.

To obtain a work permit, an application is filed with the BIDA for an e-visa recommendation. On receipt of the recommendation, the Bangladesh Embassy provides the employee with an e-visa that is valid for three months. On arrival in Bangladesh, the employee must apply to the BIDA for the work permit. The applications are filed by the employer and the application stage takes about two weeks. The following documents must be filed:

- Copy of the employer's incorporation certificate with the MoA and AoA/ permission letter.
- Board resolution for the employment, mentioning salary and benefits.
- Passport size photographs and passport copy.
- Service contract/agreement or appointment letter/transfer order.
- Certificates of all academic qualifications and professional experience.
- Copy of advertisement made for local recruitment before appointment of the expatriate.
- Specific activities of the company and statement of manpower, showing a list of local and expatriate personnel employed with designation, salary break-up, nationality, and date of first appointment.
- Encashment certificate of inward remittance of a minimum of USD50,000.

C. Corporate Governance

6. What are the standard management structures (e.g., general assembly, board of directors, etc.) in a corporate entity governed in your jurisdiction and the key liability issues relating to these (e.g., liability of the board members and managers)?

In Bangladesh shareholders' liability towards a company is limited to the extent of their shareholding and related contributions. Below is the typical corporate governance structure for a company in Bangladesh.

Shareholders Meetings

Whereas general matters at the shareholder meeting are resolved by simple majority resolution, special resolutions (approved by minimum 75% of the voting shareholders) are required for major decisions to be made for the company. Shareholders cannot contractually agree to modify the shareholder approval requirement for general and special resolutions. However, they can contractually agree to pass general and special resolutions and upon a breach to such arrangement the contract may be enforced to pass such resolution. In addition, they can also agree contractually to pass certain resolutions with a higher percentage of approvals from shareholders than what is statutorily required.

Every company is required to hold at least one shareholder's general meeting in a calendar year. Schedule-2 sets forth the matters, required to be decided through shareholders' general resolution (approval by shareholders holding more than 50% of the voting shares). A list of required resolutions to be passed under different meetings of members for different agendas is attached. In addition, to change any right associated with a class of shares, approval from the shareholders holding more than 90% of the shares belonging to such class of shares is required.

Board of Directors

Each private limited company must have a minimum of two directors and public limited companies three. Directors can be nominated and appointed by shareholders, or by the board of directors. If a director is a nominee of a shareholder, such director is not required to hold any shares of the company. If a director is appointed by the board of directors, such director must hold at least one common share of the company (the "qualification share", as outlined in the Articles of Association) within two months from the date of appointment, and such director can hold such qualification share on trust for the benefit of a shareholder.

The day-to-day business of a company is run by its board of directors. Except for the matters that are reserved for the shareholders' meeting by law and the articles of association, all other matters shall be decided by the board of directors. Unless otherwise specified in the Articles of Association, matters are resolved by simple majority votes. Approval from board of directors is required for transfer of any shares, issuance of new shares and variation of rights attached to any class of shares.

Each company must have a managing director, who is elected by the board or shareholders. The managing director cannot hold other position in any other entity. The powers and obligations of the managing director are determined by virtue of an agreement with the company or of a resolution passed by the company in its general meeting of shareholders or by its board of directors or by virtue of its memorandum or articles of association.

Classification of shares

The company is initially incorporated with only a single class of ordinary / common shares. In another word, a private limited company is not permitted to have different classes of shares at its incorporation.

Thereafter, different classes of shares may be issued with different rights, including preference shares with preference over rights to receive dividends and residual proceeds at liquidation.

Reporting Requirements

The company must file in each year an annual report outlining the authorized, paid-up capital, shareholder details, directors' detail, along with a directors' report and an audited account of the company duly passed in the Annual General Meeting ("**AGM**") of the company with RJSC. In AGM the shareholders are required to appoint an auditor, accredited by the Institute of Chartered Accountants of Bangladesh, to audit the accounts of the company in the next year closing. An auditor may be appointed for three subsequent terms. In addition, a six-monthly foreign investment report is required to be lodged with Bangladesh Investment Development Authority and Bangladesh Bank.

Dividends and distributions

Following a recommendation by its board of directors, a Bangladeshi company may, in a shareholders' general meeting, declare dividends to its shareholders from time to time. Dividends are subject to withholding taxes.

Scheduled banks arrange summary approvals from central bank for repatriation of dividends to the non-resident shareholders. Before applying to central bank for an approval, the bank is required to verify the financial statements, tax status and non-residency status of the relevant foreign shareholder. There is no statutory or regulatory requirement of any reserve balance beyond which dividends may be declared.

Directors' liability

Directors are bound to use fair and reasonable diligence in discharging the duties and to act honestly, and act with such care as is reasonably expected from him, having regard to his knowledge and experience. A director will be personally liable on a company contract when he has accepted personal liability either expressly or impliedly. Directors are the agents or the trustees of a Company. Director's liability to the Company may arise where:

(1) the directors are guilty of negligence,

(2) the directors committed breach of trust,

(3) there has been misfeasance and

(4) the director has acted ultra vires and the funds of the company have been applied for such an act.

A director is required to act honestly and diligently applying his mind and discharging his duties as a man of prudence of his ability and knowledge would do. It has been explained in the duties of directors as to what is standard or due care and diligence expected from him. Any wilful misconduct or culpable negligence falls within the category of misfeasance.

Directors must hold the meeting even though the accounts are not ready or the company is not functioning or the management of the business is vested in the Central Government. The holding of the meeting must be within the period of 15 months after the preceding AGM. The Board of Directors shall at the meeting lay a balance sheet and a profit and loss account for the financial year. For default, the Directors are liable to be punished with fine of BDT 10,000 and BDT for each day of continuing default.

Directors having any interest in any contract shall disclose the nature at the Directors' meeting. Also directors having such interest are not entitled to vote in the deciding meetings. Failing to do so is punishable with BDT5,000 fine. Directors are liable to compensate a person who has subscribed shares on the faith of a prospectus, which contained untrue statement. The Director should compensate every such subscriber for any loss or damage he/she may have sustained by reason of such untrue statement. The Directors are liable to criminal prosecution for inducing or attempting to induce a person by statement or even forecast which is false or misleading to enter into or to offer to enter into any agreement to buy shares of the company. They shall be punishable with imprisonment for a term which may extend to five years, or with fine which may extend to BDT5,000, or with both.

For unregistered charges over assets of the company Directors are liable and penalty is a fine up to BDT2,000. Where directors manage a company then each director shall be responsible (if there is no managing director) that the company should maintain and keep proper books of account. Default or non-compliance will make the Director punishable with imprisonment for a term not exceeding six months or fine of BDT5,000 or both. For auditor appointment related incompliance Fine up to BDT 1,000.

A Director of a company in liquidation must co-operate with the liquidator in realizing the assets of the company and distributing them among the creditors and contributors of the company. If they fail to do so they are liable to imprisonment, which may extend to seven years and fine. Therefore, Directors are liable for theft of the company's property or for false accounting. Directors are liable to prosecution on several issues. If a company is adjudged bankrupt, the only consequence for the directors is imprisonment or fine if they are found to perform any offences as referred to in the Bankruptcy Act, 1997. According to Section 86 of the Bankruptcy Act, 1997 Directors of such a bankrupt company shall be punishable with imprisonment, which may extend to two years and fine if, within 48 months immediately before the filing of bankruptcy they incur any debt without having any responsible ground of expectation of his repaying the debt.

In addition there are certain operational laws such as labour laws and environment laws and under such acts where an offence punishable under the act or under any rule, regulation or scheme is committed by a company or other body corporate or by a firm, every director partner manager secretary or other officer or agent thereof shall, if actively concerned in the conduct of the business of such company, body corporate or firm, be deemed to have committed the offence unless he proves that the offence was committed without his knowledge or consent or that he exercised all due diligence to prevent the commission of the offence. Such directors would be subject to same sanction as would have been applicable to a company or the individual committing such offence.

7. What are the audit requirements in corporate entities?

Every company incorporated in Bangladesh must appoint a statutory auditor within thirty days of incorporation. Thereafter, the auditor needs to be reappointed in every general meeting. For public limited companies, an auditor cannot serve a company for more than continuous three years. The auditor needs to submit an audited account of the company to the board of directors after conclusion of each of the financial year closing. Upon approval from the directors, such audit report must be approved by the shareholders in the general meeting of the shareholders within nine months of the financial closing date on which the audit has been done. Thereafter the audit report approved in the general meeting is required to be filed with the regulator within thirty days from the date of the general meeting along with the annual return of the company.

D. Shareholder Rights

8. What are the privileges that can be granted to shareholders? In particular, is it possible to grant voting privileges to shareholders for appointment of board members?

The company is free to grant any right to the shareholders by way of incorporating relevant terms in its articles of association in addition to the following statutory rights already granted:

General Meeting of Shareholders	Type of Resolution	List of Agenda	Notice
Annual Meeting of Shareholders	Ordinary Resolution (requires majority vote)	▪ Resolution on appointment of auditors; ▪ Resolution for approval of annual accounts and declaration of dividend ▪ Resolution for appointment of managing agent ▪ Appointment of director at the place of removed director ▪ Remove member from committee of Inspection in compulsory winding up ▪ All other matters which are required to be approved through shareholders except for the matters to be approved by special / extraordinary resolutions	14 days before the meeting.
	Extraordinary Resolution (requires vote from shareholders holding minimum 75% shares)	▪ Removal of any Director ▪ Declare that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up ▪ Commence winding up and appointment of liquidator ▪ Propose arrangement with creditors ▪ Sanction of scheme of liquidation	14 days before the meeting.

General Meeting of Shareholders	Type of Resolution	List of Agenda	Notice
Extraordinary Meeting of Shareholders	Ordinary Resolution (requires majority vote)	▪ Resolution for appointment of managing agent ▪ Appointment of director at the place of removed director ▪ Remove member from committee of Inspection in compulsory winding up ▪ All other matters which are required to be approved through shareholders, except for all other special / extraordinary resolutions	21 days before the meeting.
	Special Resolution (requires vote from shareholders holding minimum 75% shares with the meeting notice containing the agendas subject to special resolution)*	▪ Change of name ▪ Increase or decrease of authorized capital ▪ Alternation of Articles & Memorandum of Association ▪ Fix reserve capital ▪ Making liability of directors unlimited ▪ Fix remuneration of Managing Agent ▪ Payment of interest out of capital ▪ To declares that the affairs of the company ought to be investigated by an inspector appointed by the Government ▪ Removal of auditor ▪ Conversion of company into public/private limited company ▪ Commence winding up and appointment of liquidator ▪ Authorize liquidator to accept shares, etc. as consideration for sale of property of company ▪ Substitute memorandum and articles for deed of settlement**	21 days before the meeting.
	Extraordinary Resolution (requires vote from shareholders holding minimum 75% shares)	▪ Removal of any Director ▪ Declare that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up ▪ Commence winding up and appointment of liquidator ▪ Propose arrangement with creditors ▪ Sanction of scheme of liquidation	21 days before the meeting.

* The only difference between the process of the special resolution and the process of the extraordinary resolution is that the special resolution should provide agenda in the meeting notice.

** This is applicable to companies intending to substitute their bylaws by way of a deed of settlement among the shareholders rather than altering the Articles.

9. Are there any specific statutory rights available to minority shareholders available in your jurisdiction?

Following protections are available for minority shareholders of companies incorporated in Bangladesh:

- *Derivative Actions*: Shareholders having at least 10% interest in any class of shares may bring law suit on behalf of the company against the directors, management, other shareholders or other third party when the company has a valid cause of action but fails to bring a law suit.
- *Minority Interest*: Any shareholder or debenture holder may bring an action against the company if there is any discriminatory act or act unfairly prejudicial to his/her interest by the company.
- *Class Action*: Shareholders having at least 10% of a specific class of shares can bring an action against the company in case the company makes any variation to such shareholders' rights without their prior consent.

The default position under law is that no decision of the company requires unanimous approvals of all shareholders. However, shareholders can agree on veto rights of minority shareholders through contracts and such rights will be recorded in the articles of association of the company.

10. Is it possible to impose restrictions on share transfers under the corporate documents (e.g., articles of association or its equivalent in your jurisdiction) of a company incorporated in your jurisdiction?

It is possible to impose restrictions on share transfers under the corporate documents (e.g., articles of association or its equivalent in Bangladesh) of a private company incorporated in Bangladesh.

11. Are there any specific concerns or other considerations regarding the composition, technical bankruptcy and other insolvency cases in your jurisdiction?

No.

E. Acquisition

12. Which methods are commonly used to acquire a company, e.g., share transfer, asset transfer, etc.?

Acquisition of shares (transfer and issue of shares): An acquisition of shares can take place either by subscribing to fresh equity in a company or by purchasing existing equity in the target from another shareholder. For publicly listed companies, shares may be bought either:

- through the stock exchange at market price;
- through the stock exchange at a negotiated price; or
- by private arrangements (generally known as 'private investment in public equity').

Merger (amalgamation): The target merges into the acquiring entity following a court order and the target is then dissolved. All assets and liabilities of the target vest in the buyer. The purchase consideration is paid by the buyer to the shareholders of the target, either by allotting shares or by paying cash for the value of their shares.

Demerger: This structure is adopted to avoid the tax inefficiencies of an itemised sale of assets. The target's undertaking or division is demerged from the target under a court order and then transferred to the buyer.

Asset/liability transfer (itemised sale of assets and liabilities): Specific assets and liabilities are sold under a sale and purchase agreement with an itemised list of assets and liabilities to be transferred.

Asset transfer (sale as a going concern): All assets and liabilities of an entity or a business division or plant are sold as a going concern under this structure. Like amalgamation, this requires approval from the court.

What are the key differences and potential advantages and disadvantages of the various structures?

Share purchase: A share purchase involves a very simple and straightforward process, which is easy to execute and implement. The only tax incidence is stamp duty, levied at 1.5% of the purchase consideration; no other direct or indirect tax is payable. There is minimal disruption to the target business in a share purchase. A share purchase does not trigger the need to obtain fresh consents or licences. There is no question of transferring employees. The only risk is that all liabilities of the target, disclosed or undisclosed, are also transferred automatically; but this can be addressed through indemnification.

Merger/demerger/sale as going concern: Taxes can be avoided, but the process is complex and time consuming, and the scheme requires approval by 75% of the creditors. Share acquisition from dissenting shareholders may also be considered as a potential risk. On the positive side, all assets and liabilities – including employees – are automatically transferred; and there is no need to obtain fresh consents or licences.

Asset transfer: On the positive side, liabilities may be segregated and thus are not automatically transferred. The scope and extent of the due diligence process are reduced, and the transaction can thus be implemented relatively quickly. However, this structure is tax inefficient, as various stamp duties (some at a rate of 3%) and direct or indirect must be paid. All operational licences must be procured afresh. The transfer of employee is required by way of termination followed by reappointment.

13. What are the advantages and disadvantages of a share purchase as opposed to other methods?

A. **Share Purchases: Advantages/Asset Purchases: Disadvantages**

A share purchase is a very simple and straightforward process that is easy to execute and implement for the following reasons:

- Value added tax ("**VAT**") and other indirect taxes are not payable. The only incidence of indirect transfer tax is stamp duty, levied at 1.5% of the purchase consideration. Both VAT and a higher rate of stamp duty are levied on an itemised sale of assets.
- There is minimal disruption to the target business in a share purchase. A share purchase does not trigger the need to obtain fresh consents or licences. An asset transfer necessitates obtaining fresh business licences and consents.
- There is no question of transferring employees. In addition, no employee consent is required unless the employment agreement states otherwise. Other than slump sale, in an asset purchase, the employees must be terminated and then rehired, as local laws do not acknowledge transfer of employment.

B. **Share Purchases: Disadvantages/ Asset Purchases: Advantages**

The following must be considered:

- In an asset purchase the liabilities are not automatically transferred. Assets can also be specifically selected in an itemised sale, thereby mitigating a number of legal risks for the buyer. This will in turn reduce the scope and extent of the due diligence process over the target company. Therefore, an asset purchase can be implemented relatively quickly.

- If the asset purchase is structured as a slump sale, there can be significant direct tax and indirect transfer tax savings.
- Carry-forward and setting-off of losses is permitted in asset sales, facilitating further tax benefits to the buyer.

14. What are the approvals and consents typically required (e.g., corporate, regulatory, sector based and third-party approvals) for private acquisitions in your jurisdiction?

Approvals under the Foreign Exchange Regulations Act: There are no restrictions under the foreign exchange regime on general acquisitions and issue of shares of a target. However, all transfers involving foreign shareholders must take place at a fair price. In the case of foreign sellers up to BDT 10 million sale proceed may be repatriated without valuation and up to BDT 100 million sale proceed may be repatriated by the bank based on valuation by a chartered accountant / merchant bank without central bank approval. Prior approval must be sought from the central bank for repatriable sale proceed over BDT100 million. In other cases involving local shareholder to foreign buyer transfer and foreign seller to foreign buyer transfer, a simple post-closing notification to the central bank along with the valuation report shall suffice.

The fair market valuation must be conducted by an accredited chartered account or a licensed bank, following an approximate mix of the asset-based, market value and income approaches. However, such valuation is exempted to repatriate the sale proceeds if the fair value of the shares is determined on the basis of the NAV approach, based on the latest audited financial statements together with tax returns without any consideration to intangible assets. Under such circumstances an undertaking is issued by the target specifying that the impairment of assets have been adjusted in arriving at the NAV; and the remitting bank is satisfied that there is no abnormal growth in total assets in any of the last three years, particularly in the last year.

Approvals from the original company jurisdiction of the high court: Merger and sale as a going concern both require approval from the original jurisdiction of the high court. Amalgamations in Bangladesh must also be sanctioned by the high court.

Approval from the Bangladesh Security and Exchange Commission: A listed company requires approval from the Bangladesh Security and Exchange Commission to issue any capital if its total paid-up capital would exceed BDT 100 million as a result.

Regulatory approval: In certain industries where share lock-in applies, M&A approval must also be obtained from the regulators – for example for financial institutions, insurance companies, telecommunication companies, power generation companies etc.

Post-closing: Certain perfections for the transaction post-closing must also be made at the Office of the Registrar of Joint Stock Companies and Firms and BIDA followed by a notification to the central bank.

15. What are the regulatory competition law requirements applicable to private acquisitions in your jurisdiction?

The Competition Commission of Bangladesh, constituted under the Competition Act, 2012, is responsible for supervising M&A activity in Bangladesh. However, the provisions set out in the Competition Act are currently operating in reactive mode pending the incorporation of the underlying competition rules needed to impose proactive measures.

Any combination (including any M&A transaction) that would have an adverse effect on competition is prohibited. The commission has wide powers, among other things, to investigate any combination, either on its own motion or following a complaint from any third party. Statutory and regulatory authorities can seek a reference from the commission to determine whether a proposed combination is anti-competitive. The commission will issue its decision within 60 days.

The commission is yet to quantify the meaning of a 'significant adverse effect' and the relevant thresholds for mandatory approval. Until these rules have been set out, the commission enjoys the discretion to decide on the possible effects of any combination. If, during or after completion of an investigation, the respondent, the commission and the complainant agree on the terms of an appropriate order, the commission will confirm the agreement as a consent order, subject to:

- publication of the order in the *Official Gazette* within seven working days for comments within a period of 30 days;
- the commission receiving, reviewing and hearing representations from third parties with material interest;
- the consent order being made as agreed and proposed with or without changes; and
- the commission's refusal to issue the order if additional information warrants this.

16. Are there any specific rules applicable for acquisition of public companies in your jurisdiction?

Where there is no additional requirements for public limited companies, deal process for listed companies is as follows:

Purchase through exchange: The typical timetable for an offer is one week, as follows:

- Once an irrevocable offer has been filed, together with the relevant documents, with a corresponding stock broker or merchant bank, this notice will be circulated immediately.
- The corresponding stock broker or merchant bank will complete the purchase within a week and report to the regulator. The offer may be cancelled if there is no seller for the shares.

Private purchase: The typical timetable of an offer is one week, as follows:

- A detailed sale and purchase agreement is executed between the seller and the purchaser.
- The seller gives an irrevocable sell order to the corresponding broker or merchant bank.
- The broker freezes the shares and sends a confirmatory notice to the exchange.
- The purchaser deposits 20% of the purchase price at the exchange by cheque.
- The exchange immediately circulates the news.
- Once the news has been circulated, the broker will complete the transaction.
- On completion, the cheque will be returned to the purchaser.

➢ **Acquisition through building up a stake in the target before and/or during a transaction process;**

A purchaser cannot build up a stake during the transaction process. Before this, however, it can build up a stake as long as it holds less than 10% of the shares in the target.

Under the Bangladesh Securities and Exchange Commission (Substantial Acquisition of Shares and Takeovers) Rules, 2018, the acquisition of shares corresponding to 10% or more of the issuer's total voting shares is considered a 'substantial acquisition' of shares. The following activities require disclosure in the stock exchange's online news circular:

- any buy order or transaction that would result in this 10% threshold being met or exceeded;
- any purchase of shares corresponding to 10% or more of the voting rights in the issuer; or
- once an initial shareholding corresponding to a 10% or more of the voting rights in the issuer has been achieved, any further acquisition of shares.

➢ **Squeeze-out of any remaining minority shareholders:**

There are no provisions on the squeeze-out of any remaining minority shareholders and there is no possibility for minority shareholders to 'sell out'. However, once a consortium ends up owning 90% of the shares in the target, it can purchase the remaining 10% at the price below (whichever is highest) and delist the company:

- the last trade price;
- the weighted average price over the last six months; or
- the NAV per share, as per the latest financial statements.

17. Is there a requirement to disclose a deal, for instance to regulatory authorities? Is it possible to keep a deal confidential?

Other than for publicly listed companies, there is no such disclosure requirements.

18. Can sellers be restricted from shopping around during a negotiation process? Is it possible to include break fee or other penalty clauses in acquisition documents to procure deal exclusivity?

Yes, sellers may be restricted from shopping around during a negotiation process by way of executing an exclusivity clause.

There is no express prohibition on break fee payment arrangements in Bangladesh. However, this is not common practice, although in some cases a break cost payment obligation is incorporated in the sale and purchase agreement.

Generally, when a sale and purchase agreement is short of closing, the defaulting party is required to pay the non-defaulting party the break cost. In the case of the purchase of shares from other shareholders, the seller and/or the buyer assumes such liability. In case of asset sell and share issue, the target and/or the buyer assumes such liability.

However, as 'break cost' as a term is not defined in the foreign exchange regulations, it is difficult to make such arrangements in practice. In such cases the parties often agree to pay accrued management fees in the form of constancy or legal fees.

19. What are the conditions precedent in a typical acquisition document? Is it common to have conditions to closing such as no material adverse change?

Common conditions precedent in share sale agreements include as listed below, while it is also common to have conditions to closing such as no material adverse change:

- Obtaining the necessary corporate approvals including resolutions from the board of directors.
- Completion of due diligence to the satisfaction of the buyer.
- Obtaining the necessary regulatory approvals, if relevant.
- Obtaining approvals (or non-objections) from shareholders with pre-emptive rights, customers, suppliers and financial institutions, if applicable.
- Obtaining a valuation certificate/approval from the central bank for repatriation if the seller is a non-resident.
- Identification of an escrow agent if the transaction contemplates interim price adjustment.
- Representations and warranties being true and correct as on the closing date.
- Settlement of certain identified litigations, tax, disputes, regulatory issues/proceedings or providing adequately for their resolution.
- Delivery of the physical shares along with duly executed share instruments and affidavits or electronic transfer in a depository account.
- Resignation of directors nominated by the seller, if relevant.
- Payment of the sale consideration into the buyer's bank account.

20. What are the typical warranties and limitations in acquisition documents? Is it common to obtain warranty insurance?

Seller warranties or indemnities are typically included in an acquisition agreement. These cover areas such as:

- Title and marketability to shares, assets and properties of the target.
- Shares, assets and properties, free of any encumbrances.
- Organisation and authorities of the target company and the sellers.
- Approvals obtained to complete the transfer.
- Capitalisation of the target.
- Lack of conflicts or consents.
- Financial statements.
- Undisclosed liabilities.
- Absence of certain changes, events and conditions.
- Material contracts.
- Condition and sufficiency of business assets.
- Inventory.
- Accounts receivable and accounts payable.
- Customers and suppliers.
- Insurance.
- Legal proceedings and governmental orders.
- Compliance with laws and permits.
- Employee benefit plans and employee matters.
- Real property and leases.
- Taxes.
- Books and records.
- Related party transactions.
- Bank accounts and power of attorney.
- Environmental matters.

The indemnity clause allows the holder to require an indemnity providing that it be compensated for any losses or damages. However, warranty insurances are not common in local context.

The following limitations are generally imposed:

- limitation periods overriding statutory limitations;
- a cap on damages or compensation payable;
- the exclusion of indirect damages;
- matters disclosed in a disclosure schedule; and
- minimum thresholds for making claims.

21. Is there a requirement to set a minimum pricing for shares of a target company in an acquisition?

In general, there is no such requirements other than for tax purpose for which purchase consideration cannot be below 25% of fare price. However, for transfers involving non-residents, purchase must be done at fair market value.

22. What types of acquisition financing are available for potential buyers in your jurisdiction? Can a company provide financial assistance to a potential buyer of shares in the target company?

Under the Companies Act, a company in Bangladesh is prohibited from providing any financial assistance, whether directly or indirectly, to a potential buyer of shares in that company. General source of fund for acquisition in Bangladesh comprises of own fund and debt / bank financing.

23. What are the formalities and procedures for share transfers and how is a share transfer perfected?

Formalities involved specifically for listed companies have been described in 16 above. At closing, the following steps are generally followed by companies:

- A fair market valuation is conducted by a chartered accountant for transfers involving non-residents.
- Lenders consent for transfer is obtained by the target company.
- Sale and purchase agreement, share transfer instruments and seller's affidavits are executed by the relevant parties and exchanged as CPs. Share transfer instruments and seller's affidavits require notarization and legalization from Bangladesh embassy in case of non-resident sellers.
- Conditions precedent satisfaction letter, along with documents evidencing the satisfaction of the conditions precedent are exchanged.
- Relevant corporate resolutions recording the closing of the transaction, including approval of the transfer, change in by-laws and resignation/ appointment of directors are executed.
- Central Bank approval for remittance to a foreign seller is obtained, if relevant.
- Bank remittance certificate from the receiving bank.
- Share transfer instruments and seller's affidavits are lodged and stamped through regulator and then filed with the target company.
- Target company issues share certificates in favour of the buyer and inserts relevant entries in the corporate registers and books.
- Resignation of the seller's nominees from the board of directors and appointment of the buyer's nominees to the board of directors are lodged with the regulator.

- Notification to the central bank about any change in foreign shareholding.

The documents in an asset sale are more or less the same. A scheme of arrangement must be filed in court with respect to a merger or de-merger by the target and buyer.

24. Are there any incentives (such as tax exemptions) available for acquisitions in your jurisdiction?

No such incentives other than those provided in double taxation avoidance agreements.

F. Enforceability

25. Can acquisition documents be executed in a foreign language?

Acquisition documents must be executed either in Bengali or English language.

26. Can acquisition documents be governed by a foreign law?

Bangladesh courts uphold a choice of foreign law and party autonomy as agreed between the parties when entering into the contract. It was decided in PLD 1964 Dacca 637, that when the intention of the parties to a contract is expressed in words, this express intention determines the proper law of the contract and overrides every presumption. A share purchase agreement can provide for a foreign governing law if the parties agree to it. In practice, if all the parties to the agreement are Bangladeshi, Bangladesh law is adopted as the governing law.

27. Are arbitration clauses legally permissible or generally included in acquisition documents?

Yes, arbitration clauses are legally permissible and generally included in acquisition documents. Bangladesh arbitration law permits enforcement of foreign arbitral awards in Bangladesh.

Parties can also agree to waive certain rights under the Arbitration Act.

28. Are there any specific formalities for the execution of acquisition documents? Is it possible to remotely/digitally sign documents?

Acquisition documents may be executed remotely / as digitally sign documents except for the share transfer instruments and seller's affidavit which must be wet signed.

G. Trends and Projections

29. What are the main current trends in M&A in your jurisdiction?

Bangladesh has one of the most liberal M&A regimes in the world and almost zero restrictions on country-specific FDI. This notwithstanding, however, this market of around 200 million consumers has seen little of the surge in M&A deals in evidence elsewhere in the world in recent years, and even less so since the start of the COVID-19 pandemic. Some global mergers and transactions have involved assets located in Bangladesh, but there are few actual acquisitions of local businesses. However, the country is an attractive destination for FDI, which suggests that there is still space in the market for greenfield investments rather than brownfield projects.

30. Are any significant development or change expected in the near future in relation to M&A in your jurisdiction?

31.

The Competition is expected to enact a M&A rule soon, which shall outline mandatory filing procedures, thresholds and other important requirements for such transactions.

BOLIVIA

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A. General

1. What is the main legal framework applicable to companies in your jurisdiction?

The main framework applicable to companies in Bolivia is the Commercial Code, which contains the most important norms regarding company structures, obligations, and M&A.

Companies participating in specific industries (financial entities, telecommunications, energy, oil & gas, and others) are also subject to specific regulations and supervision by State authorities. These regulations may contain specific provisions relevant for M&A analysis.

2. What are the most common types of corporate entities (e.g., joint stock companies, limited liability companies, etc.) used in your jurisdiction? What are the main differences between them (including but not limited to with regard to the shareholders' liability)?

According to a 2021 report by the Registry of Commerce, there are 2 (two) types of corporate entities which are most used in Bolivia (excluding *sole proprietorship* of a business, which is the most common type of business structure in the country). The first one is "Sociedad de Responsabilidad Limitada" (Limited Liability Partnership ("**LLP**")); and the second one is "Sociedad Anónima" (Joint Stock Companies ("**Corporation**")).

Both kinds of corporate entities provide limited liability to the shareholders. The main differences are:

LLPs require a minimum of 2 (two) partners and may have a maximum of 25; on the other hand, the Corporations must have at least 3 (three) shareholders, and there is no limit regarding the number of shareholders of the company.

Shares in Corporations are freely transferable, while any modification of the partners structure of an LLPs must be approved by the partners.

Finally, with regards to the administration, the LLP can be managed by the partners or a designated manager, while the Corporation is managed by a board of directors. In general, Corporations are subject to more corporate obligations than LLPs.

B. Foreign Investment

3. Are there any restrictions on foreign investors incorporating or acquiring the shares of a company in your jurisdiction?

There is a constitutional limitation regarding private ownership (foreign or national) in Bolivia's natural resources, particularly hydrocarbons and mining, as a result of which foreign entities must enter into agreements with state-owned hydrocarbons or mining companies to participate in these industries.

In addition, foreigners may not own real estate property within 50 kilometers of Bolivian international borders.

4. Are there any foreign exchange restrictions or conditions applicable to companies such as restrictions to foreign currency shareholder loans?

No, there are no restrictions for companies regarding foreign exchange.

5. Are there any specific considerations for employment of foreign employees in companies incorporated in your jurisdiction?

Under the General Labor Law ("*Ley General del Trabajo*") Supreme Decree N°26877 the number of foreign employees in Bolivian companies cannot exceed 15% of the total work force. Foreigners must obtain a specific purpose visa to work in the country.

C. Corporate Governance

6. What are the standard management structures (e.g., general assembly, board of directors, etc.) in a corporate entity governed in your jurisdiction and the key liability issues relating to these (e.g., liability of the board members and managers)?

The standard management structures are the following:

For LLPs the General Assembly of Partners ("*Asamblea General de Socios*") is the main governing entity of the company, (appointment of a board of directors and general manager is optional).

For Corporations, the Shareholder´s Assembly ("*Junta de Accionistas*") is the most senior governing entity of the company and must gather at least once after the end of every fiscal year, to make relevant decisions (review the financial statements, appoint board members, and others). The Corporation must also have a board of directors, which is the main executive body of the company. Although appointing a general manager is common, it is not mandatory, as representation of the corporation is automatically granted to the president of the board.

7. What are the audit requirements in corporate entities?

All companies must file their financial statements annually. Some companies subjected to specific industry regulations (e.g., financial services), must go through external audits every year to ensure transparency.

D. Shareholder Rights

8. What are the privileges that can be granted to shareholders? In particular, is it possible to grant voting privileges to shareholders for appointment of board members?

Besides specific statutory rights, shareholders may contractually agree to specific privileges (such as the right of first refusal before transferring shares to third parties) in a share purchase agreement. There are no restrictions regarding privileges which can be granted to shareholders.

Voting privileges for appointment of board members can also be contractually negotiated and enforced.

9. Are there any specific statutory rights available to minority shareholders available in your jurisdiction?

The Commercial Code grants the following statutory rights to minority shareholders who represent at least 20% of the share capital of the company:

- Appointment of one third of the board of directors.

- Appointment of a comptroller

10. Is it possible to impose restrictions on share transfers under the corporate documents (e.g., articles of association or its equivalent in your jurisdiction) of a company incorporated in your jurisdiction?

Articles of incorporation may contain conditions on share transfer, but not unreasonable limitations, as such limitations would be considered in violation of the Commercial Code.

More stringent restrictions may be negotiated and contractually agreed between shareholders in share purchase agreements and enforced under contractual law (not business law).

11. Are there any specific concerns or other considerations regarding the composition, technical bankruptcy, and other insolvency cases in your jurisdiction?

No specific considerations.

E. Acquisition

12. Which methods are commonly used to acquire a company, e.g., share transfer, asset transfer, etc.?

The number of publicly traded firms in Bolivia is small. Share transfers are more common than asset transfers.

13. What are the advantages and disadvantages of a share purchase as opposed to other methods?

Asset purchase deals provide the possibility of 'cherry picking' (which requires adequate identification of the productive assets that are of interest) but may take more time than a share purchase and may involve a tax impact on the value of the assets being acquired.

On the other hand, share purchases are faster. In the case of Corporations, share purchases do not require the registration of the transfer in public records.

14. What are the approvals and consents typically required (e.g., corporate, regulatory, sector based and third-party approvals) for private acquisitions in your jurisdiction?

Private acquisitions in Bolivia are generally not subject to specific merger control approvals. On the other hand, acquisition in specific regulated industries (financial entities, telecommunications, energy, oil & gas, and others) are subject to approval of the regulatory authorities overseeing those industries.

15. What are the regulatory competition law requirements applicable to private acquisitions in your jurisdiction?

The State Constitution prohibits the monopolization of companies as any other association of national or foreigner persons or companies that intend to get exclusivity on providing goods or services. Also, the Supreme Decree N°29519 regulates competition and consumer protection against harmful practices that negatively influence the market. Other than that, mergers and acquisitions in the private sector do not require prior authorization of governmental entities (except for companies operating in specific industries, as explained above).

16. Are there any specific rules applicable for acquisition of public companies in your jurisdiction?

The number of publicly traded companies in Bolivia is small. Acquisition of public companies would require disclosure of ownership before the Bolivian Stock Exchange.

17. Is there a requirement to disclose a deal, for instance to regulatory authorities? Is it possible to keep a deal confidential?

Mergers and acquisitions in specific industries (financial entities, telecommunications, energy, oil & gas, and others) must be disclosed to the corresponding regulatory authorities and cannot be kept confidential.

18. Can sellers be restricted from shopping around during a negotiation process? Is it possible to include break fee or other penalty clauses in acquisition documents to procure deal exclusivity?

Yes, specific provisions regarding the project may be contractually agreed by the parties.

19. What are the conditions precedent in a typical acquisition document? Is it common to have conditions to closing such as no material adverse change?

Conditions precedent commonly include performance of covenants, issuance of legal opinions, and execution of related contracts.

“Material adverse event” clauses are also commonly used.

20. What are the typical warranties and limitations in acquisition documents? Is it common to obtain warranty insurance?

Typical warranties include material contracts, litigation intellectual property, licenses and permits, anti-money laundering, environmental matters, taxes, employees, real property, among others.

It is not common to obtain warranty insurance.

21. Is there a requirement to set a minimum pricing for shares of a target company in an acquisition?

Shares cannot be priced lower than the nominal amount declared in the share certificates.

22. What types of acquisition financing are available for potential buyers in your jurisdiction? Can a company provide financial assistance to a potential buyer of shares in the target company?

Potential buyers usually resort to financing from Bolivian banks. More complex structures (leveraged buyouts for example) are not common.

23. What are the formalities and procedures for share transfers and how is a share transfer perfected?

Stock certificates must be endorsed on the back of the document and signed by the seller. In order to complete the transfer, the buyer of the shares must present the certificates before the secretary of the company, who must record the transaction in the shareholders' registration book. No further formalities are needed.

24. Are there any incentives (such as tax exemptions) available for acquisitions in your jurisdiction?

There are no incentives.

F. Enforceability

25. Can acquisition documents be executed in a foreign language?

Share purchase agreements executed in foreign languages can be executed in Bolivian courts, following a judicially mandated translation of such documents.

26. Can acquisition documents be governed by a foreign law?

While acquisition documents may be governed by foreign law, if the agreements are executed in Bolivia, Bolivian courts would disregard the choice of law provisions and apply Bolivian law.

27. Are arbitration clauses legally permissible or generally included in acquisition documents?

Arbitration clauses are legally permissible and commonly included in acquisition documents.

28. Are there any specific formalities for the execution of acquisition documents? Is it possible to remotely/digitally sign documents?

Stock certificates must be transferred by endorsement in the back of the document. Besides this, there are no formalities for the execution of acquisition documents.

Share Purchase Agreements may be remotely and digitally signed.

G. Trends and Projections

29. What are the main current trends in M&A in your jurisdiction?

The Bolivian mining industry has seen M&A activity in the last couple of years.

30. Are any significant developments or changes expected in the near future in relation to M&A in your jurisdiction?

There is a draft bill for a new Commercial Code, which, if approved, may introduce significant changes impacting mergers and acquisitions (M&A). The proposed code aims to modernize and streamline the country's commercial regulations, including those that govern corporate transactions, shareholder rights, and corporate governance. While the potential changes could impact M&A processes by clarifying or restructuring regulatory requirements, there is currently no set timeline for its approval. Consequently, legal professionals and businesses are uncertain about when these updates will take effect and what the final changes will entail.

BOSNIA AND HERZEGOVINA

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A. General

1. What is the main legal framework applicable to companies in your jurisdiction?

Company law is regulated by three entity/district level laws: Company Law of Federation of Bosnia and Herzegovina ("**FBH**"), Company Law of Republika Srpska ("**RS**") and Company Law of Brčko District ("**BD**").

2. What are the most common types of corporate entities (e.g., joint stock companies, limited liability companies, etc.) used in your jurisdiction? What are the main differences between them (including but not limited to with regard to the shareholders' liability)?

Available corporate forms are: a) general partnership (at least two members, who are jointly and severally liable for the liabilities of the company); b) limited partnership (a company in which one or more members are jointly and severally liable for the company obligations with their entire property - general partners, and one or more members are liable for company obligations only up to the amount of their contributions as entered into court register - limited partners); c) joint stock company (a company whose registered capital is divided into stocks) and d) limited liability company (a company whose registered capital is divided into shares).

Limited liability companies and joint stock companies are the most common legal forms present in Bosnia and Herzegovina. The main differences between the two is the minimum capital, mandatory corporate bodies and the fact that certain activities may only be performed by a joint stock company.

B. Foreign Investment

3. Are there any restrictions on foreign investors incorporating or acquiring the shares of a company in your jurisdiction?

In principle, there are no restrictions and foreign investors are granted the same rights as the local investors. The only limitation provided by the law is that foreign equity ownership of business entity engaged in the production and sale of arms, ammunition, explosives for the military use, military equipment and public broadcasting shall not exceed 49% of the equity in that business entity. In case of investing in these sectors, foreign investor must obtain prior approval from the competent authority.

4. Are there any foreign exchange restrictions or conditions applicable to companies such as restrictions to foreign currency shareholder loans?

The general restriction is that only local currency ("**BAM**") can be used in internal payment transactions. Under Bosnia and Herzegovina financial regulation, foreign currency shareholder loans are defined as credit agreements. Crediting in foreign currency is allowed in Bosnia and Herzegovina but under the condition that both payment and collection transactions are being made in local currency.

5. Are there any specific considerations for employment of foreign employees in companies incorporated in your jurisdiction?

Foreign employees must obtain work permit if they intend to work in Bosnia and Herzegovina. The authority responsible for employment of foreigners' issues work permit based on the established quota of work permits or as a working permission that is not counted in the quota. The work permit quota is the number of work permits that can be issued in Bosnia and Herzegovina in one year to certain professions, i.e., to foreigners who perform certain activities that require a work permit to work in Bosnia and Herzegovina.

The annual quota of work permits is determined by the Council of Ministers in accordance with the migration policy and taking into consideration the situation in the labor market. Within the annual quota of work permits, the Council of Ministers determines the activities and professions in which it is allowed to employ foreigners, the number of work permits for each activity and determines the territorial distribution of work permits according to expressed needs.

When issuing work permits, priority shall be given to foreigners who already have temporary resident permit in Bosnia and Herzegovina on the basis of bringing family together or the foreigner with temporary residence permit in Bosnia and Herzegovina.

C. Corporate Governance

6. What are the standard management structures (e.g., general assembly, board of directors, etc.) in a corporate entity governed in your jurisdiction and the key liability issues relating to these (e.g., liability of the board members and managers)?

The corporate structure of limited liability companies have, in principle, the following outline (with some minor differences depending on which entity the company is located):

- Shareholders Assembly (mandatory) – consists of all shareholders of a company.
- Supervisory Board (not mandatory, unless the company has at least two shareholders and at least 1,000,000 BAM capital) – minimum three members, if not appointed its authorities are executed by Shareholders Assembly
- Management – must have at least one Director, and can have one or more Executive Directors. Scope of

authorizations of each is inscribed into the court registry.

- Procurator (not mandatory) – procurators are authorized representatives, inscribed into the court registry as holders of special proxy for representation of the company. Procurators may not transfer their authorities to third persons.

7. What are the audit requirements in corporate entities?

Internal audit is not obligatory in limited liability companies but must be established in joint stock companies (all joint stock companies in FBH, and only public joint stock companies in RS). The external audit is obligatory for certain companies (turnover and size as determined by the applicable laws on accounting).

D. Shareholder Rights

8. What are the privileges that can be granted to shareholders? In particular, is it possible to grant voting privileges to shareholders for appointment of board members?

Each shareholder has such number of votes in the shareholders assembly that corresponds to its participation in the share capital, and the law does not provide privileges to certain shareholders for appointment of board members. However, we have seen cases where this was implemented in the corporate documents of a company and enforced through the court.

9. Are there any specific statutory rights available to minority shareholders available in your jurisdiction?

Each of the Company's Laws guarantees certain rights to the minority shareholders. Although the exact scope of minority protection varies from entity to entity, minority protection includes the right to request the convocation of the shareholders assembly, right to buy out of the shares, extraordinary audit etc. In addition, all shareholders are entitled to (upon fulfilment of legally prescribed conditions and within the deadlines provided by the law) initiate the process of challenging the decisions of the shareholders assembly before the competent court.

10. Is it possible to impose restrictions on share transfers under the corporate documents (e.g., articles of association or its equivalent in your jurisdiction) of a company incorporated in your jurisdiction?

The only restriction stipulated by the laws is the obligation to honor the preemptive right in case of sale of the shares. In addition, although the laws do not specifically regulate it, it is common to agree in the charter documents lock-in periods, drag along/tag along rights, as well as put and call options.

11. Are there any specific concerns or other considerations regarding the composition, technical bankruptcy and other insolvency cases in your jurisdiction?

No specific considerations.

E. Acquisition

12. Which methods are commonly used to acquire a company, e.g., share transfer, asset transfer, etc.?

Both methods are used equally common – deciding factors are usually the results of the due diligence and obligations pertaining to the company.

13. What are the advantages and disadvantages of a share purchase as opposed to other methods?

Share purchase is usually a simpler process but carries more risks as all obligations of the company become, ultimately, the obligation of the purchaser. Although this is mitigated with adequate representations and warranties and escrow account, in case some hidden obligations arise they usually end up in long, complex and expensive litigation procedures.

14. What are the approvals and consents typically required (e.g., corporate, regulatory, sector based and third-party approvals) for private acquisitions in your jurisdiction?

This greatly depends on the type of the company in question as well as the sector in which it operates. If it is a regular limited liability company engaged in e.g. production of furniture it is common that no prior approvals are necessary. However, for all regulated entities (banking, finance, insurance etc.) prior approval of the regulator is necessary prior to closing the deal and is usually stipulated as a condition precedent in the transaction documents.

15. What are the regulatory competition law requirements applicable to private acquisitions in your jurisdiction?

According to Bosnian Competition Act, a merger is required to be notified by parties if the following conditions are met: a) total annual income of all participants to the concentration achieved by selling goods and / or services on the world market is KM 100,000,000 (approx. EUR 51 million) according to the final account in the year preceding the merger, or b) total annual income of each of at least two participants to merger achieved by selling goods and / or services on the market of Bosnia and Herzegovina is at least BAM 8,000,000 (approx. EUR 4.1 million) in the year preceding the merger, or if their joint share in the relevant market exceeds 40%.

16. Are there any specific rules applicable for acquisition of public companies in your jurisdiction?

Acquisition of public companies is done by a privatization procedure. Each of the privatization agencies determines its privatization plan and implements it based on the conditions provided in it.

17. Is there a requirement to disclose a deal, for instance to regulatory authorities? Is it possible to keep a deal confidential?

If the entities in question are non-regulated entities, it is possible to keep the deal confidential. However, for publicly held joint stock companies and all regulated entities there are reporting obligations to both the stock exchange and the relevant regulator authority and it is not possible to circumvent these obligations.

18. Can sellers be restricted from shopping around during a negotiation process? Is it possible to include break fee or other penalty clauses in acquisition documents to procure deal exclusivity?

This is not specifically regulated by our laws, so the parties are free to agree on the terms of the negotiations.

19. What are the conditions precedent in a typical acquisition document? Is it common to have conditions to closing such as no material adverse change?

Commonly, conditions precedent include remedying the problems identified in course of the due diligence process, obtaining relevant approvals for closing of the deal (competitions and/or regulatory approvals) and delivery of all documents needed for closing. Material Adverse Change ("**MAC**") clauses used to be common conditions precedent in the transaction documents, but considering the recent market developments and instabilities, the sellers have made a strong push against MAC clauses and these are seen much less nowadays.

20. What are the typical warranties and limitations in acquisition documents? Is it common to obtain warranty insurance?

This greatly depends on the sector in which the target is active, whether it is a full or partial acquisition and negotiating power of the parties. Warranty insurance is not very common for deals in our jurisdiction, but we have used warranty insurance in cross-border deals affecting several jurisdictions (including Bosnia and Herzegovina).

21. Is there a requirement to set a minimum pricing for shares of a target company in an acquisition?

Minimum share price mostly applies to joint stock companies, where the price has to be determined in accordance with the trading patterns and cannot deviate from certain thresholds provided for by the Securities Law (thresholds and the ranges are regulated by each of the entity applicable securities laws).

22. What types of acquisition financing are available for potential buyers in your jurisdiction? Can a company provide financial assistance to a potential buyer of shares in the target company?

All commercially and internationally developed and common financing is also used in Bosnia and Herzegovina. It is not allowed for companies to provide financial assistance for acquisition of such company's shares. Considering that this is explicitly forbidden, any such transaction would be null.

23. What are the formalities and procedures for share transfers and how is a share transfer perfected?

Formalities for share transfer perfection depend on the court where the company is located, but in principle include signing of the share transfer agreement and amendments to the articles of association, inscription into the Book of Shares, and submission of application for registration and registration with the court.

24. Are there any incentives (such as tax exemptions) available for acquisitions in your jurisdiction?

Incentives and exemptions are provided for in the context of foreign investments. The main incentives for foreign investors relate to tax exemptions. Therefore, foreign investment will be exempted from paying import taxes. Foreign investment also may be exempted from other tax dues in line with the principle of equal treatment of domestic and foreign investors and of stimulating foreign investments.

F. Enforceability

25. Can acquisition documents be executed in a foreign language?

While it is possible to execute the acquisition documents in a foreign language, in order for them to be used, implemented or registered in Bosnia and Herzegovina, they will need to be translated into one of the official languages in Bosnia and Herzegovina. Such translation must be an official translation, i.e., undertaken by a court sworn interpreter.

26. Can acquisition documents be governed by a foreign law?

If one of the parties to the acquisition documents is foreign, then it is permissible to agree on a foreign law in all contracts, including the acquisition documents. Furthermore, a submission to a foreign material law is enforceable, however, as a rule, a Bosnian court will always be using domestic procedural law. However, there are mandatory principles of the local law which will apply even if another legal system has been (effectively) agreed upon the parties (e.g., inscription in the Land Registry, enforcement proceedings on assets in Bosnia and Herzegovina, bankruptcy and liquidation proceedings etc.

27. Are arbitration clauses legally permissible or generally included in acquisition documents?

The disputes will be resolved in a form of arbitration if the parties agreed to the jurisdiction in form of written agreement /contract, in respect of a dispute, or in respect of future disputes that may arise from contract concluded among them. The contract shall be deemed concluded also through an exchange of letters, telegrams and faxes, as well as when the arbitral jurisdiction clause is contained in the general conditions of the contract, which are an integral part of the contract. Therefore, acquisition documents can provide for arbitration clauses, if all legally set conditions have been met.

28. Are there any specific formalities for the execution of acquisition documents? Is it possible to remotely/digitally sign documents?

In order to register the share transfer before the competent court, it may be necessary (depending on the seat of the target company) to notarize the signature and/or process the acquisition documents as notarial deeds. Although it is possible that the court in question would accept notarization by a foreign notary, it is advisable to conduct the notarization locally. This can be done by the parties (or their legal representatives) personally, or by a locally appointed proxy.

G. Trends and Projections

29. What are the main current trends in M&A in your jurisdiction?

Political instability, Covid pandemic and the geo-political developments make it very difficult for Bosnia and Herzegovina to set trends in its economic development or foreign investment. Nevertheless, our economy became quite resilient to these factors and manages to slowly grow over time. We are seeing an increased interest in various sectors including tourism, IT, production and construction. All these remain steady sources of M&A activity.

30. Are any significant development or change expected in the near future in relation to M&A in your jurisdiction?

We do not expect any significant changes in the forthcoming period.

BRASIL

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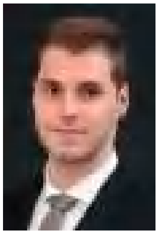

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A. General

1. What is the main legal framework applicable to companies in your jurisdiction?

Brazil is a civil law system, influenced by Roman law. The primary source of law is legislation. Case law is not generally binding, although decisions of higher courts serve as authorities for interpretation. The Brazilian legal system is based on the Federal Constitution and laws, which are subject to review by higher courts, such as the Federal Supreme Court for constitutional matters, the Superior Court of Justice for legal issues of non-constitutional nature and local State courts of appeal. The primary legislation is approved by the National Congress. The Government, the Ministers and other governmental entities can also make, mainly, delegated legislation by order. Courts can, in general, review administrative decisions.

Most civil, commercial, and criminal matters, as well as most civil and criminal procedures are regulated by general codes established as Federal Laws (the Brazilian Civil Code, the Brazilian Corporations Law, the Brazilian Penal Code, the Brazilian Civil Procedural Code and the Brazilian Penal Procedural Code), in each case as complemented by other laws, decrees and regulations. The main legal framework applicable to companies under the Brazilian national law is comprised of the Brazilian Civil Code (Federal Law No. 10,046/2002) and Brazilian Federal Law No. 6,404, dated December 15, 1976 ("Brazilian Corporations Law"). The Brazilian Corporations Law is applicable to the Sociedades Anônimas, as defined below, and the Sociedades Empresárias Limitadas, as defined below, are mainly governed by the Brazilian Civil Code, provided that certain provisions of the Brazilian Corporations Law may be applicable to Sociedades Empresárias Limitadas, as defined below, that elect to be governed in a subsidiary form by the Brazilian Corporations Law.

Brazilian monetary, fiscal, and trade policies are established and implemented at the federal level. The main body in charge of fiscal and monetary policy in Brazil is the National Monetary Council (*Conselho Monetário Nacional*). The implementation and further regulation of such policies, including the issuance of the Brazilian currency, definition of the reference interest rate and the control of foreign exchange reserves and transactions, are controlled by the Central Bank of Brazil (*Banco Central do Brasil*). The issuance, distribution, and trade of any securities in Brazil, as well as specific provisions regarding publicly-held companies, is subject to regulation and inspection by the Brazilian Securities Commission (*Comissão de Valores Mobiliários - CVM*), as well as to further self-regulation enacted by listed companies, which may vary in accordance with the governance requirement of the different listing segments.

Brazil's antitrust legal framework is regulated at a federal level by different federal laws and regulations. Brazilian Federal Law No. 12,529, dated November 30, 2011, is the primary Brazilian Antitrust Law, which implemented a pre-merger review system and improved the structure of the Brazilian Administrative Council for Economic Defense ("**CADE**").

2. What are the most common types of corporate entities (e.g., joint stock companies, limited liability companies, etc.) used in your jurisdiction? What are the main differences between them (including but not limited with regard to the shareholders' liability)?

The two most common corporate types of legal entities in Brazil are the limited liability company ("**Sociedade Empresária Limitada"** or "**Ltda.**") and the corporation ("**Sociedade Anônima**" or "**S.A.**"). In general terms, the Sociedade Empresária Limitada is the corporate type with a simpler and less expensive structure. Sociedades Anônimas are usually recommended whenever the entity will require a complex management/governance structure, stock option plans or a more sophisticated capitalization structure, and/or has plans to carry out public offerings of securities. The Sociedade Anônima, however, is subject to higher disclosure and publicity standards.

The main differences between a Sociedade Empresária Limitada and a Sociedade Anônima are the following: (i) the former is not expressly allowed to access debt or equity capital markets, except for the issuance of certain specific debt instruments, while the latter can access both markets and is the corporate type usually required for the public issuance of securities; (ii) in a Sociedade Empresária Limitada, the quotaholders have their liability limited to the quotas that they subscribed, provided that all quotaholders are jointly liable for the payment in in full of the capital stock, whereas in a Sociedade Anônima the liability of the shareholder is limited to the subscription price paid for the shares; (iii) in general, the voting power in a Ltda. is measured by the percentage of the capital stock that is held, while in a S.A. the voting power is measured by the number of shares held, provided that both corporate types may issue, respectively, preferred quotas or shares without voting rights; in addition, S.A.s may also issue plural voting shares; (iv) in a Sociedade Empresária Limitada the capital stock is divided into quotas, which are not freely transferable and need to have a par value, being possible the issuance of preferred quotas, whereas in a Sociedade Anônima the capital stock is divided into shares, which are freely transferable, except (a) in the event that the bylaws of a closely-held corporation set forth certain specific restrictions or (b) in case a shareholders' agreement sets forth such limitations and/or prohibitions; and (v) in a Ltda. the distribution of profits is allocated in accordance with the provisions of the company's articles of association, being possible to provide in the articles of association the disproportional distribution of profits, while in a S.A. certain percentages of the company's profits must have the destination that was expressly provided by the Brazilian Corporations Law, and it is not possible to have a disproportional distribution of profits, although it is possible to have preferred shares with rights to minimum and fixed dividends.

B. Foreign Investment

3. Are there any restrictions on foreign investors incorporating or acquiring the shares of a company in your jurisdiction?

In general, there are no restrictions to foreign investments in Brazil. The exceptions are:

4. Are there any foreign exchange restrictions or conditions applicable to companies such as restrictions to foreign currency shareholder loans?

All foreign exchange transactions in Brazil are carried out in a unified foreign exchange market through authorized financial institutions. This foreign exchange market encompasses the transactions of purchase and sale of foreign currency and international transfers of Brazilian Reais, which consequently includes shareholder loans in foreign currency. Such transactions are subject to the closing of currency exchange agreements with certain registered banks. Each bank has its own requirements and operational restrictions and may require certain documents and information related to the transaction and to the persons involved. Certain costs and fees may be due in view of the need of performing such currency exchange agreements, and taxes shall be levied on such transactions, which may vary according to their nature.

Subject to limitations or conditions	acquisition of rural real estate properties and real estate properties in frontier areas
	television and radio broadcasting (Law 4,117/62)
	newspapers
	navigation and cabotage
	mining and hydraulic energy companies
	medical services
	national financial system
Prohibitions	nuclear energy
	mail and telegraph services
	launch and orbital positioning of satellites

The Central Bank of Brazil is responsible for the control and registration of foreign investments, in addition to the repatriation of capital and the remittance of profits abroad. In this sense, certain foreign exchange transactions shall need to be registered with the Central Bank of Brazil.

5. Are there any specific considerations for employment of foreign employees in companies incorporated in your jurisdiction?

Yes, there are specific requirements for the employment of foreign employees in Brazilian companies. Except in case of international agreement on the contrary, the entrance of foreigners in Brazil is subject to the granting of a residence and work authorization, which must be obtained abroad, at the relevant Brazilian embassies and consulates. The residence and work authorization allow the entry and stay of foreigners in national territory, provided that the conditions set out in immigration legislation in force are met, but the relevant authorities can prevent the entry or stay of foreigners in Brazil.

In the case of individuals not hired in Brazil, but with the intention to come to Brazil on business, without the intent to immigrate, they may enter the country with a business trip visa. Moreover, in order to render services to a Brazilian company, a foreign individual must be granted with (i) one of the temporary residence and work authorizations; or (ii) a permanent residence and work authorization, depending on the length of stay.

Finally, it is worth mentioning that there is a cap on work permits set by the Brazilian Labor Code. It establishes that there is a cap of 1/3 of foreign workers for 2/3 of Brazilian workers in a company. In this sense, although the Brazilian Federal Constitution sets forth that Brazilian and foreign citizens shall be treated equally, with no distinction, the residence and work authorization application may be denied based on this assumption.

It is also important to highlight that, both for the Ltda. and the S.A., the individual appointed for management positions (i.e. manager, officer and director) may be foreigner. For a foreign individual to be appointed to a management position, such person shall grant a power of attorney to a Brazilian resident, which shall need to be valid during the entirety of their term of office plus a minimum period of three years after the end of their term of office.

C. Corporate Governance

6. What are the standard management structures (e.g., general assembly, board of directors, etc.) in a corporate entity governed in your jurisdiction and the key liability issues relating to these (e.g., liability of the board members and managers)?

Both the Sociedade Empresária Limitada and the Sociedade Anônima need to have at least one individual appointed to a statutory management position, which does not need to own an equity interest in the company and, in general, does not need to be a Brazilian citizen. For the Sociedade Empresária Limitada, such individual is referred to as a manager and his/her powers to represent the Ltda. shall be set forth in the company's articles of association, being possible to include the need of prior approval by the quotaholders for the performance of certain acts. Additionally, the Sociedade Empresária Limitada is also governed by a hierarchically superior body, that is the quotaholders' meeting (provided that, in the event of the Ltda. having only one quotaholder, such quotaholder will still be acting solely as a hierarchically superior body) and which has certain powers and authority exclusively attributed to it by law.

Regarding the Sociedade Anônima, even though they can be managed by a single individual appointed to a statutory management position, which is its officer, the Brazilian Corporations Law sets forth the legal framework for the Sociedade Anônima's governance structure, providing the possibility of existence of a board of officers and a board of directors. The existence of a board of directors is mandatory only for publicly-held corporations, companies that have authorized capital, football corporations and quasi-public companies. It shall be composed by at least three (3) members, which do not need to own an equity interest in the company and, in general, do not need to be Brazilian citizens. It is possible to appoint alternates to the directors and only up to one third (1/3) of the directors may be appointed as officers. In the event of the existence of the board of directors, it shall be the body with authority for the election of the officers.

In addition to the aforementioned bodies, the Sociedade Anônima is governed by a hierarchically superior body, that is the shareholders' meeting, which has certain powers and authority exclusively attributed to it by law, which exercises the formal control of the company. The Sociedade Anônima also has as one of its mandatory bodies the fiscal council (*Conselho Fiscal*), which, if not provided by the company's bylaws as a body that is permanently installed (being provided that in quasi-public companies and in football corporations, the fiscal council shall be permanently installed), it shall only be installed by resolution of the shareholders. The fiscal council is responsible for the supervision of the company's management, and it shall issue non-binding opinions regarding certain events. Such body shall be composed by, at least, three members and, at the most, five members, with equal number of alternates, which shall be appointed by the shareholders' meeting.

Finally, it is worth mentioning that it is possible to provide that a Sociedade Empresária Limitada shall have a board of directors and/or a fiscal council, in which case their structure and authority shall be governed by the Brazilian Corporations Law.

The management of the Sociedade Empresária Limitada and of the Sociedade Anônima, in general, shall not be personally liable for the acts performed within the limits of their function. Nonetheless, they shall be personally liable for acts performed with willful misconduct, negligence or in violation of the applicable laws and governing documents of the company and may be subject to certain liabilities in view of the piercing of the corporate veil. It is possible to hire D&O insurance for the management of the company or even enter into indemnity agreements with members of the company's management.

7. What are the audit requirements in corporate entities?

Corporate entities need to annually, within four (4) months after the end of each fiscal year, draw up their respective financial statements and management's accounts and submit them for approval by the shareholders. The fiscal council, if installed, shall issue an opinion on the financial statements and the board of directors, if existing, shall also resolve such documents.

Only due to regulatory requirements posed by specific governmental authorities, there will be a legal obligation of having the financial statements audited by an independent auditor. If the company has a board of directors, such body shall have the authority for the appointment and destitution of independent auditors.

D. Shareholder Rights

8. What are the privileges that can be granted to shareholders? In particular, is it possible to grant voting privileges to shareholders for appointment of board members?

The privileges that can be granted to shareholders that own preferred shares are the following: (i) priority in the distribution of dividends, fixed or minimum; (ii) priority in the reimbursement of capital in the event of liquidation, whether with or without a premium; (iii) other preferences and advantages that may be attributed pursuant to the company's bylaws to preferred shares without voting rights; (iv) right to elect one or more members of the management in a separate election; and/or (v) prior approval of certain amendments to the bylaws in a special meeting that are expressly indicated in the company's bylaws.

It is also possible for a non-public S.A. to issue common shares of different classes, which may grant the right to elect certain members of the company's management or attribute to it plural voting, provided that, subject to the compliance with certain requirements posed by the Brazilian Corporations Law, it is possible to maintain common shares with plural voting in publicly-held corporations.

In addition to those privileges arising from the ownership of preferred shares (which could also be applicable to Sociedades Empresárias Limitadas that have preferred quotas) or common shares of a different class, it is also possible to establish in the shareholders' agreements similar privileges, such as, for example, defining which shareholder shall be entitled to elect certain members of the management, restrictions to the election of such members, vetoes and procedures for the appointment of members of the management.

9. Are there any specific statutory rights available to minority shareholders available in your jurisdiction?

For the Sociedades Anônimas, the Brazilian Corporations Law sets forth certain privileges to minority shareholders as long as they hold at least a certain equity interest (which may be reduced by specific regulations issued by the Brazilian Securities Commission in the event that the S.A. is a publicly-held corporation), such as follows: (i) with ten percent of the company's voting capital stock, the adoption of multiple voting procedure for the election of the directors and the election of a member of the fiscal council and its alternate in a separate election; (ii) with five percent of the company's capital stock, the shareholder may (a) judicially request the presentation, in full, of the company's corporate books, (b) call a shareholders' meeting in the event that the management does not attend, within eight days, the request for the calling of a meeting that they presented, which shall be duly justified, (c) request to be called to the shareholders' meeting by registered mail, (d) request the disclosure of certain information, by the company's management, that is provided in paragraph 1 of article 157 of Brazilian Corporations Law, (e) promote a derivative action against the company's management, (f) request to the fiscal council the presentation of certain information regarding matters under its authority, (g) file a judicial action for the dissolution of the company due to the non-compliance with its purpose and (h) promote a derivative action in view of damages arising from a controlling company due to the abuse of the control power; (iii) with five percent of the company's voting or non-voting capital stock, the shareholder may call a shareholders' meeting in the event that the management does not attend, within eight days, to the request for the call of a shareholders' meeting for the installation of the fiscal council; (iv) with half of a percent of the company's capital stock, the shareholder may request the addresses of the shareholders in order to proceed with a proxy request; and (v) with ten percent of the company's voting stock or five percent of the company's non-voting capital stock, the shareholder may request the installation of the fiscal council. In a publicly-held corporation, the shareholder with fifteen percent (15%) of the company's voting capital stock or ten percent (10%) of the company's capital stock may request the right to elect a director and its alternate in a separate election, provided that, if the shareholders were not able to obtain any of the aforementioned *quora*, they shall be entitled to sum the votes of common and preferred shares, in which case a combined threshold of ten percent (10%) of the company's capital stock is required to exercise such right (it is worth mentioning that such quorum is also applicable to companies that issue only common shares, in accordance with the Brazilian Securities Commission's interpretation).

10. Is it possible to impose restrictions on share transfers under the corporate documents (e.g., articles of association or its equivalent in your jurisdiction) of a company incorporated in your jurisdiction?

Yes, it is possible to impose restrictions on share transfers under the corporate documents. In a Sociedade Empresária Limitada, the transfer of quotas to third parties (e.g., anyone that is not already a partner) is subject to the inexistence of opposition by owners of one-fourth of the capital stock, assuming that there are no other restrictions established in the Ltda.'s articles of association. In a closely-held Sociedade Anônima, its bylaws may set forth certain specific restrictions for the transfer of shares.

Both for a Sociedade Empresária Limitada and for a Sociedade Anônima, its partners may enter into a quotaholders' agreement and a shareholders' agreement, respectively, in order to set forth additional restrictions for the transfer of equity interests.

11. Are there any specific concerns or other considerations regarding the composition, technical bankruptcy and other insolvency cases in your jurisdiction?

Considering the changes implemented by the Federal Law No 14,112/2020 that amended the Federal Law 11,101/2005 ("**Bankruptcy Brazilian Law**" or "**BBL**"), the most relevant comments and concerns about bankruptcy and insolvency proceedings in our jurisdiction are the following:

Competent Courts. The competent court for the filing of an insolvency proceeding is the court located in the jurisdiction of the debtor's main place of business. In some cases, the judge might not be completely familiar with insolvency law and is not capable to issue technical decisions;

Accrual of interests. From the date of the filing of the reorganization request, the accrual of interests, penalties, adjustment for inflation, and late charges are suspended. Those amounts only become enforceable if the reorganization plan provides for their payment or if the reorganization is converted into bankruptcy;

Mutual debts – set off. Matured, clear, and certain debts are admitted for set off. In reorganization proceedings, the set-off of mutual debts must be expressly authorized in the reorganization plan. In bankruptcy proceedings, the set-off of debts due before the bankruptcy has a priority over all other creditors (unless otherwise provided by contract);

Alternative Plan. Creditors would be entitled to present an alternative plan if no reorganization plan is presented by the debtor to vote within the 180 days stay period, or if, after the dismissal of the plan at the general meeting of creditors. There are no restrictions for foreign creditors to present an alternative plan, but in case of lack of unencumbered creditor assets in Brazil, a foreign creditor might be requested to grant collateral for purposes of supporting the alternative plan provisions. Case law of Brazilian courts is still sparse in relation to the ability of shareholders of the company under judicial reorganization to vote in the general creditors' meeting which deliberates the alternative plan submitted by creditors, considering the provision set forth in article 43 of the BBL that prevents shareholders to vote on the General Creditors Meeting;

DIP Lending. By providing Debtor-in-Possession (DIP) financing to the debtor, creditors usually reach the best recovery rate for their existing distressed debt and have priority in the payment of the financing provided to the debtor, according to provisions set forth in the BBL;

Consolidation. In the case of substantive consolidation, there is the immediate extinguishment of personal guarantees and intercompany claims (article 69-K of BBL). There is a clear rule providing that secured guarantees will not be affected by substantive consolidation, except with the approval of the holder (article 69-K of BBL). Also, the judge may authorize or not the consolidation of the companies which filed for judicial or out-of-court whether the legal requirements are fulfilled and according to the proof of the corporate financial relationship, pursuant to article 69-G of BBL;

Abusive vote. Voting rights are to be exercised by a creditor in the interest and in accordance with its judgment of advisability. A vote can be declared null and void when the intention to obtain an illegal advantage is clear. The voting by creditors can be virtual and may also be replaced, with the same effect, by a term of adhesion signed by creditors who meet the specific approval quorum or other mechanism deemed sufficiently secure by the judge;

Bondholder voting. Despite the law not contemplating that a trustee could split the vote among holders, Brazilian case law largely admits bondholders' 'individualization' procedures, consisting of ancillary filings for documenting and verifying claims. Without explicit authorization, trustees have generally been hesitant to vote on behalf of bondholders;

Setting aside transactions. Under the Bankruptcy Law, certain transactions carried out before the filing of the bankruptcy request (or reorganization, if afterward converted into a bankruptcy) can be declared ineffective, regardless of whether the contracting party was aware of the debtor's financial situation or the debtor intended to defraud creditors;

UPI (*Unidade Produtiva Isolada*). The Brazilian Portuguese expression for 'Isolated Production Unit' (UPI) has no legal definition, and, therefore, there is flexibility for the definition of what may be sold in reorganization proceedings as UPI. Doctrine and case law then conceptualized it as assets, tangible, or intangible. The BBL provides for no succession of all obligations, including environmental and anti-corruption laws, in the acquisition of a UPI;

Pledge and fiduciary transfer of assets (chattel mortgage). Credits secured by the fiduciary assignment are not subject to the judicial and out-of-court reorganization proceedings or liquidation, up to the amount of the value of the asset given as collateral, and therefore have super-priority treatment over other credits. If the creditor holds a pledge, it will be considered as a secured creditor in insolvency proceedings and will not be able to enforce the pledge agreement;

Fiduciary lien (chattel mortgage) of a foreign creditor. Brazilian law forbids any contractual provisions authorizing the creditor to retain the lien in case of an event of default, being all such provisions are deemed null and void (prohibition of *pacto comissório*); and

Advance on Currency Exchange Contracts (*Adiantamento de Contrato de Câmbio – ACC*). As per the BBL, the amount assigned to the debtor in national currency arising from an advance on a currency exchange contract is not subject to extrajudicial and judicial reorganization proceedings, nor bankruptcy, up to the amount of the value of the contract, and could be the object of a request for a refund in cash if the insolvency of the company is decreed. Nonetheless, the Brazilian Superior Court of Justice ruled that the charges levied on such amount are subject to the judicial recovery proceeding.

E. Acquisition

12. Which methods are commonly used to acquire a company, e.g., share transfer, asset transfer, etc.?

To acquire a company, the following methods are commonly used: (i) acquisition of shares; (ii) acquisition of assets; (iii) subscription of shares/quotas for the acquisition of the company's control; (iv) execution of convertible debt instruments or other securities convertible into equity; (v) transfer of establishment; and (vi) merger of the target company (or of part of its net equity) into another company.

13. What are the advantages and disadvantages of a share purchase as opposed to other methods?

A share purchase deal has the following advantages: (i) it is possible to acquire the totality of the capital stock of the target company and, therefore, no longer have any minority quota holders/shareholders; (ii) in case of a foreign shareholder acquiring the shares, this may be the more efficient structure from a tax perspective; (iii) in case of a S.A., there would be no corporate acts to be registered with the board of trade for the transfer; and (iv) it is easier to set forth price adjustment mechanisms.

It is worth mentioning the following disadvantages of a share purchase: (i) in the event that there is no prior corporate reorganization or contractual provisions allocating the liability of the company acquired, the acquisition of a company may result in the assumption of contingencies regarding the target company's past activities; and (ii) the acquisition of shares may trigger certain regulatory approvals, such as the one provided in article 256 of the Brazilian Corporations Law, whereas other structures would not trigger such obligations.

14. What are the approvals and consents typically required (e.g., corporate, regulatory, sector based and third-party approvals) for private acquisitions in your jurisdiction?

For private acquisitions, usually, the following approvals and consents are required (which may vary according to a specific case): (i) prior approval by CADE, the Brazilian antitrust regulatory agency; (ii) prior approval/consent by certain specific governmental authorities that the target company is subject to in view of its activities; (iii) prior approval/consent of certain creditors for the change of control of the target company; and (iv) approval by the acquiring company's shareholders/ quota holders or board of directors, as applicable.

15. What are the regulatory competition law requirements applicable to private acquisitions in your jurisdiction?

Law No. 12,529/2011 (the "**Brazilian Antitrust Law**") establishes that are reportable to CADE the transactions by which (i) two or more independent companies merge; (ii) one or more companies acquire, directly or indirectly, the control or a portion of another company (through the acquisition/exchange of shares, quotas, bonds or securities convertible into shares, or assets, tangible or intangible); (iii) one company merges into another company; or (iv) two or more companies establish a joint venture, a consortium or other type of association. Merger filings shall be submitted and approved by CADE prior to the consummation of the transaction, subject to its respective annulment and a pecuniary penalty ranging from BRL60,000.00 to BRL60,000,000.00. Until the antitrust clearance by CADE is not granted, firms cannot anticipate the effects of the merger or lessen competition between them, subject to the abovementioned penalties.

A transaction will be reportable in case it involves one party that meets the BRL750,000,000.00 threshold and, on the other side, another party that meets the BRL75,000,000.00 threshold. Both thresholds refer to gross revenues or business volume in Brazil of the groups involved in the transaction in the year preceding it. It is considered an economic group, for the purposes of verifying the thresholds indicated above: (i) companies under common control, either internal or external; and (ii) companies in which any of the companies listed in item (i) hold, directly or indirectly, at least 20% of the total or voting capital.

Regarding specifically investment funds, the economic group for calculation of the gross revenues is defined as, cumulatively: (i) the economic group of each quota holder with 50% or more of the quotas of the fund involved in the transaction, individually or through any kind of quota holder's agreement; and (ii) companies controlled by the fund involved in the transaction and the companies in which the fund holds 20% or more of the total or voting capital.

Transactions involving the acquisition of shares are subject to CADE's Resolution No. 33/2022. Such kind of transaction is only subject to CADE's review when: (i) they result in the acquisition of control (which is considered by CADE as being related to the ability to influence the

Target/Investor	Acquisition of direct or indirect shareholding in the Target	Increases of direct or indirect shareholding in the Target
Are not competitors neither operate in vertically related markets	Mandatory submission when acquiring or reaching 20% of the total or voting capital	Each further increase of 20% or more of the total or voting capital, acquired from a single seller
Are competitors and/or act in vertically related markets	Mandatory submission when acquiring or reaching 5% of the total or voting capital	Each increase of 5% or more of the total or voting capital, through one or more transactions

relevant competitive, commercial and strategic decisions of the company, such as approving investment plans and conducting day-to-day activities, not related to the mere protection of the investment), either sole or shared; and (ii) do not result in the acquisition of control, but fulfill the *de minimis* rules indicated below:

CADE's Resolution No. 33/2022 also establishes that further acquisitions of shares made by sole controllers are not notifiable.

The initial analysis of any merger filing is conducted by CADE's General-Superintendence ("**GS**"), which may approve the transaction without restrictions (which is the case in the vast majority of transactions) or forward the case to CADE's Tribunal if it considers that the transaction needs antitrust remedies or must be blocked. GS's decisions may also: (i) be challenged by third parties which are formally admitted in the process in due time; or (ii) requested for review by a member of CADE's Tribunal. There are two (2) types of review proceedings under the Brazil's Competition Law: the fast-track proceeding and the non-fast-track.

CADE's total review period under the fast-track proceeding is thirty (30) days, being provided that such type of proceeding is available to non-complex cases. CADE's total review period under the non-fast-track proceedings, which is the proceeding applicable to mergers that entail high concentration or that raise competition concerns, is two-hundred and forty (240) calendar days.

Both structural and behavioral remedies are generally accepted by CADE, although the latter is less common.

16. Are there any specific rules applicable for acquisition of public companies in your jurisdiction?

Yes, there are specific rules applicable for acquisition of the control of public companies in Brazil and for the acquisition of the control of a company by a public company in Brazil. Regarding the first case, it is worth pointing out that, pursuant to article 254-A of the Brazilian Corporations Law (as regulated by CVM Resolution 85/22), the direct or indirect sale of the control of a publicly-traded company shall only be completed under the condition (suspensive or resolutive) that the buyer calls out a tender offer (a unilateral manifestation of will by the offeror that proposes, through public means of communication and for a determined period of time, to acquire part or all of the shares issued by a certain publicly-held corporation, in view of previously established terms) for the acquisition of the shares owned by minority shareholders, in order to ensure them a minimum price equivalent to 80% of the price paid per voting share of the controlling shareholder. The rules of certain listing segments of B3 provide additional payment terms and conditions (including the purchase price per share) attributed to the shares held by minority shareholders.

Additionally, pursuant to article 256 of the Brazilian Corporations Law, the acquisition of the control of companies by a publicly-held Sociedade Anônima may be subject to the approval of its shareholders in the event that the purchase price being paid within the scope of the transaction exceeds certain thresholds.

17. Is there a requirement to disclose a deal, for instance to regulatory authorities? Is it possible to keep a deal confidential?

There may be a requirement to disclose certain aspects of the deal to CADE if the transaction is subject to its approval, or to other governmental authorities and agencies that may oversight the target company's activities. Nonetheless, it is worth mentioning that, if the corporate act that implements the transaction needs to be registered with the board of trade, such corporate act shall become public. Also, publicly-traded companies are subject to additional disclosure requirements.

18. Can sellers be restricted from shopping around during a negotiation process? Is it possible to include break fee or other penalty clauses in acquisition documents to procure deal exclusivity?

Yes, sellers can be restricted from shopping around during a negotiation process upon the execution of an instrument establishing an exclusivity for the potential buyer or seller. It is possible to include penalties in view of the non-compliance with exclusivity provisions. It is common to include break fees in the definitive documents, but such inclusion sets forth a price for not closing the deal.

19. What are the conditions precedent in a typical acquisition document? Is it common to have conditions to closing such as no material adverse change?

Typical conditions precedent are (i) obtaining clearance with certain governmental authorities, especially CADE, (ii) obtaining waiver/prior consent from creditors; (iii) implementation of corporate reorganizations that may be required; (iv) bring-down of representations and warranties; (v) inexistence of law or order that prevents of prohibits the transaction; (vi) absence of a material adverse change; (vii) renewal of certain material agreements; and (viii) certain aspects regarding the company's conduct of its business. It is common to have conditions to closing such as no material adverse change; however, the inclusion of such condition precedent is usually preceded by an extensive discussion on the definition of what would be considered as a material adverse change.

20. What are the typical warranties and limitations in acquisition documents? Is it common to obtain warranty insurance?

The most typical warranties in the acquisition of documents are (i) holdback; (ii) corporate guarantee; (iii) bank guarantee; (iv) escrow account; (v) fiduciary lien over certain assets or credit rights; and (vi) pledge over certain assets.

The most typical limitations for the acquisition of documents are (i) cap provisions; (ii) *de minimis* provisions (with or without a deductible); (iii) basket provisions; and (iv) survival provisions, to determine a time limitation for the indemnity obligation.

It is not very common to obtain warranty insurance in Brazil, although some insurance companies offer this product.

21. Is there a requirement to set a minimum pricing for shares of a target company in an acquisition?

In general, there is no obligation to set a minimum price for the acquisition of the target company's shares, however, transactions with related parties should, in principle, be made at market value, being fairly accepted to adopt the net worth value as basis for closed entities which shares have no other more reliable parameter. Please note, however, that edits to Provisional Measure 1,152 have made relevant changes to Brazilian Transfer Pricing rules, reason why intragroup transaction with foreign parties will need (assuming the conversion of the provisional measure into law) to be subject to attend its dispositions regarding price determination.

Notwithstanding the foregoing, it is important to point out some relevant tax effects that arise from the acquisition of a relevant stake. In this sense, when a Brazilian company acquires an equity interest in another Brazilian company, two methods may be used to register the acquired investment which are: (i) the cost of acquisition method; and (ii) the pick-up method. The cost of acquisition method is based on historical cost and is generally applied for temporary investments. The pick-up method is mandatory for permanent investments and is determined based on the company's net worth.

Under the pick-up method, at the time of the investment's acquisition, the acquirer shall segregate the acquisition cost in the following allotments: (i) net equity value of the acquired interest (proportional to the share of the capital acquired); (ii) built-in gains or built-in losses, equivalent to the difference between the fair market value or "FMV" (usually, the value attributed in an open market transaction in general market conditions) of the target's net assets and their book value (proportional to the interest acquired); and (iii) goodwill or bargain gain, equivalent to the difference between the investment's acquisition cost and the sum of the amounts described in items (i) and (ii).

As a rule, the amortization of built-in gains and goodwill (referred to as **"Premium"**) paid by the acquirer on the acquisition of an interest in another entity is a non-deductible expense for income tax purposes, being added back to taxable income and registered as a deferred tax asset until the sale or liquidation of the investment. Nonetheless, tax law established the possibility of the Premium amortization for tax purposes before those events, in case acquirer and target combine their net worth through a merger.

In this case, the tax amortization of Premium happens as follows:

(i) *built-in gains or built-in losses*: the surviving entity allocates the built-in gain or built-in losses to the related assets and liabilities, which becomes part of its cost of acquisition, causing tax effects as the assets and liabilities are realized (amortization, depreciation, liquidation, sale, etc.); and

(ii) *goodwill*: deductible from corporate income tax basis in a 60-month straight line period.

(iii) *bargain gain*: subject to taxation in a 60-month straight line period.

It is important to mention that the tax amortization of the Premium is object of several disputes, reason why it is recommendable to have a deep analysis of the matter before any acquisition. It is also the case to mention that, in order to attend the merger requirement, foreign investors usually acquire Brazilian target entities through Brazilian vehicles entities, which is one of the reasons tax authorities challenge the further premium tax amortization (tax authorities do not recognize the vehicle entity for tax purposes).

22. What types of acquisition financing are available for potential buyers in your jurisdiction? Can a company provide financial assistance to a potential buyer of shares in the target company?

Companies may obtain acquisition financing by: (i) entering into financing agreements with financial institutions; (ii) in case of a S.A., proceeding with the public or private issuance of either debt or equity securities (in case of a Ltda., the company may only issue certain specific debt securities or securities that are not specific to Sociedades Anônimas); (iii) obtaining financing with companies of the same economic group; and (iv) entering a joint venture agreement with strategic investors.

Yes, a company can provide financial assistance to a potential buyer of shares in the target company.

23. What are the formalities and procedures for share transfers and how is a share transfer perfected?

For Sociedades Anônimas, share transfers usually do not required any formalities or prior procedures, except in the event of prior restrictions being set forth to the transfer of shares, as mentioned above. The transfer of shares is perfected upon the execution of the relevant transfer term drawn in the Shares Transfer Book and the relevant update of the Registered Shares Register Book.

Regarding Sociedades Empresárias Limitadas, the transfer of quotas requires the inexistence of opposition by quotaholders representing one fourth of the company's capital stock or the compliance with the provisions regarding the transfer of quotas provided in the articles of association, as well as the additional compliance with quotaholders' agreements that may have been executed. The transfer of quotas is perfected upon the registration of the amendment to the articles of association or the document providing for the transfer of the quotas with the relevant board of trade.

24. Are there any incentives (such as tax exemptions) available for acquisitions in your jurisdiction?

Brazilian tax legislation does not provide a range of tax incentives applicable to share acquisitions, except for foreign investors that comply with certain conditions.

With regard to sales carried out at a Brazilian stock exchange by foreign investors which invest in Brazil according to the rules of Bacen Resolution 4,373 and are not located in tax haven jurisdictions, the corresponding capital gain will not be subject to withholding tax ("**WHT**") (if the seller is located in a tax haven jurisdiction the WHT would be applicable at a 15% rate). Capital gain derived on similar transaction by Brazilian individuals are subject to a 15% income tax, whilst capital gains derived by Brazilian legal entities are subject to a combined 34% incomes taxes rates (and, depending on the case, revenue taxes, usually at a 4.65% combined rate)

Foreign investors may also benefit from tax exemption on capital gain derived over sales of closed corporation shares if they acquire such shares through a Brazilian Private Investment Fund ("**FIP**").

Tax law regarding the matter has recently changed through Provisional Measure 1,137 ("**PM 1,137**"). PM 1,137 is effective since January 1st, but to remain effective until the Congress must ratify it within a certain period (in this case, up to March 1st).

As per PM 1,137, to benefit from the tax exemption, the foreign investors shall not be domiciled in tax haven jurisdiction nor be subject to a privileged tax regime as well as invest in Brazil according to the rules of Bacen Resolution 4,373. In addition, the FIP portfolio should comply with the Brazilian Securities Commission's requirements.

Please note that the tax exemption will apply regardless of the sale comprising the target entity owned by the FIP or the FIP quotas.

If by any chance PM 1,137 is not converted into law, then the following requirements would need to be met: (i) the foreign investor should not hold more than 40% of the FIP quotas nor be entitled to more than 40% of the income to be paid by the FIP either individually or together with related parties; (ii) the investor should not be domiciled in a tax have jurisdiction; (iii) the fund's portfolio should not comprise debt securities in an aggregate amount greater than 5% of the fund's net worth, with the exception of convertible debentures, subscription bonuses, and public debt securities; and (iv) the FIP portfolio should be in compliance with CVM's and the Brazilian Federal Revenue's dispositions (which are more restrictive than CVM's dispositions).

Please also note that the requirements set forth in items (i) and (ii) above should be carefully analyzed, as there are a lot of doubts regarding its application and its interpretation has already led to some challenges by tax authorities.

F. Enforceability

25. Can acquisition documents be executed in a foreign language?

Yes, acquisition documents can be executed in a foreign language.

26. Can acquisition documents be governed by a foreign law?

Yes, acquisition documents can be governed by a foreign law.

27. Are arbitration clauses legally permissible or generally included in acquisition documents?

Yes, arbitration clauses are both legally permissible and generally included in acquisition documents.

28. Are there any specific formalities for the execution of acquisition documents? Is it possible to remotely/digitally sign documents?

No, there are no specific formalities for the execution of acquisition documents, even though it is common and advisable to include initials in acquisition documents (especially those that shall be submitted for registration with the board of trade). It is possible to remotely/digitally sign documents.

G. Trends and Projections

29. What are the main current trends in M&A in your jurisdiction?

The main current trends in M&A in our jurisdiction are (i) investments in or acquisitions of football clubs, as a new corporate type specific for football clubs has been recently approved; (ii) investment in or acquisition of startups, especially those for financial services; and (iii) distressed M&As.

30. Are any significant development or change expected in the near future in relation to M&A in your jurisdiction?

No, nothing is expected in the near future.

BULGARIA

KAMBOUROV & PARTNERS

A. General

1. What is the main legal framework applicable to companies in your jurisdiction?

The primary legal framework which governs companies in Bulgaria is the Commercial Act, promulgated in the Bulgarian State Gazette Issue No 48/1991 (the "**Commercial Act**"), as amended and supplemented. It regulates the majority of aspects relating to companies, including, but not limited to:

- the types of companies/legal entities which can be established for commercial purposes under Bulgarian law, such as limited liability company ("**OOD"**), joint stock company (**"AD"**), sole proprietorship, general partnership, limited partnership, and as recently introduced, variable capital company;
- registration requirements;
- how different types of companies are to be managed and administrated;
- the dissolution and liquidation requirements;
- merger and acquisition prerequisites and procedure;
- insolvency procedures.

The Commercial Act does not cover any regulatory requirements for specific sectors, licensing regimes, taxation, and labour rules.

2. What are the most common types of corporate entities (e.g., joint stock companies, limited liability companies, etc.) used in your jurisdiction? What are the main differences between them (including but not limited to with regard to the shareholders' liability)?

The most common types of corporate entities are joint stock companies and limited liability companies (AD and OOD, respectively).

One of the distinctive differences between them is the amount of registered capital required for their establishment. The OOD requires a minimum registered capital of BGN 2 (approx. EUR 1) and is therefore most commonly chosen. As a general rule the minimum amount of the registered capital of an AD is in turn BGN 50,000 (approx. EUR 25,565). The minimum capital requirements for AD may vary in accordance with the requirements applicable to particular activities, where minimum capital requirements are regulated at higher thresholds.

Another notable difference between the 2 (two) types of companies is in how their management is regulated. An OOD is managed by the registered manager(s) and the general meeting of shareholders, and under Bulgarian law is thus theoretically considered to be a hybrid between an unlimited and limited liability form of corporation. Contrastingly, the Commercial Act envisages that ADs may have either a one-tier or two-tier management system. Under the one-tier system, the AD is governed by a board of directors which is elected by the general meeting of shareholders. The board of directors in turn elects the executive member(s), who have representative authority before third persons and who effectively manage the company. Under the two-tier system, the AD's general meeting of shareholders elects the members of the supervisory board, and the supervisory Board in turn elects the members of the management board.

The third main difference between the 2 (two) structures is the nature of the shares and how they are transferred. The share quotas in an OOD appear only in the company's registration with the Bulgarian Commercial Register and cannot be transferred to third persons (non-shareholders) without the approval of the general meeting of shareholders, whereas the shares in an AD, as a general rule, are freely transferrable. The AD may issue materialized shares (in paper form) and non-materialized [book-entry form, registered at the Central Depository AD (**"CDAD"**)]. The shares issued by the AD may only be registered, as well as ordinary and privileged shares. Normally privileged shares are issued with no voting rights but with a right of guaranteed dividend attached to them. Materialized ordinary registered shares are transferred through endorsement, which is subject to registration in the shareholders book of the relevant company. The interim share certificates issued by a joint-stock company evidencing that the relevant shareholders have subscribed for a certain number of shares in the capital of the company and have the right to obtain them when issued, are transferred through the same instrument as the materialized ordinary shares, i.e., through their endorsement which is to be recorded in the shareholders' book. Non-materialized shares are transferred through investment intermediary to whom the buyer addresses a buy order, the seller addresses a sell order, and the transaction is closed as at the moment when the share transfer is registered at CDAD.

B. Foreign Investment

3. Are there any restrictions on foreign investors incorporating or acquiring the shares of a company in your jurisdiction?

There are no general restrictions on foreign investors for incorporating or acquiring the shares of a company within the Bulgarian jurisdiction, with certain notable deviations on that general principle regarding prohibitions concerning:

- Foreign companies registered in jurisdictions with preferential tax regime;
- Acquisition above certain percentages in regulated sectors, for example energy and television; and
- Acquisition of shares in a company which has owned agricultural land for less than 5 (five) years.

All foreign direct investment, however, is subject to screening. In accordance with recent amendments to the Bulgarian Investment Promotion Act, Bulgaria has the implemented the regime introduced with Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union. The regime includes a National Screening Mechanism for Foreign Direct Investment related to security and public order.

Foreign direct investment subject to screening in accordance with the newly implemented regime include the following:

- Investments resulting in the acquisition of more than 10% of the capital of an enterprise operating in the territory of the country or investments whose value exceeds EUR 2,000,000 or their equivalent in BGN.
- Investments resulting in the acquisition of more than 10% of the capital of an enterprise operating in the territory of the country which carries out high-tech activities.
- New investments whose value exceeds EUR 2,000,000 or their equivalent in BGN.
- Exceptionally, if proposed by a Council member and in coordination with the State Intelligence Agency (SIA) or State Agency for National Security (SANS), new investments or such not exceeding EUR 2,000,000 or their equivalent in BGN.
- The scope of the screening proceeding includes all foreign investments (including in activities not falling in the scope of Art. 4, para. 1 of the Regulation) with a foreign investor from Russia or the Republic of Belarus, as well as investments made in establishments engaged in petroleum activities.
- Any foreign investment if considered as affecting the security and public order – upon a reasoned request of the State Intelligence Agency (SIA) or State Agency for National Security (SANS).
- Foreign investments regardless of their amount should a non-EU country has a direct or indirect participation in the capital of the investor, state body financing inclusive (If the foreign investor is a company and its shares are traded on a regulated market - its participation should exceed 5%).

The Bulgarian Parliament shall be adopting a list of low-risk non-EU countries to which the screening rules for EU Member States shall be applied. These screening rules also apply to the United States of America, the United Kingdom, Canada, Australia, New Zealand, Japan, the Republic of Korea, the United Arab Emirates and the Kingdom of Saudi Arabia.

4. Are there any foreign exchange restrictions or conditions applicable to companies such as restrictions to foreign currency shareholder loans?

There are typically no specific foreign exchange restrictions for companies regarding foreign currency shareholder loans. Bulgaria, as part of the European Union (“**EU**”), adheres to the principles applicable under EU law. It must thus be noted that all transactions with the

National Central Bank of Russia related to the management of the Russian Central Bank's reserves and assets are prohibited.

Further, all foreign currency loans must be reported to the Bulgarian National Bank for statistical purposes, regardless of whether the loan was granted by a non-resident.

5. Are there any specific considerations for employment of foreign employees in companies incorporated in your jurisdiction?

EU and European Economic Area ("**EEA**") citizens have the freedom to enter, reside, and work in Bulgaria without any restrictions, as long as they do not hold positions that necessitate Bulgarian citizenship and are not engaged in professions listed as regulated. They can enter into employment agreements with Bulgarian employers without the need for a permit from the Bulgarian Employment Agency.

Foreign employees who are not citizens of an EU/EEA country or Switzerland generally need both work and residence permits to legally work in Bulgaria. The specific type of permit required depends on the individual circumstances and the duration of their employment.

C. Corporate Governance

6. What are the standard management structures (e.g., general assembly, board of directors, etc.) in a corporate entity governed in your jurisdiction and the key liability issues relating to these (e.g., liability of the board members and managers)?

As detailed under question 2, the standard management structures differ within the Bulgarian OOD [similar to the limited liability company ("**LLC**")] and the AD [similar to the joint stock company ("**JSC**")].

The OOD is governed by the general meeting of shareholders and the elected manager(s). The liability of shareholders is limited to their capital contributions. As opposed to the AD, the shareholders of an OOD have duties to support their company's business activities. The manager(s) of an OOD, have significant responsibilities and thus liabilities. Those include:

- Liability to the company for damages caused as a result of violating their duties;
- Liability in the event of non-compliance with insolvency requirements;
- Liability for engaging in competitive activities without obtaining consent;
- Liability for non-compliance with tax law.

The AD's structure depends on whether it has been established as a one-tier management system or two-tier. The structure thus includes either the general meeting of shareholders alongside a board of directors or alongside a supervisory and management board. The liability of shareholders is limited to the amount of shares they hold in the AD. Directors, similarly to managers, are held to a higher standard, and the associated liabilities are largely similar to those of managers in the OOD.

7. What are the audit requirements in corporate entities?

The Bulgarian Accountancy Act regulates the audit thresholds in respect of corporate entities. All entities exceeding the following requirements are subject to a mandatory annual audit:

- Balance sheet assets of BGN 2,000,000;
- Net sales revenue of BGN 4,000,000.
- Average number of employees for the reporting period – 50.

All medium-sized and large entities are subject to mandatory audit.

Regardless of the requirements listed above, all ADs and partnerships limited by shares (“**KDA**”) are subject to mandatory audit, unless they are considered microenterprises within the meaning of the law. All public companies are also subject to mandatory audit.

D. Shareholder Rights

8. What are the privileges that can be granted to shareholders? In particular, is it possible to grant voting privileges to shareholders for appointment of board members?

Generally, the law provides that 1 (one) share equals to 1 (one) vote in the General meeting of shareholders. Joint stock companies have the option to issue privileged shares which may or may not have voting rights, may have rights to extra dividends, etc., depending on their regulation in the Articles of Association (“**AOA**”).

The AOA may also envisage different kinds of rights for shareholders contingent upon the shareholders agreements and being based on the percentage of equity the respective shareholders hold.

The newly adopted provisions regulating the variable capital company have introduced to the Commercial Act the concepts of rights of first refusal, pre-emptive rights, tag-along and drag-along clauses, which is the first time those have been regulated directly in a normative act under Bulgarian law rather than contractually in the AOAA.

9. Are there any specific statutory rights available to minority shareholders available in your jurisdiction?

Minority shareholders do not have explicitly mandated rights. They enjoy the protections and privileges that all shareholders in a company have, including voting rights, rights to dividends, etc.

Minority shareholders can request the convening of a general meeting of shareholders:

- In the OOD, if shareholders holding 10% of the capital in the company request it; and
- In the AD, if shareholders holding at least 5% of the capital of the company for the last 3 (three) months request it.

Shareholders in the company also have the right to challenge decisions of the general meeting of shareholders in court, as well as challenge registrations in the Commercial Register, regardless of the percentage of shares they hold.

10. Is it possible to impose restrictions on share transfers under the corporate documents (e.g., articles of association or its equivalent in your jurisdiction) of a company incorporated in your jurisdiction?

It is possible and relatively common in Bulgaria to impose restrictions on share transfers under the corporate documents, such as pre-emption rights, lock-up periods, tag-along and drag-along right, restrictions on transfer to specific parties, etc. The specific provisions governing share transfers and restrictions would typically be included in the company’s AOA.

11. Are there any specific concerns or other considerations regarding the composition, technical bankruptcy and other insolvency cases in your jurisdiction?

Bankruptcy and insolvency are regulated under the Commercial Act in Bulgaria, and there are no specific concerns regarding shareholder’s rights in that regard.

E. Acquisition

12. Which methods are commonly used to acquire a company, e.g., share transfer, asset transfer, etc.?

The most common way to acquire a company in Bulgaria is through a share purchase.

Another commonly used way to acquire a business is through the purchase of the business enterprise of the company as a going concern.

Asset purchase transactions are less common due to respective tax burdens but are permitted and occur in our jurisdiction.

13. What are the advantages and disadvantages of a share purchase as opposed to other methods?

The advantages of a share purchase include clearer transfer of title as a result of the whole company transfer being registered in the commercial register as opposed to an asset transfer. This extends to simplification of continuing relationships with business partners, employees, customers. Another significant benefit of a share acquisition is its exemption from Value Added Tax ("**VAT**"). Likewise, when purchasing a going concern, VAT is not applicable. In contrast, the acquisition of assets typically incurs VAT, with specific assets being exceptions.

Conversely, a disadvantage of a share purchase is the potential for the buyer to assume all the target company's liabilities. Determining the extent of this liability should be carried out through thorough legal and financial due diligence and subsequently addressed in the transaction agreements.

14. What are the approvals and consents typically required (e.g., corporate, regulatory, sector based and third-party approvals) for private acquisitions in your jurisdiction?

Private acquisitions are generally not regulated unless they explicitly fall within the scope of merger control or sector specific regulatory provisions. Corporate approvals depend on the corporate governance requirements of the shareholders selling/acquiring the relevant company.

The merger control procedure is regulated by the Protection of Competition Act ("**PCA"**). A transaction that results in a lasting change of control over an undertaking or part of it must be notified to the Commission for Protection of Competition ("**CPC**") if the statutory thresholds are met, that is, if the sum of the total turnovers of all undertakings participating in the concentration on the territory of the Republic of Bulgaria for the previous financial year exceeds BGN 25,000,000 and either the total turnover of at least 2 (two) of the undertakings participating in the participating in the concentration on the territory of the Republic of Bulgaria for the previous financial year exceeds BGN 3,000,000, or the total turnover of the undertaking, which is the object of acquisition on the territory of the Republic of Bulgaria for the previous financial year exceeds BGN 3,000,000.

Third-party approvals usually derive from contractual change of control provisions.

15. What are the regulatory competition law requirements applicable to private acquisitions in your jurisdiction?

Depending on the size and impact of the acquisition, it may be necessary to notify the CPC of the proposed transaction. The PCA establishes thresholds for merger control, as detailed under question 14, and transactions that exceed these thresholds must be notified to the CPC for approval.

16. Are there any specific rules applicable for acquisition of public companies in your jurisdiction?

Acquisition of shares in public companies is subject to a specific regime regulated by the Public Offering of Securities Act. The specific requirements depend on the amount of shares the buyer wishes to acquire and may include a mandatory public offering for purchasing shares, pricing and notification requirements.

17. Is there a requirement to disclose a deal, for instance to regulatory authorities? Is it possible to keep a deal confidential?

Disclosure requirements vary depending on whether the respective sector of the target is subject to regulation and, respectively, requires disclosure on transactions, and whether the size of the transaction meets the specific thresholds under competition law, with deals requiring regulatory approval from the CPC due to competition law considerations having mandatory disclosures.

For acquisition deals which are not subject to any disclosures and approvals, a large portion of the documents concerning the deal may be kept confidential. The disclosure of the acquisition is then largely dependent on the structure of the target company itself.

All share transfer agreements in an OOD need to be registered in the commercial register, and the beneficial owners of the company must also be disclosed. Therefore, ownership of an OOD cannot remain confidential. The regime for commercial enterprise acquisitions is also subject to registration in the public commercial register.

The transfer of shares in a joint-stock company need not be registered in the commercial register unless all of the shares are acquired. Change in beneficial ownership must nevertheless be disclosed if it has occurred.

18. Can sellers be restricted from shopping around during a negotiation process? Is it possible to include break fee or other penalty clauses in acquisition documents to procure deal exclusivity?

Contractually, sellers can be restricted from trying to sell to other parties during the negotiation process. This is commonly done through signing a term sheet or preliminary share-purchase Agreements which include clauses prohibiting such behaviour for a limited period. The transaction documents, in turn, may include break fee provisions and other penalty clauses ensuring deal exclusivity.

19. What are the conditions precedent in a typical acquisition document? Is it common to have conditions to closing such as no material adverse change?

The conditions precedent usually reflects the risks/liabilities identified during the due diligence process. It usually includes clauses either requiring positive action from the seller to address identified liabilities, or for the seller to refrain from undertaking certain activities. Common condition precedent clauses also include meeting mandatory legal requirements in Bulgaria, like securing corporate approvals, merger clearance, and other regulatory consents, as well as obtaining necessary contractual approvals.

Material Adverse Change ("**MAC**") clauses are specifically common when the transaction documents are not governed by the Bulgarian law.

20. What are the typical warranties and limitations in acquisition documents? Is it common to obtain warranty insurance?

Title, lack of encumbrances (third-party rights inclusive), good standing (lack of insolvency inclusive) and no-hidden liabilities (tax inclusive) are the most typical warranties in the acquisition documents. Statutory prescribed liability time limits are commonly applied.

Usually, warranty insurance is involved when the Bulgarian company is part of a larger target group.

21. Is there a requirement to set a minimum pricing for shares of a target company in an acquisition?

There is no specific requirement under Bulgarian law that mandates setting a minimum pricing for shares of a target company in an acquisition, unless the target is a publicly listed company. It is uncommon to acquire shares for less than their nominal value.

22. What types of acquisition financing are available for potential buyers in your jurisdiction? Can a company provide financial assistance to a potential buyer of shares in the target company?

The most common type of acquisition financing is third-party financing, usually obtained from banks. Financial assistance is prohibited from being granted by AD.

23. What are the formalities and procedures for share transfers and how is a share transfer perfected?

Share-transfer agreements in respect of OOD must be executed in front of a notary public, with signatures of the signatories and content of the agreement being certified. The transfer is fully perfected after it has been registered with the Commercial Register.

Transfer of shares in a JSC is relieved of the notarization requirement and is done through endorsement executed on the share itself. In order for the transfer to be perfected, it needs to be registered in company's book of shareholders, and if all of the shares of the company have been acquired, it needs to be registered in the Commercial Register.

24. Are there any incentives (such as tax exemptions) available for acquisitions in your jurisdiction?

There are no specific tax reliefs relating to acquisitions in Bulgaria.

F. Enforceability

25. Can acquisition documents be executed in a foreign language?

Generally, all documents which are to be submitted with an official Bulgarian authority must be either in Bulgarian or officially translated in Bulgarian. Therefore, it is possible for the acquisition documents to be drafted in a foreign language, but a translation complying with the legal requirements might still be needed.

Furthermore, certain acquisition documents such as share-transfer agreements require notarization. In such cases, both the original foreign language document, its notary certification (if done by a foreign notary) and its translation into Bulgarian must be notarized.

26. Can acquisition documents be governed by a foreign law?

Acquisition documents may be governed by a foreign law, but it's essential to ensure enforceability, and in the event of share acquisition, that all prerequisites under Bulgarian law are met in order for the share transfer to be registered. Bulgarian courts generally recognize and enforce foreign law provisions in contracts, but there may be exceptions and limitations which can vary on a case-by-case basis.

27. Are arbitration clauses legally permissible or generally included in acquisition documents?

Arbitration clauses are both permissible and often included in acquisition documents.

28. Are there any specific formalities for the execution of acquisition documents? Is it possible to remotely/digitally sign documents?

Acquisition documents which require simple written form may be signed remotely and/or with qualified electronic signature. Under Bulgarian law, only the qualified electronic signature as defined under the Electronic Document and Electronic Certification Services Act and is considered as equal to the handwritten signature, unless the parties agree that for the purposes of their relationship a simpler electronic signature will suffice as well.

Certain documents require notarization, specifically share-transfer agreements, agreements for the sale-purchase of the going concern and all real estate transactions. The documents requiring notarization cannot be digitally signed, and if they are signed before a notary which is not on the territory of the Republic of Bulgaria, the document is subject to legalization requirements.

G. Trends and Projections

29. What are the main current trends in M&A in your jurisdiction?

In contrast with the trends in Western Europe, Bulgaria saw increased M&A activity across sectors in 2023. This includes several significant transactions for the region, an example of which is Tawal's acquisition of United Group's towers.

For 2024, there have not yet been signs that the M&A activity will slow down.

30. Are any significant development or change expected in the near future in relation to M&A in your jurisdiction?

No significant developments are expected in the near future.

COSTA RICA

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A. General

1. What is the main legal framework applicable to companies in your jurisdiction?

The main framework applicable to companies in Costa Rica is the Commercial Code, which contains the most important norms regarding company structures, obligations, and M&A.

Companies participating in specific industries (e.g., financial entities, telecommunications, energy,) are also subject to specific regulations and supervision by regulatory government agencies. Regulations may contain specific provisions relevant for M&A analysis.

2. What are the most common types of corporate entities (e.g., joint stock companies, limited liability companies, etc.) used in your jurisdiction? What are the main differences between them (including but not limited to with regard to the shareholders' liability)?

The most common types of corporate entities which are used in Costa Rica are *Sociedad de Responsabilidad Limitada* (Limited Liability Partnership); and *Sociedad Anónima* ("**Corporation**")

Both types of corporate entities provide limited liability to shareholders, where the main differences are the following:

	Corporation	Limited Liability Company
Capital Stock	Shares	Quotas or participations
Currency of the capital stock	Colones or foreign currency	Colones of Foreign Currency
Approvals	No need of approval by shareholders, unless indicated otherwise on the Articles of Incorporation.	The quota holders must unanimously approve with express consent the transfer of the quotas to third parties, unless in the Articles of Incorporation it is indicated that the transfer can be done with the approval of ¾ of the quota holders.
Transfer of Ownership	-Assignment of the share certificate -Registration in the Shareholders' Registry Book	Requires transferee acceptance
Administration	Board of directors, with a minimum of 3 (three) members -President -Secretary - Treasurer	Managers
Reserve Fund	20% of the capital stock	10% of the capital stock

B. Foreign Investment

3. Are there any restrictions on foreign investors incorporating or acquiring the shares of a company in your jurisdiction?

There is a constitutional limitation regarding private ownership (foreign or national) in Costa Rica's natural resources, particularly energy, and hydrocarbons, as a result of which foreign entities must enter into limited time agreements with state-owned companies to participate in these industries.

Additionally, national railways, ports, and airports, while they are in service, may not be transferred, leased pledge, directly or indirectly, nor leave the domain and control of the Costa Rican government.

4. Are there any foreign exchange restrictions or conditions applicable to companies such as restrictions to foreign currency shareholder loans?

No, there are no restrictions for companies regarding foreign exchange.

5. Are there any specific considerations for employment of foreign employees in companies incorporated in your jurisdiction?

Currently there is no limitation in the number of foreign employees in Costa Rican companies, nonetheless foreigners must obtain a specific purpose visa to work in the country.

C. Corporate Governance

6. What are the standard management structures (e.g., general assembly, board of directors, etc.) in a corporate entity governed in your jurisdiction and the key liability issues relating to these (e.g., liability of the board members and managers)?

The standard management structures are the following:

The foundation of corporate governance lies in the dualistic system of the General Assembly and the Board of Directors (for Corporations) and Managers (for LLC):

a) Shareholders' meeting: This is the supreme authority in corporate entities, responsible for major decisions like amending bylaws, approving financial statements, or changing the capital structure. They also elect board members and legal representatives depending on the bylaws) and oversee their actions.

b) Board of directors and managers in case of an LLC: They supervise and manage the company's affairs, implements the shareholders' resolutions, and oversees the executive management. The board of directors must have three members (president, secretary and treasurer), additional members and roles can be dictated by the company bylaws.

Key Liability Issues:

a) Directors' and Managers' Liability: Both board members and managers can be held liable for acts of fraud, abuse of authority, negligence, and violation of the law or company bylaws. If they act within the confines of their authority and in the best interests of the company, they usually benefit from a shield against personal liability.

b) Joint Liability: In certain circumstances, board members may be jointly liable for company obligations, especially if legal regulations and company statutes aren't followed.

c) The concept criminal liability for legal entities is recognize in Costa Rica, especially in cases of money laundering, bribery, or environmental offenses. Corporations must ensure robust internal controls to avoid punitive measures.

7. What are the audit requirements in corporate entities?

No requirement exists except for publicly traded companies, which must file their financial statements annually. Some companies subjected to specific industry regulations (e.g., financial services) must go through external audits every year to ensure transparency.

D. Shareholder Rights

8. What are the privileges that can be granted to shareholders? In particular, is it possible to grant voting privileges to shareholders for appointment of board members?

Besides specific statutory rights, shareholders may contractually agree to specific privileges (such as the right of first refusal before transferring shares to third parties). It is important to note that, as a standard practice, the Costa Rican Commercial Code indicates that each shareholder should be considered when voting in proportion to the number of shares or participations they hold, depending on the type of company.

9. Are there any specific statutory rights available to minority shareholders available in your jurisdiction?

For protection of the minority shareholders, the Commercial Code requires the approval of the board of directors or equivalent body, as a prerequisite for the execution of those transactions that involve the acquisition, sale, mortgage or pledge of assets of the issuing company that represent a percentage equal to or greater than 10% of its total assets.

10. Is it possible to impose restrictions on share transfers under the corporate documents (e.g., articles of association or its equivalent in your jurisdiction) of a company incorporated in your jurisdiction?

Yes, the articles of incorporation of a corporation may impose a previous authorization from the shareholders or the board of directors to transfer the shares to third parties. In the case of LLC there is a statutory obligation to provide a right of first refusal to shareholders.

11. Are there any specific concerns or other considerations regarding the composition, technical bankruptcy, and other insolvency cases in your jurisdiction?

No.

E. Acquisition

12. Which methods are commonly used to acquire a company, e.g., share transfer, asset transfer, etc.?

Even though share transfers are more common than asset transfers, companies may also be acquired through mergers,in which case the purchaser absorbs the target company, which in turn disappears. In this case, the purchaser also assumes all of the target's assets and liabilities.

The requirements to complete a merger are the following:

a pre-merger project or agreement;

approval via extraordinary shareholders' meetings (of all entities involved);

filing with competition authority COPROCOM (if thresholds for competition review are met); and publication of an extract of the merger approval in writing or in a deed in the official newspaper.

The merger will be effective a month after its publication and registration if no third party opposes it. In principle, recordable assets will be transferred to the resulting or surviving entity.

13. What are the advantages and disadvantages of a share purchase as opposed to other methods?

Asset purchase deals provide the possibility of 'cherry picking' (which requires adequate identification of the productive assets that are of interest) but may take more time than a share purchase and may involve a tax impact on the value of the assets being acquired.

On the other hand, share purchases are faster. In the case of corporations, share purchases do not require the registration of the transfer in public records.

14. What are the approvals and consents typically required (e.g., corporate, regulatory, sector based and third-party approvals) for private acquisitions in your jurisdiction?

Mergers or acquisitions involving regulated entities (banks, public companies, financial entities, pension funds, companies managing funds of third parties and insurance companies), in addition to the previous communication to Coprocom (antitrust government agency), must obtain the applicable approvals of the Securities Supervisory Agency (Sugeval), the Private Pension Funds Supervisory Agency (Supen), the General Insurance Supervisory Agency (Sugese), the General Telecommunications Supervisory Agency (Sutel) or the Financial Entities Supervisory Agency (Sugef), as appropriate. An ultimate beneficiary filing needs to be made yearly and 15 days after any change of ownership occurs.

15. What are the regulatory competition law requirements applicable to private acquisitions in your jurisdiction?

Preliminary merger control for transactions of a certain volume (over a threshold of USD 15 million) or of special relevance to the national market is mandatory.

A merger or acquisition may be considered a concentration under Article 88 of the Law for the Strengthening of the Costa Rican Competition Authorities ("**CR-LSCA"**) or Article 38 of the Regulations to the Law for the Promotion of Competition and Effective Consumer Protection (CR-LPC), and thus even though parties are free to consolidate a merger or an acquisition, they are required to file a notification or previous communication to Coprocom if meeting the criteria established in the CR-LSCA.

M&A control in Costa Rica uses a short authorization procedure. If the preliminary merger control notice is not sent, Coprocom may challenge a merger proven to qualify as a concentration by opening a penalizing procedure.

16. Are there any specific rules applicable for acquisition of public companies in your jurisdiction?

Acquisition of public companies would require disclosure of ownership before the Costa Rican Stock Exchange and follow the public offering procedure set forth in in the Stock Market Regulatory Law Number 7732 and its regulations.

17. Is there a requirement to disclose a deal, for instance to regulatory authorities? Is it possible to keep a deal confidential?

Mergers and acquisitions in specific industries (financial entities, telecommunications, energy, and others) must be disclosed to the corresponding regulatory authorities.

Additionally, there is an annually requirement to disclose the ultimate beneficiary owner before the Central Bank of Costa Rica, accordingly when there is a change in control, such registry must be updated.

18. Can sellers be restricted from shopping around during a negotiation process? Is it possible to include break fee or other penalty clauses in acquisition documents to procure deal exclusivity?

Yes, specific provisions regarding the project may be contractually agreed by the parties. Breakup fee can be built into a contract.

19. What are the conditions precedent in a typical acquisition document? Is it common to have conditions to closing such as no material adverse change?

Conditions precedent commonly include performance of covenants, corporate authorization, regulatory approvals, issuance of legal opinions, and material adverse event clauses.

20. What are the typical warranties and limitations in acquisition documents? Is it common to obtain warranty insurance?

Typical warranties and limitations include, no conflicts, material contracts, litigation, intellectual property, licenses and permits, anti-money laundering, environmental matters, taxes, employees, real property, among others.

It is not common to obtain warranty insurance, but it can be negotiated and included.

21. Is there a requirement to set a minimum pricing for shares of a target company in an acquisition?

Shares cannot be priced lower than the nominal amount declared in the share certificates, for purposes of calculating the tax on capital gains.

22. What types of acquisition financing are available for potential buyers in your jurisdiction? Can a company provide financial assistance to a potential buyer of shares in the target company?

The most common funding structures, regardless of the acquirer, are bank lending, corporate debt, capital increases (private placement of shares of stock) and securitizations or security trust agreements.

Withholding taxes are an important issue to consider in establishing funding structures and schemes, as these may apply if interest is paid to a bank domiciled abroad.

23. What are the formalities and procedures for share transfers and how is a share transfer perfected?

Share certificates (in the case of Companies) must be endorsed on the back of the document and signed by the seller and the transfer must be recorded on the shareholders´ registry book. In the case of LLC, quota transfer requires acceptance by transferor and given the statutory right of first refusal, a quota holders approval is required as well.

24. Are there any incentives (such as tax exemptions) available for acquisitions in your jurisdiction?

There is a free zone regime that may be applicable if mandatory conditions are met.

F. Enforceability

25. Can acquisition documents be executed in a foreign language?

Share purchase agreements executed in foreign languages can be enforceable by Costa Rican courts, if they have been officially translated into Spanish.

26. Can acquisition documents be governed by a foreign law?

Yes, acquisition documents may be governed by foreign law.

27. Are arbitration clauses legally permissible or generally included in acquisition documents?

Arbitration clauses are legally permissible and commonly included in acquisition documents.

28. Are there any specific formalities for the execution of acquisition documents? Is it possible to remotely/digitally sign documents?

Share certificates must be transferred by endorsement which has to be signed by the seller in the back of the document. Additionally, as a formality the signatures in the Share Purchase Agreement can be authenticated.

Share Purchase Agreements may be remotely and digitally signed. The digital signature issued by the Central Bank of Costa Rica adds an additional layer of validity (treated as a notarized signature) but any digital signature is valid in Costa Rica and treated as if it was a wet ink signature.

G. Trends and Projections

29. What are the main current trends in M&A in your jurisdiction?

The main current trends are in the services, real estate and consumer sectors.

The M&A market in Costa Rica is steadily continuing to grow, with key economic indicators reflecting a recovering economy. The country presents a winning combination of skills and opportunities that are appealing to export and services-oriented foreign investment and continues to attract the attention of foreign companies that see it as a stable emerging economy with quality workforce and potential for growth. Costa Rica's attractiveness for foreign investment has begun to shift to emerging areas such as semiconductors, medical devices, IT, knowledge processes, finance and accounting, which require sophisticated skills and technological infrastructure.

Other developments include the establishment of shared service centers and manufacturing facilities outside the Greater Metropolitan Area, as well as the establishment of energy, infrastructure and tourism projects, creating continuous M&A opportunities for sophisticated investors, venture capitalists and investment banking firms.

Notwithstanding outside factors or local political and fiscal trends, which include the implementation of the recently passed tax law reform (2019), government debt and social issues appearing as obstacles, the M&A market should continue to be active following Latin American trends. The consolidation of consumer goods companies (wholesale and retail), as well as an inflow of South American groups owing to the country's logistic advantages, should continue to have a favorable influence in the M&A market. Furthermore, according to the Inter-American Development Bank, there is a potential attraction of USD 1,544.8 million for Costa Rica, product of the emerging nearshoring phenomenon in Latin America, where companies are relocating part of their supply chains to countries close to their target markets.

The most dynamic sectors in the country on a pre-pandemic basis have been life sciences, services and distribution, hospitality, consumer, advanced manufacturing, and industrials. These sectors are the main focus of foreign direct investment and should be the main focus for new potential M&A dealings in Costa Rica for 2024. Furthermore, as previously mentioned, the growth of collaborative businesses, e-commerce and technology may force companies in these sectors to develop a rapid strengthening in key markets, and M&A opportunities will be key for such achievements.

Costa Rica expects to continue evolving as a destination for investors with strong promotion and protection programs and friendly policies once the economic recovery following the effects of the COVID-19 pandemic has strengthened. Even though the size of the Costa Rican and Central American market is not as significant as other countries in Latin America, in terms of retail operations, its pursuit of growth will continue drawing multinationals that feel comfortable with the above-mentioned mixture of skills and opportunities.

30. Are any significant developments or changes expected in the near future in relation to M&A in your jurisdiction?

No.

CROATIA

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A. General

1. What is the main legal framework applicable to companies in your jurisdiction?

Companies Act presents a main legal framework for companies in Croatia. Other relevant regulations are Act on Takeover of Joint Stock Companies, Capital Market Act, Court Registry Act, Competition Act, etc.

2. What are the most common types of corporate entities (e.g., joint stock companies, limited liability companies, etc.) used in your jurisdiction? What are the main differences between them (including but not limited to with regard to the shareholders' liability)?

The most common types of corporate entities in Croatia are joint stock companies and limited liability companies.

<u>Joint stock companies</u>

- Minimum share capital amounts to EUR 25,000;
- Supervisory board is obligatory;
- Management board manages the company's business independently and at their own risk;
- Management board members are appointed by the supervisory board;
- Incorporation process is much more complex and time-consuming;
- The shareholders' meeting must be held (i) during the first 8 months of the financial year, and (ii) always when mandatory provisions of the articles of associations or the company's interests require a shareholders' resolution. Every shareholders' meeting must be recorded by a notary public;

- Liability of shareholders occurs only under very exceptional circumstances: if (i) a shareholder uses the company to achieve a goal that is otherwise prohibited; (ii) a shareholder uses the company to cause damage to creditors; (iii) contrary to the provisions of the law, a shareholder manages the company's assets as if they were his/her assets; or (iv) a shareholder decreases the value of the company's assets for his/her own or someone else's benefit although he/she knew and/or should have known that the company would not be able to fulfil its obligations; and
- Squeeze out of minority shareholders is possible.

Limited liability company

- Minimum share capital amounts to EUR 2,500;
- Supervisory board is obligatory only under certain statutory conditions;
- Management board manages the company's business in line with the articles of associations, shareholder's resolutions and mandatory instructions of the shareholder's meeting and supervisory board (if any);
- Management board members are appointed by the shareholders; however, company's articles of associations may provide that supervisory board (if any) appoints management board;
- Incorporation process is more simplified, especially in case of a simple LLC;
- The shareholders' meeting must be convened at least once a year or, except in the cases provided for in the Companies Act or the articles of associations, whenever required for the sake of the company's interest. Only in certain cases, (e.g., amendments of the articles of associations, liquidation of the company) the presence of a notary public at the shareholders' meeting is required;
- Liability of shareholders occurs only under very exceptional circumstances: if (i) a shareholder uses the company to achieve a goal that is otherwise prohibited; (ii) a shareholder uses the company to cause damage to creditors; (iii) contrary to the provisions of the law, a shareholder manages the company's assets as if they were his/her assets; or (iv) a shareholder decreases the value of the company's assets for his/her own or someone else's benefit although he/she knew and/or should have known that the company would not be able to fulfil its obligations; and
- No squeeze out of minority shareholders.

B. Foreign Investment

3. Are there any restrictions on foreign investors incorporating or acquiring the shares of a company in your jurisdiction?

No. Every individual and legal entity, either Croatian or foreign, may incorporate a company in Croatia and/or acquire shares in a Croatian company.

4. Are there any foreign exchange restrictions or conditions applicable to companies such as restrictions to foreign currency shareholder loans?

No.

5. Are there any specific considerations for employment of foreign employees in companies incorporated in your jurisdiction?

EU/EEA citizens may freely reside and work in Croatia, while the non-EU/EEA nationals shall obtain work permit and residence permit in order to legally stay and work in Croatia.

C. Corporate Governance

6. What are the standard management structures (e.g., general assembly, board of directors, etc.) in a corporate entity governed in your jurisdiction and the key liability issues relating to these (e.g., liability of the board members and managers)?

The standard structure presents general assembly, management board and supervisory board (which is obligatory for LLC only in certain cases).

Joint stock company

Management board manages the company's business independently and at their own risk.

Members of the management board must exercise the duty of care and diligence of a prudent manager and protect the company's business secrets. A violation of this duty makes them jointly and severally liable towards the company for any damages caused.

The management board will not be liable to compensate for damages, if the action by the management board is based on the decision of the shareholders' meeting. However, authorization by the supervisory board does not exclude responsibility.

Supervisory board members must exercise the duty of care and diligence of a prudent manager. Violation of this duty makes them jointly and severally liable towards the company for any damages caused.

Limited liability company

Management board manages the company's business in line with the articles of associations, shareholder's decisions and mandatory instructions of the shareholder's meeting and supervisory board (if any).

Members of the management board must exercise the duty of care and diligence of a prudent manager and protect the company's business secrets. A violation of this duty makes them jointly and severally liable to the company for any damages caused.

The management board will not be liable to compensate for damages if the action by the management board is based on the decision of the shareholders' meeting. However, authorization by the supervisory board does not exclude responsibility.

Supervisory board members must exercise the duty of care and diligence of a prudent manager. Violation of this duty makes them jointly and severally liable to the company for any damages caused.

7. What are the audit requirements in corporate entities?

Audit of financial statements is required. Audit of financial statements implies verification and evaluation of annual financial statements and consolidated reports, data and methods used when compiling them and on that base shaping independent expert opinion on the matter.

Audit of financial statements of Croatian companies is regulated by the Accounting Law and the Audit Law. The obligors are determined by the Accounting Law while the conditions and regulations of the audit process are determined by the Audit Law. In case of any status changes of the company, mergers, acquisitions and divisions, the Company Law determines the process.

D. Shareholder Rights

8. What are the privileges that can be granted to shareholders? In particular, is it possible to grant voting privileges to shareholders for appointment of board members?

Yes, it is possible to grant certain voting privileges to shareholders. In addition, shareholders may be granted with certain privileges relating to the distribution of profits, pre-emption rights on issuance of new shares or acquisition of the shares from other shareholders, etc.

9. Are there any specific statutory rights available to minority shareholders available in your jurisdiction?

Please find below the list of certain statutory rights available to the minority shareholders:

- request the company to bring a claim for damages against (i) founders of the company, (ii) management board members, (iii) supervisory board members, (iv) executive directors and members of the board of directors, (v) any person or entity who uses his/her/its influence to cause damage to the company and anyone who has benefited from such use of influence, provided that the requesting shareholders have been shareholders for at least 3 months prior to the shareholders' meeting;
- application to the court to remove a member of the supervisory or management board;
- request in writing to convene a shareholders' meeting (and indicate the purpose and reasons for convocation);
- request that another subject matter is included in the agenda of the shareholders' meeting and published;
- request the court to appoint extraordinary auditors for an audit of certain actions of a company, provided that the requesting shareholders have been shareholders for at least 3 months prior to the shareholders' meeting, if the other shareholders at a shareholder's meeting refuse to appoint extraordinary auditors;
- and other rights.

10. Is it possible to impose restrictions on share transfers under the corporate documents (e.g., articles of association or its equivalent in your jurisdiction) of a company incorporated in your jurisdiction?

Yes. In practice, the most common share transfer restrictions are pre-emption right of the existing shareholders, drag-along and tag-along right.

11. Are there any specific concerns or other considerations regarding the composition, technical bankruptcy and other insolvency cases in your jurisdiction?

No.

E. Acquisition

12. Which methods are commonly used to acquire a company, e.g., share transfer, asset transfer, etc.?

Share transfer is the most common method to acquire a company in Croatia.

13. What are the advantages and disadvantages of a share purchase as opposed to other methods?

A share purchase means taking over a company. The target company is a separate legal entity which will include all of its assets, liabilities and obligations. One benefit is that continuity is maintained as contracts with employees, suppliers and customers remain in place subject to any specific "change of control" provisions.

An asset purchase is the transfer of a specific business activity and related assets and employees. The buyer can pick the assets it wants or more particularly identify what, if any, liabilities it will take on. Contracts with suppliers and customers do not automatically transfer and will need to be assigned. However, contracts with employees and pre-completion liabilities transfer by operation of law. Other than in respect of employees, the attraction for a buyer is that the asset purchase is isolated from historic risk factors.

14. What are the approvals and consents typically required (e.g., corporate, regulatory, sector based and third-party approvals) for private acquisitions in your jurisdiction?

The most typical approvals are: (i) corporate approvals mostly relating to the approvals of the remaining shareholders (i.e. , shareholders having pre-emption rights to transfer of shares) for the transaction; (ii) regulatory approvals required from certain authorities regulating business activity performed by the company; and (ii) competition approvals i.e., merger clearance required from the Competition Agency in case the relevant competition thresholds are met.

15. What are the regulatory competition law requirements applicable to private acquisitions in your jurisdiction?

Merger filing to the Croatian Competition Agency will be required provided that certain national thresholds are cumulatively met:

(i) the aggregate worldwide turnover of all the parties to the concentration, based on the last available financial statements, exceeds approximately EUR 130 million;

and

(ii) the annual turnover of each of at least two parties to the concentration achieved in Croatia, based on the last available financial statements, exceeds EUR 13.3 million.

16. Are there any specific rules applicable for acquisition of public companies in your jurisdiction?

Yes. For acquiring shares of a public company, the necessary documents are: a declaration of intent, the prospectus, the bid, the application for publication of the bid, the share purchase agreement, the takeover report, the opinion of the target's management, documents on legal transactions for the acquisition of previously owned shares in the target, the bidder's declaration that no other attempts have been made at acquiring the target shares, the depository's certificate on securing the consideration for the transaction, the certificate of the market regulator on the average price of shares, the agreement with the depository for the deposit of shares, etc.

17. Is there a requirement to disclose a deal, for instance to regulatory authorities? Is it possible to keep a deal confidential?

Yes, provided that certain regulatory authority imposes such an obligation. That depends on the target company's business activity. Some regulatory authorities only require notification on a transaction, while some require their prior approval on the transaction.

18. Can sellers be restricted from shopping around during a negotiation process? Is it possible to include break fee or other penalty clauses in acquisition documents to procure deal exclusivity?

Yes. Exclusivity in negotiations can be agreed between the parties, as well as penalties for its violation.

19. What are the conditions precedent in a typical acquisition document? Is it common to have conditions to closing such as no material adverse change?

Conditions precedents typically depend on a due diligence findings. Yes, it is possible to have conditions to closing such as no material adverse change.

20. What are the typical warranties and limitations in acquisition documents? Is it common to obtain warranty insurance?

The warranties may be divided into: (i) fundamental warranties which include warranties on ownership of shares, good standing of the target company, authorities of parties to perform the transaction, etc.; and (ii) business warranties related to employment, litigation, real estate, insurance, company's business operations, compliance, etc.

Typical limitations refer to the limitation of liability. It is not common to obtain a warranty insurance.

21. Is there a requirement to set a minimum pricing for shares of a target company in an acquisition?

No.

22. What types of acquisition financing are available for potential buyers in your jurisdiction? Can a company provide financial assistance to a potential buyer of shares in the target company?

The most standard types of financing are loans. In joint stock companies, it is not allowed to provide such a financial assistance, i.e., it is forbidden by the law. However, that would be possible for limited liability companies.

23. What are the formalities and procedures for share transfers and how is a share transfer perfected?

The seller and the buyer must execute the share transfer agreement in a form of a Croatian notarial deed. The title to the shares passes to the buyer upon the registration in the company's book of shares and submitting the updated list of shareholders to the Court Register. Registration of the buyer as a new shareholder to the Court Register has a publicity effect only.

24. Are there any incentives (such as tax exemptions) available for acquisitions in your jurisdiction?

No, as we are familiar with. For further details, tax advisors should be consulted

F. Enforceability

25. Can acquisition documents be executed in a foreign language?

Yes, however share transfer agreement as well as any other documentation which should be submitted to the Croatian authorities must be executed in Croatian language (at least in a bilingual form).

26. Can acquisition documents be governed by a foreign law?

Yes.

27. Are arbitration clauses legally permissible or generally included in acquisition documents?

Arbitration clauses are legally permissible and, in practice, included in acquisition documents.

28. Are there any specific formalities for the execution of acquisition documents? Is it possible to remotely/digitally sign documents?

Croatian law requires wet-signature or qualified e-signature. In addition, certain acquisition documents must be included in a form of a notarial deed (such as share transfer agreement, articles of associations, etc.) while other must be only notarized (notarization of signature, such as application for registration of share transfer to the court registry, etc.).

G. Trends and Projections

29. What are the main current trends in M&A in your jurisdiction?

There is a lot of activity in the M&A market, and we see a markable increase in transaction numbers in 2022 when compared to 2021 and 2020. Also, we see a number of new investors moving in, including private equity funds and venture capital funds which is a novelty for Croatian markets. There has been a lot of activity in the IT sector, primarily driven by M&A takeovers, and also a significant activity in the media sector.

30. Are any significant development or change expected in the near future in relation to M&A in your jurisdiction?

Based on our experience so far, we expect lots of M&A takeovers in IT sector.

DENMARK

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A. General

1. What is the main legal framework applicable to companies in your jurisdiction?

Foreign investors generally acquire or invest in limited liability companies (kapitalselskaber) such as the public limited company (aktieselskab or A/S) or the private limited company (anpartsselskab or ApS). Limited liability companies, limited partnership companies (partnerselskaber or P/S) and branch offices (filialer) are governed by the Danish Companies Act (Consolidated Act 2025-20-03 No. 331 on Public and Private Limited Companies with later amendments).

Other corporate entities such as general partnerships (interessentskaber) and limited partnerships (kommanditselskaber) are available and governed partly by the Danish Act on Certain Commercial Undertakings (Consolidating Act 2021-02-01 No. 249 on Certain Commercial Undertakings) and partly by Danish legal principles.

2. What are the most common types of corporate entities (e.g., joint stock companies, limited liability companies, etc.) used in your jurisdiction? What are the main differences between them (including but not limited to with regard to the shareholders' liability)?

The most common type of corporate entity in the Danish market for foreign investors is the limited liability company, which may be either a private limited company or a public limited company. As a main rule, a private limited company can be used for all types of business (for certain regulated businesses the establishment of a public limited company is required), but are not eligible for listing on, e.g., stock exchanges such as Nasdaq Copenhagen (Main Market) or Nasdaq First North Growth Market Denmark (First North). However, as of January 2025, private limited companies may offer its shares to the public either in accordance with the EU Regulation on European crowdfunding service providers for business or to a limited number of qualified investors subject to certain monetary thresholds. The primary features of the two types of companies are generally the same as they both (i) have a separate legal personality, (ii) are subject to corporate taxation and (iii) have limited shareholder liability, as the shareholders' liability is generally limited to the shareholders' capital investment in the company, meaning that the shareholders are not liable for the acts and/or omissions of the limited liability company (as opposed to partners in general partnerships, who are personally liable for the obligations of the partnership). Group companies are regarded as separate legal entities and, as a rule, the parent company is not liable for the acts of subsidiaries. However, the corporate veil may be pierced under certain circumstances, a shareholder with the effect that may be liable, e.g., if a shareholder intentionally or gross negligently causes damage to the company, and a shareholder may also be liable based on applicable regulations such as Danish and EU competition law which can form the basis for parent company liability.

Generally, the Danish Companies Act provides for a more flexible regulation of private limited companies compared to that of public limited companies. The share capital of a public limited company must be at least DKK 400,000, while the share capital of a private limited company must be at least DKK 20,000. Furthermore, the Danish Companies Act contains several provisions determining the differences between private limited companies and public limited companies, e.g., in terms of requirements relating to the articles of association, the holding of shareholders' meetings, etc.

A two-level taxation regime applies as a limited company pays corporation tax on its corporate income (limited companies are subject to a Danish corporate income tax rate, which is currently 22% and 26% for companies with certain financial activities) and as shareholders pay tax on the dividend distributed by the limited company. This is commonly referred to as "double taxation".

However, dividends should most often not be included in the taxable income for non-resident companies. An attractive feature for foreign investors is the participation exemption regime, which includes tax-free receipt and distribution of dividends from and to all EU Member States, as well as countries with whom Denmark has formed a tax treaty (however, with certain exceptions. See question 24).

A foreign investor may prefer to carry out the Danish investment through a tax transparent vehicle in which case a limited partnership or a limited partnership company may be suitable.

B. Foreign Investment

3. Are there any restrictions on foreign investors incorporating or acquiring the shares of a company in your jurisdiction?

There are no general restrictions on foreign investors incorporating or acquiring shares in a Danish company, and foreign investments are encouraged in Denmark.

However, a Danish act on screening of certain foreign direct investments was introduced in 2021. The act introduced a mandatory screening mechanism for foreign direct investments, if the foreign investor intends to acquire, directly or indirectly, possession of or control over at least 10 % of the ownership interest or voting rights or equivalent control by other means of managerial, financial, development or operational matters, in Danish companies within the following sectors (all considered to be sensitive in relation to national security or public order): (i) companies in the defence sector, (ii) companies in the field of IT security functions or processing of classified information, (iii) companies producing dual-use items (only dual-use items on the so-called Control List), (iv) companies within the field of critical technology, and (v) critical infrastructure companies (this category also includes significant suppliers to such companies). Furthermore, the act also introduced a mandatory screening of foreign investors from outside the EU or EFTA intending to enter into a special financial agreement with a company domiciled in Denmark operating within any of the sensitive sectors set out above. Certain exceptions apply, including in respect of foreign investors from EU member states or EFTA countries.

Please refer to Gorrissen Federspiel's article in https://gorrissenfederspiel.com/en/a-new-danish-act-on-screening-of-certain-foreign-direct-investments-has-been-introduced-in-parliament/, about the screening mechanism for foreign direct investments.

In addition, the Danish Business Authority requires identification and contact details of shareholders and ultimate owners, etc. Furthermore, certain additional restrictions apply in sensitive sectors, including in relation to national security.

4. Are there any foreign exchange restrictions or conditions applicable to companies such as restrictions to foreign currency shareholder loans?

As a rule, there are no foreign exchange restrictions or conditions applicable to companies such as restrictions on foreign currency shareholder loans, except for those restricting money laundering. Payments to foreign companies incorporated in any country or state which is currently subject to United Nations (UN) or EU sanctions may be subject to foreign exchange control or currency restrictions.

As such, Danish companies are generally free to obtain financing on the international market without being subject to foreign exchange restrictions etc.

5. Are there any specific considerations for employment of foreign employees in companies incorporated in your jurisdiction?

Generally, foreign employees employed in a Danish company are subject to the same legislation as the Danish employees and they must be employed on the same employment terms and conditions as the Danish employees in the company in question.

Under Danish law, the company and the individual employee are generally free to agree on the terms and conditions of employment, and the employee is entitled to receive an employment agreement with information about all substantial terms and conditions of the employment in accordance with the Danish Act on Employment Certificates (in Danish: "Ansættelsesbevisloven"). However, Danish protective mandatory legislation and/or collective bargaining agreements may limit the freedom of contract. In relation to employees working remotely from abroad, such employees may also be subject to protective mandatory legislation in the country from where they are working remotely (depending on the legislation in the country in question), and they may be required to pay social security contributions in such a foreign country.

If a company considers employing a foreign employee in Denmark, the company must be aware that the employee may have to apply for a residence and work permit depending on the individual employee's citizenship. Citizens of Norway, Sweden, Finland, and Iceland are free to enter, reside, study and work in Denmark without a visa, residence and work permit. Citizens in the EU/EEA and Switzerland are covered by the

EU rules on the free movement of persons and services and are thus exempt from the requirement of a residence and work permit. Instead, citizens of the EU/EEA and Switzerland must within 3 months after arrival apply for a registration certificate if they intend to stay in Denmark for more than 3 months. For all other foreign citizens, the company must obtain a residence and work permit for the employee before the employee starts to work in Denmark in accordance with The Danish Aliens Act (in Danish: "Udlændingeloven"). The company is responsible for ensuring that foreign employees always have valid residence and work permit.

C. Corporate Governance

6. What are the standard management structures (e.g., general assembly, board of directors, etc.) in a corporate entity governed in your jurisdiction and the key liability issues relating to these (e.g., liability of the board members and managers)?

Governance and governance structures

A governance structure with a general meeting (being the shareholders represented at a general meeting), a board of directors and an executive management are widely known and used in Denmark.

There are no restrictions on foreigners being members of boards of directors or executive management. However, to be registered with the Danish Business Authority, it is required that certain information and documentation is registered with the Danish Business Authority, such as full name, citizenship at birth, date of birth, national identification number (or passport number) and a copy of a valid national ID (e.g., passport copy).

Public and private limited liability companies may elect one of the following management structures:

- A management structure where a board of directors (with at least three members for public limited companies) exercises overall and strategic management functions as well as certain supervisory functions and appoints an executive management responsible for the day-to-day management of the company (a so-called one-and-a-half-tier governance structure which is the traditional Danish governance structure) or
- A management structure where an executive management exercises overall and strategic management functions. In a private limited company, such a governance structure can be chosen without being supervised by a supervisory board (one-tier governance structure which is fairly common, especially in holding companies). In a public limited company, the executive management must be supervised by a supervisory board with at least three members (two-tier governance structure which is uncommon).

If a public limited company with a one-tier governance structure is preferred, a practical approach is to elect the executive management as members of the board of directors as well. However, the board of directors of a public limited company must be composed in such a way that the majority of the members of the board of directors are not members of the executive management of the company, and the chairman and vice-chairman of the board of directors should not be involved in specific day-to-day management (the combined position of chairman/vice-chairman and CEO is therefore not possible).

Management liability

Members of the management of a limited liability company who, in the performance of their duties, have intentionally or negligently caused damage to the limited liability company are liable to pay damages. The same applies where the damage has been caused to the shareholders or any third party. Under Danish law, the basis for management liability is as a starting point the general rule of liability for negligence. Danish courts have generally been reluctant to impose liability unless clear specific duties have been neglected, and members of the management enjoy a wide margin of discretion, provided that the member's actions and decisions are made on an informed, well-considered and factual basis (the business judgement rule). If found negligent, a member of a company's management may face claims for indemnification and/or damages from any aggrieved party and can be disqualified. However, it is an area under development, and in recent years high-profile cases in the Danish market have been litigated before ordinary courts (i.e., in public).

On July 1, 2023, a bill to amend the Financial Business Act, the Criminal Code and various other acts entered into force. The bill implemented the political agreement of June 16, 2022 on "Stricter responsibility assessment for management members in financial companies and broader recruitment basis for management in the financial sector".

The bill does not intend to change the liability standard for management liability for damages, and "culpa" (fault) will therefore continue to be the basis of liability in cases of management liability. However, it is our assessment that it will be a stricter standard of liability, approaching professional liability. The bill introduced stricter rules on management liability for damages:

- Non-compliance with internal guidelines, etc. in financial companies must be given greater weight in the assessment of liability.
- Reverse burden of proof for liability if the financial company suffers losses as a result of dispositions that favour members of management. The board of directors must therefore be able to prove that the grant or agreement in question was justifiable.
- Strict liability on the part of the management member whose interests are served by the grant or agreement if the board of directors has not approved the disposition in accordance with the rules.

7. What are the audit requirements in corporate entities?

As a rule, all limited liability companies are obliged to prepare and submit annual reports, unless they are exempted due to circumstances such as restructuring or winding up. The size of the company is important in terms of the scope of the annual report. Further, large companies, including listed ones, must comply with EU regulation (CSDR) by preparing a sustainability report provided with an auditor's statement, in addition to the annual report. In February 2024, a bill was introduced to implement the CSDR directive (2022/2464) in Danish law.

The annual report must be filed with the Danish Business Authority without undue delay after the approval of the annual report by the annual general meeting (no later than six months after the end of the financial year for non-listed companies and no later than four months after the end of the financial year for listed companies).

Small companies may opt out of auditing if, for two consecutive financial years, they do not exceed two of the following three thresholds at the balance sheet date:

- a balance sheet total of DKK 4 million
- a net turnover of DKK 8 million, and

- an average number of full-time employees of 12 during the financial year

For holding companies, special rules apply when determining the thresholds for opting out auditing.

Opting out of auditing can only be done at an ordinary general meeting with prospective effect.

D. Shareholder Rights

8. What are the privileges that can be granted to shareholders? In particular, is it possible to grant voting privileges to shareholders for appointment of board members?

As a rule, shareholders have administrative rights (e.g., voting rights), economic rights (e.g., the right to receive dividend if distributed) and right of disposal (e.g., transfer or pledge of a share).

The administrative rights are primarily exercised at a general meeting (either at the ordinary general meeting or at an extraordinary general meeting), including the shareholders' right to pass resolutions and elect members to the board of directors, and the right of each shareholder depends on the shareholder's ownership stake and voting rights.

All shares carry equal rights. However, the articles of association may provide for different share classes with different rights. In that case, the articles of association must specify the differences between the different share classes and the size of each share class. As such, it is possible to adopt share classes with economic preferences, e.g., a liquidity preference, or with more administrative rights, e.g., more voting rights per share or the right to appoint members to the board of directors.

As for the election/appointment of members to the board of directors, such members are as a starting point elected by the general meeting. The election of members to the board of directors will be decided or the resolution passed by a simple majority of votes. In case of a tied vote, the election of a person will be decided by lot unless otherwise provided in the articles of association. However, it is possible to adopt an appointment mechanism in the company's articles of association whereby public authorities or others, including shareholders, have a right to appoint one or more members to the board of directors. However, the majority of the members of the board of directors in a public limited company must be elected by the general meeting.

It is also possible to agree in a shareholders' agreement that members to the board of directors are appointed solely by a shareholder or a third party. As a rule, such agreement entails that the shareholders that are parties to the shareholders' agreement undertake to vote in such a way that the appointed board members are elected by the general meeting. Therefore, such a mechanism is not a violation of the requirement that majority of the members of the board of directors in a public limited company must be elected by the general meeting. In this regard, it should be noted that under Danish law, the shareholders' agreement is not formally binding on the company, and enforcement of the shareholders' agreement is thus restricted to the contractual remedies agreed between the parties in the shareholders' agreement. Professional parties are typically comfortable with that approach, e.g., by including sufficiently strong remedies (i.e., penalty or purchase rights) in the shareholders' agreement.

The articles of association can be aligned with the shareholders' agreement to increase the enforceability of the shareholders' agreement (as the articles of association are binding on the company), although since the articles of association are publicly available, it is customary to only include very limited elements from the shareholders' agreement in the articles of association. In practice, it is typically only the overall governance structure (i.e., the size of the board of directors etc.) that is reflected in the articles of association.

9. Are there any specific statutory rights available to minority shareholders available in your jurisdiction?

Shareholders exercise their rights through the general meeting, and the right of each shareholder depends on each shareholder's ownership stake and voting rights.

All resolutions at general meetings are passed by a simple majority of votes unless otherwise provided in the Danish Companies Act or the company's articles of association.

A shareholder controlling more than 50% of the voting rights will be able to elect all members of the board of directors, and a shareholder controlling at least 2/3 of the voting rights and the share capital will be able to amend the company's articles of association and resolve to issue new shares etc. (unless otherwise provided in the Danish Companies Act or the company's articles of association).

The acceptance criterion for certain resolutions at general meetings according to the Danish Companies Act provides certain minority rights. In short, if the shareholder owns:

Less than 10%: the minority shareholder has a right to demand the shares to be redeemed (right of redemption), if the remaining shares are owned by only one shareholder;

- 10% - 24.99%: the minority shareholder may block for section 107-decisions (i.e., certain material amendments to the articles), and the shareholder may not be redeemed by the majority shareholder(s);
- 25%-49.99%: the minority shareholder may demand that the Danish Business Authority appoints an additional approved auditor ("auditor of the minority shareholders") to participate in the audit together with the company auditor(s), and the minority shareholder may require that the company is scrutinised by appointed scrutinisers;
- 50%: the shareholder can block all decisions, except for the above-mentioned minority shareholder rights;
- 50.01% - 66.66%: the shareholder may decide on all matters relating to the company, unless the matter is covered by sections 106 (ordinary amendments to the articles), 107 (certain material amendments to the articles) or 45 (principle of the shares' equality) of the Danish Companies Act;
- 66.67% - 75 %: the shareholder may amend the articles of association and also resolve to issue new shares etc.;
- 75.01% - 89.99%: the shareholder may block the appointment of the auditor of the minority shareholders and block the appointment of scrutinisers;
- 90% and more: the shareholder may decide on section 107-matters and may demand that the minority shareholders' shareholdings be redeemed;

A minority shareholder often deems the minority rights and protection under the Danish Companies Act as insufficient, and it is customary to negotiate and agree on specific reserved matters on which the minority shareholder has a veto right.

The veto rights granted to a minority shareholder depend on multiple factors. Certain veto rights may – in addition to obviously giving the minority shareholder a veto right – entail that the majority shareholder will not be able to consolidate the company from an accounting perspective and/or that the minority shareholder and the majority shareholder will have "joint control" from a merger control perspective.

10. Is it possible to impose restrictions on share transfers under the corporate documents (e.g., articles of association or its equivalent in your jurisdiction) of a company incorporated in your jurisdiction?

Shares in a limited company are from a Danish corporate law perspective freely transferable, unless otherwise provided for in the articles of association.

The shares may be subject to transfer restrictions in a shareholders' agreement, and in principle the transfer restrictions in the shareholders' agreement can – with certain exceptions – be reflected 1:1 in the articles of association (to ensure that the company has to consent before a transfer can be legally consummated). However, the articles of association are publicly available and it is therefore customary only to include a provision in the articles of association for the company stating that transfers require consent from the general meeting or the board of directors (and the shareholders will in the shareholders' agreement explicitly agree that such consent is only to be given if the contemplated share sale is in accordance with the shareholders' agreement).

11. Are there any specific concerns or other considerations regarding the composition, technical bankruptcy and other insolvency cases in your jurisdiction?

Initially, the issuance of a winding up order does not result in liability on the part of the members of the board of directors or the executive management per se. However, an administrator/official receiver is obliged to investigate, whether any member of the board of directors or the executive management is liable.

Furthermore, when a company is wound up, the administrator/official receiver takes over the management of the company, and the shareholders lose their rights under the Danish Companies Act.

E. Acquisition

12. Which methods are commonly used to acquire a company, e.g., share transfer, asset transfer, etc.?

Acquisitions are typically carried out as a share transfer or an asset transfer, but other transaction models are available, such as statutory merger (e.g., a dissolution of a company without liquidation by transferring all its assets and liabilities to the acquiring company against the issue of new shares in the acquiring entity, i.e., a merger by absorption), de-merger etc. We often see statutory mergers between group companies, which are usually straight forward transactions.

It depends on a variety of factors how a transaction is to be structured, but the most common types of transactions are share transactions and asset transactions.

13. What are the advantages and disadvantages of a share purchase as opposed to other methods?

It depends on a variety of factors how a deal is to be structured. Some of the general considerations are listed below.

The transaction perimeter is important. If the target is not a separate legal entity, e.g., if the target is split across multiple legal entities or if the target is a business unit in a separate legal entity, an asset deal may be the most straight forward way to go. The target business units would be carved out from the relevant legal entity/entities. Furthermore, asset deals may be suitable in restructuring cases where the buyer only wishes to take over the healthy operating business or certain assets of value, but not (all) liabilities of the company.

The tax implications of the transaction structure must also be considered and depend on the involved parties' place of jurisdiction and the legal entities involved in the transaction. As a main rule, the seller usually prefers a share deal as it may lead to a lower taxation of the seller, as capital gains on shares are tax-exempt for non-Danish investors, and domestic corporate investors on unlisted shares, whereas the buyer may prefer an asset deal if the acquired assets will be revalued to fair market value with a higher future depreciation (and hence lower tax burden). The tax implications should be considered carefully, and other elements such as significant tax loss carryforwards of the target, which the buyer otherwise could have used in the future, could affect the choice of transaction structure. Conversely, such tax loss carryforwards may be used by the seller to offset any capital gains on assets.

The risk associated with the target and the buyer's risk profile must also be considered. In a share deal, the target company, including all assets and liabilities (on- or off-balance sheet), are within the transaction perimeter. The risks are typically mitigated by way of a proper due diligence and appropriate warranties and indemnities, but unexpected costs or liabilities emerging after closing of the transaction is a buy-side issue if the issue is not covered contractually, e.g., by the agreed warranties and indemnities in the share purchase agreement.

On the other hand, an asset transfer has the advantage that the buyer as a general rule can define the specific assets and liabilities within the transaction perimeter. Therefore, to a certain degree, the buyer can opt out of liabilities otherwise associated with the target such as contracts, undertakings, loan obligations, etc. However, the buyer cannot freely cherry-pick. The buyer may for example be required to take over the employees of the target (with the employees' existing contracts) or may have difficulties obtaining consent from customers or suppliers, which the buyer wishes to take over as part of the transaction. However, in a share transfer, all the company's contracts automatically transfer together with the company (unless subject to a change of control-provision), and there will be no change of employer in relation to the employees.

The different transaction structures have various pros and cons, and the most suitable transaction structure depends on the individual situation, as the above considerations are far from exhaustive.

14. What are the approvals and consents typically required (e.g., corporate, regulatory, sector based and third-party approvals) for private acquisitions in your jurisdiction?

A share or asset transfer may be subject to the approval by certain regulators of compliance with certain regulatory regimes, depending on the target and the parties. It may also require clearance from competition authorities under the merger control rules or FDI authorities under the rules on foreign direct investments.

Contracts to which the company is a party may include a change-of-control clause requiring that the contractual party approves any change of control in the target company. In asset transfers, the transfer of a contract will generally require consent from the contracting party, and if a creditor has security in the assets to be transferred, it is necessary to inform the secured creditor of the sale and to obtain a release and confirmation of non-enforcement of the security before the transfer of the asset.

15. What are the regulatory competition law requirements applicable to private acquisitions in your jurisdiction?

Denmark has had mandatory merger control rules since 2000. There are three alternative filing thresholds: (1) The parties realised an aggregate Danish turnover of at least DKK 900 million (approx. EUR 121.01 million) and at least two of the parties each realised a Danish turnover of at least DKK 100 million (approx. EUR 13.44 million), (2) one of the parties realised a Danish turnover of at least DKK 3.8 billion (approx. EUR 510.95 million); and one of the other parties realised a world-wide turnover of at least DKK 3.8 billion (approx. EUR 510.95 million), or (3) the transaction involves two or more providers of electronic communications networks, a public electronic communications network, and the parties realised an aggregate Danish turnover of at least DKK 900 million (approx. EUR 121.01 million).

Furthermore, it is expected that a bill will be introduced in 2024 which, if passed, will entitle the Danish Competition and Consumer Authority to require filing of a merger if the parties involved in the merger realised an aggregate Danish turnover of at least DKK 50 million (approx. EUR 6.71 million) and the Competition and Consumer Authority finds that there is a risk for the merger to significantly impede competition.

There is a prohibition against implementing the transaction before obtaining approval. The Danish Competition and Consumer Authority has 25 working days in phase 1 and 90 working days in phase 2. It is possible to extend these time limits and there is stop-the-clock in case of failure to respond to questions within deadline. There is a filing fee of up to DKK 1.5 million (approx. EUR 0.2 million). Although not legally required, pre-notification consultations are encouraged and expected. The Danish Competition and Consumer Authority is a very active enforcer of the merger control rules and tends to spend longer time reviewing transactions than many other EU competition authorities.

16. Are there any specific rules applicable for acquisition of public companies in your jurisdiction?

Denmark is a part of the EU and accordingly both Danish and EU legislation apply to the Danish equity capital market as well as the rules established by the stock exchange (the main stock exchange in Denmark is Nasdaq Copenhagen A/S which is a part of the Nasdaq Nordic Group).

In addition to EU legislation and guidelines and opinions issued by the European Securities and Market Authority (ESMA), Denmark also has various national laws, both implementing the EU directives and regulating other matters not regulated by the EU.

17. Is there a requirement to disclose a deal, for instance to regulatory authorities? Is it possible to keep a deal confidential?

As a starting point, there is no general obligation to disclose a deal involving a Danish target. However, a transaction involving a Danish target may be subject to disclosure requirements in a variety of ways, examples of which are described below.

Firstly, if the transaction is subject to approval by a regulatory authority, e.g., if approval of the transaction by the Danish Competition and Consumer Authority is required, the parties will have to disclose the transaction.

Secondly, if the deal is structured as a share deal, the new owner of the target company must be registered with the Danish Business Authority (as Danish companies have to register their legal and beneficial owners with the Danish Business Authority).

Thirdly, if the transaction is structured as an asset deal, the employees must be notified of the transfer, and assets subject to registration such as real estate must be registered in the land register.

18. Can sellers be restricted from shopping around during a negotiation process? Is it possible to include break fee or other penalty clauses in acquisition documents to procure deal exclusivity?

Danish law generally respects the principle of freedom of contract. As a rule, Danish contracts do not require a specific form or content, and the contracting parties are free to agree on the terms and conditions of the contract.

Therefore, it is possible to contractually restrict the seller(s) from shopping around during a negotiation process by entering into an exclusivity agreement. Furthermore, it is possible to agree on appropriate remedies in case of breach of the exclusivity obligation, including break fees, adequate damages (including external costs to advisors etc.).

19. What are the conditions precedent in a typical acquisition document? Is it common to have conditions to closing such as no material adverse change?

The parties are generally free to agree on the conditions precedent applicable for the transaction. Many transactions are only conditional upon mandatory regulatory approval, but other conditions such as no material adverse change, financing, shareholder approval, third party consents etc. may be agreed upon.

20. What are the typical warranties and limitations in acquisition documents? Is it common to obtain warranty insurance?

21.

The warranties catalogue should be adapted to the specific transaction, but generally the warranties are fairly broad and comprise fundamental warranties, business warranties and tax warranties.

The warranties are typically monetary limited, and the acquisition documents will define the de minimis amount, the basket and the cap. Furthermore, the warranties will be limited in time depending on the nature of the warranties (claims for breach of tax warranties and fundamental warranties will only become limited after a longer period of time). Finally, the warranties will in a Danish transaction be qualified by information reasonably disclosed in the due diligence documentation. A disclosure letter mechanism may be agreed between the parties, but it is rarely accepted by the seller.

The use of W&I-insurance has been widely used in the Danish market for several years, and it is also seen used in smaller transactions.

22. Is there a requirement to set a minimum pricing for shares of a target company in an acquisition?

There is no minimum pricing for shares of a target company. However, acquisitions between groups and related parties have to be at arm's length terms, and if a price is deemed to be fictional, the Danish Tax Agency will take this into consideration in determining whether the price represents a benefit.

23. What types of acquisition financing are available for potential buyers in your jurisdiction? Can a company provide financial assistance to a potential buyer of shares in the target company?

The types of financing may vary depending on the nature of the acquisition and the companies involved.

The most common types of financing include:

1) Financing through financial institutes or mortgage institutes.
2) Financing through other professional investors, e.g., pension funds, employee funds, and/or funds.
3) Self-financing by issuing new shares or increasing the capital of a non-listed company through chapter drawing.
4) Seller-financing through a loan or by transferring the company in stages, e.g., by agreeing on call and/or put options on the part of the company not yet transferred.

As a rule, a Danish limited company cannot provide financial assistance to a potential buyer of shares in the target company. It follows explicitly from the Danish Companies Act that the company must not, directly or indirectly, advance funds, grant loans or provide security for a third party's acquisition of shares in the company or (its parent). Certain exemptions apply, including if the financing is approved by the general meeting and certain criteria are met (only funds that could otherwise have been distributed as dividends must be used, the assistance must be provided on market terms etc.).

While it is certain that it falls within the prohibition of financial assistance if the target company provides security for the acquisition financing, it is more debatable whether there would be any issues in relation to a Danish entity providing a negative pledge to a lender to support the financing that will be raised post-acquisition. In general, the Danish financial assistance prohibition does not extend to restrictive covenants, including negative pledges, undertaken by the target company in connection with the acquisition financing. In some circumstances, however, the Danish Business Authority has noted (in an old case) that a negative pledge provided towards the lender of the acquisition financing (or subsequent third-party financing used to refinance this) may be unlawful under the prohibition, if:

1. the negative pledge limits the freedom of the target company to such an extent that it results in losses for the company and its creditors; and/or
2. the negative pledge may be used by the lender to force the target company, directly or indirectly, to redeem the acquisition financing.

The Danish Business Authority generally approves the traditional debt-push-down approach in target companies (i.e., involving the target obtaining third-party financing to pay out dividends used to repay the acquisition debt), and this approach is commonly used in Danish transactions. Depending on how the acquisition is financed, appropriate workarounds are usually available.

24. What are the formalities and procedures for share transfers and how is a share transfer perfected?

From a corporate law perspective, shares are freely transferable unless otherwise provided by statute. The formalities and procedures for share transfers and how a share transfer is completed depend on (i) whether proof of ownership of the shares has been issued, (ii) whether the shares are negotiable, and (iii) whether the shares are registered in a central securities depository.

Shares transferred in non-public M&A are deals normally registered in the name of the holder and registered in the shareholders' register (which is often a word-document or an excel-spreadsheet), and in such cases (i.e., a transfer of a share that has not been issued through a securities depository or for which no share certificate has been issued) the transfer will be perfected once the target company (or the keeper of the register of shareholders, if such a keeper has been designated received notice of the share transfer from the buyer or the seller.

It should be noted that a buyer of a registered share may not exercise the rights conferred on the buyer as a shareholder unless the buyer has been registered in the register of shareholders or the buyer has applied for registration and provided sufficient documentation for the buyer's acquisition. However, this does not apply to the right to receive dividends and other distributions and the right to subscribe for new shares in connection with a capital increase.

25. Are there any incentives (such as tax exemptions) available for acquisitions in your jurisdiction?

In Denmark, it is not required to pay any stamp duty or share transfer tax, when acquiring shares. Similar, the sale of shares would as a main rule not trigger any capital gains taxation for foreign investors.

Further, an attractive incentive for foreign investors is the participation exemption regime. Most often dividends are irrespective of ownership percentage tax exempt and not subject to Danish withholding tax.

F. Enforceability

26. Can acquisition documents be executed in a foreign language?

Danish law generally respects the principle of freedom of contract. As a rule, Danish contracts do not require a specific form or content, and the contracting parties are free to agree on the terms and conditions of the contract.

As such, there are by default no formal requirements for a contract to be binding upon the parties. In this sense, an oral agreement is just as binding upon the parties as a written agreement (but it can obviously be more difficult to prove the terms of an oral agreement). This also applies in case of an acquisition of a company. Hence, the parties to an agreement regarding the acquisition of a company are free to choose whatever language they find suitable for the acquisition documents. For the sake of a possible future transfer of the company to a foreign transferee, the acquisition documents are often drafted in English even if both parties are Danish.

Generally, corporate documents to be filed with the Danish Business Authority may be drafted in Danish, English, Norwegian and Swedish. However, certain corporate documents must be in Danish, Norwegian or Swedish language, and specific parts of the corporate documents must be in Danish (e.g., the objects of a company). Corporate documents may be (and is frequently) prepared in a dual language Danish/English-version with the Danish text as the prevailing test in case of discrepancies.

27. Can acquisition documents be governed by a foreign law?

Danish contract law contains a basic principle of freedom of contract, which entails that the contracting parties may agree on whatever they want in whatever way they wish unless there are mandatory rules or requirements governing otherwise (the parties may for example not opt-out of the Danish Act on Employees' Rights in the event of Transfers of Undertakings). The parties to a transfer of a company are free to insert a choice of law clause in the acquisition documents. Hereby, it is possible for the acquisition documents to be governed by the law of a state other than Denmark.

28. Are arbitration clauses legally permissible or generally included in acquisition documents?

Arbitration clauses are legally permissible and are generally included in acquisition documents.

The parties generally agree on arbitration, and if Danish arbitration is chosen then the arbitration will normally be administered by the Danish Institute of Arbitration in accordance with the Rules of Arbitration adopted by the Board of the Danish Institute of Arbitration.

The rules of arbitration are available on the website of the Danish Institute of Arbitration (https://voldgiftsinstituttet.dk/en/). The rules are available in Danish and English. The website also contains a calculator of arbitrator and mediator fees and a list of the administrative costs to be paid to the Danish Institute of Arbitration.

A reason to choose arbitration is that the parties can agree that the arbitration proceedings and the award are to be kept confidential, as opposed to legal proceedings before the Danish courts, which are generally public. Furthermore, Denmark is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, also known as the "New York Arbitration Convention" or the "New York Convention" regarding recognition and enforcement of foreign arbitral awards and the referral by a court to arbitration.

29. Are there any specific formalities for the execution of acquisition documents? Is it possible to remotely/digitally sign documents?

There are no formal requirements for a contract between the parties to an acquisition of a company to be valid. Hence, there are no formal requirements for digital signatures of such contracts. However, a digital signature should ensure a sufficient level of credibility and authenticity considering its importance as proof of the agreement.

In terms of corporate documents regulated by the Danish Companies Act, such documents must meet certain technical requirements, which are described in more detail in the eIDAS regulation. Signatures that meet these requirements are considered "qualified electronic signatures". When submitting certain digitally signed corporate documents to the Danish Business Authority, the certificate that verifies the identification of the signatory and the time of the signature, etc., must be included.

G. Trends and Projections

30. What are the main current trends in M&A in your jurisdiction?

General M&A transaction deal flow seems to have picked up in 2024 (although some deals did not materialise due to lack of alignment on valuation of target, e.g., due to poor current trading updates and reluctancy to accept target projections). Likewise, the beginning of 2025 has already seen several notable deals being executed.

However, we are generally seeing a decrease in transaction activity within the otherwise flourishing renewable energy sector in Denmark, which is mainly driven by certain sub-industries, e.g. PV projects (solar energy) or offshore wind, due to lack of viable business cases caused by a general increases in costs. On the other hand, other sub-industries are making significant progress and experiencing traction, in particular with respect to Carbon Capture and Storage (CCS) and Battery Energy Storage Systems (BESS).

31. Are any significant development or change expected in the near future in relation to M&A in your jurisdiction?

Exciting times lie ahead in 2025 with signs of upwards trajectory and PE firms coming under pressure (by limited partners) to sell their aging portfolio investments before raising new funds, albeit uncertainties to current momentum remains, especially due to geopolitical tensions and the development in interest rates.

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A. General

1. What is the main legal framework applicable to companies in your jurisdiction?

In Ecuador, the corporate regime is primarily regulated by the Companies Law. However, as supplementary statutes, we need to consider the Civil Code which generally incorporates private law rules, the Organic Law of the Internal Tax Regime and its regulations, and, when applicable, the Organic Law for the Regulation and Control of Market Power.

2. What are the most common types of corporate entities (e.g., joint stock companies, limited liability companies, etc.) used in your jurisdiction? What are the main differences between them (including but not limited to with regard to the shareholders' liability)?

The most common types of corporate entities in Ecuador are (i) the stock company or corporation, known as "*Sociedad Anónima*" (which uses the *S.A.* initials), (ii) the limited liability company, referred to as "*Sociedad de Responsabilidad Limitada*" or "*Compañía Limitada*" (*Cía. Ltda.*), and (iii) recently the Simplified Shares Company ("*Sociedad por Acciones Simplificada*", with the initials "**S.A.S.**"). The key distinctions among them are as follows:

Sociedad Anónima ("**Corporation**"): In a corporation, shareholders' liability is limited to the capital they have contributed to acquire shares. Shareholders are not personally liable for the company's debts or obligations beyond their investment (with limited exceptions in which is possible to pierce the corporate veil). Shares in a joint stock company are easily transferable with the endorsement of the title and the corresponding registration in the book of shares and shareholders of the company. Shares may be traded in the stock market in compliance with the relevant legal requirements. Corporations are typically governed by the general shareholders meeting, and may have a more complex governance structure, including a board of directors. A corporation must retain 10% of its yearly profits to create a reserve fund until it reaches an amount equivalent to half of its social capital.

Sociedad de Responsabilidad Limitada (Limited Liability Company): In a limited liability company, partners have also limited liability, similar to that of a corporation. However, transfer of ownership interests in a limited liability company requires certain formalities, including the unanimous consent from all partners when the transfer is in favor of a person not already a partner of the company (and until recently, a public deed before a notary public was also mandatory). A limited liability company shall keep 5% of its yearly profits to create a reserve fund until it reaches 20% of its capital.

Sociedad por Acciones Simplificada (Simplified Shares Company): Additionally, a new type of company known as a *"Sociedad por Acciones Simplificada"* has been made available and regulated in Ecuador. The S.A.S. is designed to simplify business creation and reduce the costs of incorporation and management. Notably, S.A.S. entities are highly flexible regarding the number of shareholders (they may be incorporated by a sole shareholder), bylaws provisions, amount of capital, and formalities for corporate actions that may be achieved through private documents. In a S.A.S., shareholders can determine the company's management and administration through the social contract or a shareholders' agreement. Unlike corporations and limited liability companies, a *Sociedad por Acciones Simplificada* ("**S.A.S**".) is not obligated to establish a legal reserve fund.

B. Foreign Investment

3. Are there any restrictions on foreign investors incorporating or acquiring the shares of a company in your jurisdiction?

Generally, Ecuador displays an open and inclusive attitude towards foreign investors incorporating or acquiring shares of a local company. Laws regulating foreign investments provide equal conditions regarding the management, operation, expansion, and transfer of foreign investments, fair and equitable treatment, ensuring nondiscrimination on a level playing field for both domestic and international investors.

However, regulated, or strategic sectors – such as energy in all its forms, telecommunications, non-renewable natural resources, transportation and refining of hydrocarbons, biodiversity and genetic heritage, radioelectric spectrum, water – do contain certain restrictions to foreign investments (e.g., transactions may require prior notice or approval from relevant regulatory bodies.) This layered approach, commonly seen across Latin American nations, balances national interests with the goal of global integration and requires that investors keep-up with sector-specific guidelines.

4. Are there any foreign exchange restrictions or conditions applicable to companies such as restrictions to foreign currency shareholder loans?

Adopting the USD has simplified foreign exchange considerations in Ecuador. While registering foreign investments with the Central Bank is optional, it is recommended for facilitating profit repatriation and adhering to documentation and reporting standards. Foreign currency shareholder loans are generally permissible, subject to customary reporting and documentation requirements. In addition, individuals and corporations in Ecuador are obligated to declare and pay the capital outflow tax (known as *Impuesto a la Salida de Divisas* or ISD), recently reduced from 5% to 2.5%, for certain imported capital goods and to 0% for imports of pharmaceutical products. All other taxpayers sending currency abroad are subject to the 5% rate.

5. Are there any specific considerations for employment of foreign employees in companies incorporated in your jurisdiction?

Generally, employment of foreign employees is permissible in Ecuadorian companies provided proper work visas and work permits are obtained. There are, however, specific considerations for foreign employees in Ecuador, such as the provision set forth in the Labor Code which mandates foreign staff in transport sector should not exceed 20% of the total workforce. Exceptions exist for technical or specialized roles where local expertise might not be readily available.

C. Corporate Governance

6. What are the standard management structures (e.g., general assembly, board of directors, etc.) in a corporate entity governed in your jurisdiction and the key liability issues relating to these (e.g., liability of the board members and managers)?

In Ecuador, the foundation of corporate governance lies in the dualistic system of the general assembly and the board of directors:

a) General Assembly or Shareholders' Meeting: This is the supreme authority in corporate entities, responsible for major decisions like amending bylaws, approving financial statements, or changing the capital structure. They also elect legal representatives (or board members depending on the bylaws) and oversee their actions.

b) Board of Directors: Common in larger corporations (Sociedades Anónimas), the board supervises and manages the company's affairs, implements the shareholders' resolutions, and oversees the executive management. The number and roles of board members are dictated by the company bylaws.

c) Managers or Administrators: Ecuadorian law requires that any legal entity, including companies, must have 1 (one) or more legal representatives. The common titles for the office of legal representatives are president and general manager, depending on the bylaws. The legal representatives generally have the power to bind the company when they act on their behalf. The appointment letter of a legal representative of a company is to be registered before a public registry, such as the Mercantile Registry or the Superintendence of Companies.

Key Liability Issues:

a) Directors' and Managers' Liability: Both board members and managers can be held liable for acts of fraud, abuse of authority, negligence, and violation of the law or company bylaws. If they act within the confines of their authority and in the best interests of the company, they usually benefit from a shield against personal liability.

b) Joint Liability: In certain circumstances, board members may be jointly liable for company obligations, especially if legal regulations and company statutes aren't followed.

c) Ecuadorian Criminal Code recognizes the concept of criminal liability for legal entities, especially in cases of money laundering, bribery, or environmental offenses. Corporations must ensure robust internal controls to avoid punitive measures.

7. **What are the audit requirements in corporate entities?**

Entities may perform optional internal audits to ensure compliance and oversight. External audit, however, is governed by the Superintendence of Companies, Securities, and Insurance, and it is mandatory for those companies that exceed US$100,000 in total assets for the previous fiscal year. These audits are to be conducted by accredited firms registered by the Superintendence and, upon completion, audit reports, paired with the company's financial statements, are submitted for further revision.

D. Shareholder Rights

8. **What are the privileges that can be granted to shareholders? In particular, is it possible to grant voting privileges to shareholders for appointment of board members?**

In accordance with the Ecuadorian Companies Law, privileges can be granted to shareholders, including the possibility of granting voting privileges in the appointment of board members. These privileges may be outlined in the company's bylaws or in shareholder agreements duly registered with the Superintendence of Companies, Securities, and Insurance.

However, it is important to note that, as a standard practice, Ecuadorian law stipulates that each shareholder or partner should be considered when voting in proportion to the number of shares or participations they hold, depending on the type of company. In other words, voting is generally distributed based on the shareholder's or partner's ownership of shares or participations.

Therefore, if differentiated voting privileges are desired for specific shareholders, these must be expressly stipulated in the corporate documents and comply with the relevant legal requirements. In summary, while it is possible to establish agreements for differentiated voting as agreed upon within the company, Ecuadorian law adheres to the principle that voting is based on the ownership of shares or participations by each shareholder or partner unless valid provisions to the contrary are established.

9. **Are there any specific statutory rights available to minority shareholders available in your jurisdiction?**

In Ecuador, minority shareholders enjoy certain statutory and legal rights aimed at safeguarding their interests. These rights, as established in the Companies Law, encompass various prerogatives. Firstly, there is the right to negotiate shares, with the premise of ensuring the validity of agreements between shareholders that establish conditions for share transactions. It is relevant to note that such agreements will not have opposable effects against third parties, although this does not exempt the possibility of incurring civil liabilities, without detracting from the preservation of the inherent rights of minority shareholders.

Additionally, the right to convene shareholder meetings is conferred, as well as the right to challenge decisions perceived as detrimental to the company or individual interests. Likewise, the right to access relevant financial and accounting information is recognized, along with the right to receive dividends in proportion to the ownership stake in the company. Together, these rights form a legal framework aimed at protecting and safeguarding the position of minority shareholders in companies.

Furthermore, to enhance the protection of minority shareholders, the law stipulates that the company's bylaws serve as a supplementary norm to guarantee the enjoyment of rights and limit abusive or fraudulent practices. This provision constitutes an additional element in the defense of minority shareholders' rights, providing them with a solid and comprehensive legal framework to safeguard their interests in the corporate context.

10. Is it possible to impose restrictions on share transfers under the corporate documents (e.g., articles of association or its equivalent in your jurisdiction) of a company incorporated in your jurisdiction?

Yes, it is possible to impose restrictions on the transfer of shares under the corporate documents of a company incorporated in Ecuador, such as the bylaws or shareholders' agreements. These restrictions may include preemption rights in the event of a sale of shares, limitations on the transfer of shares to third parties, or specific requirements that must be met before allowing the transfer. However, these restrictions must be reasonable and in compliance with applicable Ecuadorian laws.

11. Are there any specific concerns or other considerations regarding the composition, technical bankruptcy and other insolvency cases in your jurisdiction?

In the context of mergers and acquisitions in Ecuador, it is crucial to consider aspects related to shareholder composition and the potential implications in cases of insolvency. In Ecuador, it is important to note that there is no specific legislation exclusively dedicated to the regulation of bankruptcy processes.

Nevertheless, the concept of diligence in the fulfillment of obligations is recognized in the Civil Code, primarily in the context of legal relationships between private parties.

In addition to the aforementioned, with regards to bankruptcy matters, Ecuadorian legislation contemplates the possibility of initiating 5 (five) types of bankruptcy procedures, namely preventive, which can be applied to individuals, commercial companies, and exceptional cases, as well as voluntary and necessary categories. These instances are duly regulated in the Organic General Code of Processes.

E. Acquisition

12. Which methods are commonly used to acquire a company, e.g., share transfer, asset transfer, etc.?

The most commonly used method to acquire a company is the transfer of shares. Nevertheless, depending on the financial or legal situation of the target, it is also usual to purchase only assets, tangible and intangible, to avoid any hidden liabilities, such as labor or tax debts.

Companies may also be acquired through mergers, in which case the purchaser absorbs the target company, which in turn disappears. In this case, the purchaser also assumes all of the target's assets and liabilities.

Recently, the Ecuadorian Commerce Code introduced the sales of a business as a going concern whereby all or part of a business, assets and liabilities, may be sold.

13. What are the advantages and disadvantages of a share purchase as opposed to other methods?

A share purchase is the fastest method to acquire a company and the one that requires minimum formalities, thus reducing closing times and sometimes costs associated with the purchase of assets (which in most cases require to be made through public deeds which have to be registered in the land registrar and pay the corresponding asset transfer taxes). This can be a lengthy and costly process; nevertheless, it reduces any risks from hidden liabilities.

The main disadvantage of a share purchase is that all assets and liabilities of the target are transferred to the purchaser, particularly labor, tax, and environmental liabilities.

14. What are the approvals and consents typically required (e.g., corporate, regulatory, sector based and third-party approvals) for private acquisitions in your jurisdiction?

Except in the case of limited liability companies, which require unanimous consent of the partners to authorize the transfer of shares to non-partners, there are no corporate approvals required for this purpose, unless a shareholder agreement has been executed, whereby the other shareholders have a first right of purchase, or consent form other shareholders is required to transfer the shares to third parties.

Entities engaged in certain economic sectors, such as the following, require the approval of the corresponding authority to transfer their shares:

- Hydrocarbons: companies for downstream and upstream activities require the approval from Ministry of Energy and Mines.
- Insurance companies may transfer the totality of their business with prior approval from the Superintendence of Companies, Securities and Insurance.
- The assignment of the totality of assets and liabilities made by a financial entity requires approval from the Superintendence of Banks.
- The shares of national media companies may not be transferred to foreign organizations or companies domiciled outside of Ecuador, or to non-resident foreign individuals.
- Companies operating in the Ecuadorian electric sector (generation, transmission, and distribution) may not transfer their shares without the approval of the Ministry of Energy and Mines.

15. What are the regulatory competition law requirements applicable to private acquisitions in your jurisdiction?

All private acquisitions that exceed the thresholds set by the Ecuadorian antitrust authority are required to obtain an authorization prior to the acquisition, in the following cases:

(a) When, as a consequence of the purchase, the purchaser acquires or its participation increases to an amount equal to or higher than 30% of the relevant market for the product or service, at a national level or in a defined market within the national territory.

(b) When the total joint volume of the business of the participants exceeds USD 90,000,000 in the previous fiscal year. The threshold increases for financial and insurance companies.

16. Are there any specific rules applicable for acquisition of public companies in your jurisdiction?

Purchases of shares of companies listed in a stock exchange in Ecuador, that allow the purchaser to take control of a company in one or successive purchases, and when a person or a group of persons acquires a significant number of shares with voting rights in a company, must be undertaken through the public offering procedure set forth in the Stock Market Law.

17. Is there a requirement to disclose a deal, for instance to regulatory authorities? Is it possible to keep a deal confidential?

Yes, all share transfer deals must be reported to the Superintendence of Companies and the Internal Revenue Service within 30 days of the transfer; consequently, it is not possible to keep a deal confidential. The report includes disclosing the new property structure until the ultimate beneficiary owner, as well as the management at each level of ownership.

18. Can sellers be restricted from shopping around during a negotiation process? Is it possible to include break fee or other penalty clauses in acquisition documents to procure deal exclusivity?

Sellers may be restricted from shopping around during a negotiation process if the parties agree. Otherwise, sellers may shop around during a negotiation process. It is possible to include break free or other penalty clauses in acquisition documents to procure deal exclusivity.

19. What are the conditions precedent in a typical acquisition document? Is it common to have conditions to closing such as no material adverse change?

Conditions precedents are widely used. The most common include:

(a) No governmental authority shall have issued any judgement, order or decision that is in force and has the effect of rendering the closing illegal or otherwise restricting or preventing its consummation.

(b) No proceeding or litigation shall exist or be pending or threatened with respect to (i) the transactions contemplated under the purchase agreement or (ii) the performance by any of the parties' obligations under the purchase agreement or that encumbers, impedes or delays consummation of the transactions contemplated in the purchase agreement, or that makes consummation of the transaction unviable.

(c) The representations and warranties of the seller/purchaser in the purchase agreement are true and correct in all respects as of the date of the purchase agreement and must be true and correct in all respects as of the closing date.

(d) Purchaser/seller shall have fully performed all of their obligations and covenants under the purchase agreement.

(e) Since the date of the purchase agreement, no material adverse effect has occurred.

(f) All corporate authorizations have been obtained for the transactions contemplated in the agreement.

(g) The consummation of the transactions contemplated in the purchase agreement shall not have been enjoined or prohibited by applicable law or any judgment, injunction, order or decree.

20. What are the typical warranties and limitations in acquisition documents? Is it common to obtain warranty insurance?

The typical warranties and limitations include:

(a) Solvency

(b) No conflicts

(c) Government approvals

(d) Litigation

(e) Authorization, Binding Effect

(f) Organization and goodstanding

(g) Compliance with anti-corruption laws

(h) Brokers of finders

(i) No undisclosed liabilities

(j) Tax matters

(k) Employment and labor matters

(l) Environmental, health and safety matters

21. Is there a requirement to set a minimum pricing for shares of a target company in an acquisition?

The parties may freely set the price for the purchase of the shares of the target company; nevertheless, for purposes of calculating the tax on capital gains, Ecuadorian tax law provides that the price cannot be less than the average patrimonial value of the shares. The patrimonial value is calculated by the target company's net worth on December 31st of the year prior to the transfer, divided by the number of outstanding shares issued by the target company.

22. What types of acquisition financing are available for potential buyers in your jurisdiction? Can a company provide financial assistance to a potential buyer of shares in the target company?

Potential buyers may obtain any type of financing, domestically or from abroad, from financial or non-financial entities, by way of loans, capital contributions, etc.

23. What are the formalities and procedures for share transfers and how is a share transfer perfected?

For corporations, seller and purchaser must deliver the endorsed share title, or a share transfer letter (either physically or electronically), to the target company's legal representative. The legal representative shall register the transfer in the book of shares and shareholders of the company, and will in turn inform on the transfer to the Superintendence of Companies, through an online application available at the Superintendence's website. If the target is a limited liability company, the share transfer must be registered with the Mercantile Registrar.

If the purchaser is a foreign legal entity, in addition to the share transfer letter, the purchaser must also provide a good standing certificate issued by the competent authority of its home country, and appoint a special representative in Ecuador, empowered to represent the foreign shareholder before Ecuadorian authorities and to report its ownership structure until the ultimate beneficiary owner. The share transfer will not be approved if these documents are not presented and approved by the Superintendence.

24. Are there any incentives (such as tax exemptions) available for acquisitions in your jurisdiction?

No, there are no tax incentives or exemptions for the acquisition of shares or assets in Ecuador. Sales of businesses as ongoing concerns are exempt from value added tax (VAT).

F. Enforceability

25. Can acquisition documents be executed in a foreign language?

Yes. Acquisition documents may be executed in a foreign language.

26. Can acquisition documents be governed by a foreign law?

Submission to foreign law is not expressly prohibited. Furthermore, regarding international arbitration, the Arbitration and Mediation Law establishes that the parties are free to agree to substantive law without any restrictions. Therefore, if there is a need for acquisition documents to be governed by a foreign law, it would be advisable to include an international arbitration clause, when it is available (i.e., when the parties are domiciled in different countries, when a significant part of the obligations or the place of the dispute is related to a country different to that of one of the parties, or when dealing with international transactions).

27. Are arbitration clauses legally permissible or generally included in acquisition documents?

Arbitration clauses are legally permissible, and they are generally included in acquisition documents. In those cases where international arbitration is available, the parties are free to choose not only the substantive law, but also the arbitration procedural rules, the language, and the site of the tribunal (and hence the law governing the arbitration itself). Ecuador is a signatory to the New York Convention (the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards), and an award issued at a foreign jurisdiction may be directly enforced in Ecuador. Moreover, under the Arbitration and Mediation Law, an international arbitration award may be summarily executed, without an exequatur procedure, following the same enforcement procedures as a last instance judgement from a local court.

28. Are there any specific formalities for the execution of acquisition documents? Is it possible to remotely/digitally sign documents?

In principle, there are no specific formalities for the execution of acquisition contract documents. They may also be signed electronically with the same legal effects of a handwritten signature, following the Law on Electronic Trade.

However, the transfer of a business as a going concern under the Ecuadorian Commerce Code must be made through a public deed issued before a notary. The transfer of rights on real estate property also requires a public deed, to be registered before the property registrar of the relevant county. The transfer of fiduciary rights in a mercantile trust, which is also a vehicle for an acquisition, also requires this formality.

Finally, as noted, the transfer of shares of a corporation shall be perfected with its registration in the book of shares and shareholders of the company by its legal representative. Other types of companies or entities may need different formalities.

G. Trends and Projections

29. What are the main current trends in M&A in your jurisdiction?

The Companies Law has been recently updated to reflect the need for expedited corporate transactions, including the use of electronic means, and the reduction of formalities (as it is the case in the use of simplified corporate forms such as the S.A.S. corporation). We can expect that this trend will continue.

Environmental concerns, corporate governance, diversity, and social responsibility, are becoming increasingly relevant in any type of business transaction, including M&A. We have also witnessed the development of regulations aimed at reporting corporate structures in order to avoid money laundering and tax evasion. Antitrust laws and data protection regulations are relatively recent and are being implemented and enforced.

30. Are any significant development or change expected in the near future in relation to M&A in your jurisdiction?

In Ecuador, there is an ongoing political discussion on the economic role of the government, and on the importance to be assigned to private investments for the development of the country. This has been particularly relevant regarding public services and what has been labeled as strategic sectors of the economy (such as oil and gas, mining, energy, telecommunications, roads, and ports infrastructure, where Public Private Partnerships regulations are being updated). However, despite such debate, it has become clear that private investment through M&A transactions are welcome and promoted. Investment contracts, including international arbitration and legal stabilization clauses, are available in accordance with certain legal requirements.

FRANCE

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A. General

1. What is the main legal framework applicable to companies in your jurisdiction?

Companies' acquisitions, mergers and divestments are mainly governed by contract law as provided by the French Civil Code and the French Commercial Code. A major reform of contract law occurred in 2016 aiming at simplifying and modernizing the applicable rules of French civil and commercial contractual laws. This reform amends, creates and deletes numerous articles of the French Civil Code and enshrines several concepts in the legislation, such as the duty of pre-contractual information or the generalized concept of hardship in the context of both civil and commercial contracts.

Mergers and acquisitions are also supervised by a number of regulators in specific sectors, such as the Prudential Supervision and Resolution Authority (*Autorité de Contrôle Prudentiel et de Résolution*) ("**ACPR**") in the banking and insurance sector or the Commission for Energy Regulation (*Commission de Régulation de l'Energie*) ("**CRE**") for the energy sector. Additionally, certain types of assets also require specific formalities to make the transfer enforceable against third parties. This is the case for transfers of real estate assets which need to be completed before a notary public.

Public mergers and acquisitions and capital market transactions must also comply with the French Monetary and Financial Code and the regulations of the Financial Markets Authority (*Autorité des Marchés Financiers*) (**"AMF"**), in particular its "General Regulation" (*Règlement Général de l'AMF*). The AMF regulates transactions carried out by listed companies as well as documents issued by listed companies in the context of certain transactions, such as initial public offerings, capital increases, mergers or demergers.

Corporate law and financial regulation are based on a set of rules that are harmonized at the European Union level with variable level of national specificities.

2. **What are the most common types of corporate entities (e.g., joint stock companies, limited liability companies, etc.) used in your jurisdiction? What are the main differences between them (including but not limited to with regard to the shareholders' liability)?**

The choice of corporate entity mainly depends on the scale of the business venture which will be undertaken. The three main types of corporate entities, all of which are limited liability companies, are the following:

The private limited liability company (*société à responsabilité limitée*) ("**SARL"**), which is commonly used for small and mid-size businesses. The management structure of an SARL, its share capital composition and the transfer of its shares (*parts sociales*) are prescribed by law. SARLs are run by one or several managers, the number of which is set out in the by-laws of the company. Transfers of shares are generally possible but will require the approval of a simple majority of the shareholders (unless the by-laws of the company require a more stringent majority) in the event of a transfer to a third party. SARLs can be set up with a single shareholder (being a natural person or a legal entity) but there is a legal cap of 100 shareholders. There is no minimum capital requirement to incorporate an SARL. SARLs cannot be listed on public markets.

The simplified joint stock company (*société par actions simplifiée*) ("**SAS"**) is more commonly used for larger businesses. The SAS is a flexible type of corporate entity which is loosely regulated by the Commercial Code (mainly via references to certain articles applicable to public limited companies) and which enables its shareholders to tailor the company to their own needs in terms of management structure and shareholder relationships. The only required body is the chairman (*président*) who can be either a natural person or a legal entity. The by-laws may also provide for the appointment of one or several general managers, who may be entrusted with the same authority and powers as that of the chairman. Additional governance bodies may be created to address any particular needs. An SAS can be set up with a single shareholder (being a natural person or a legal entity). There is no minimum capital requirement to incorporate an SAS. An SAS cannot be listed on public markets but it is authorized to offer securities to qualified investors or to a restricted circle of investors.

The public limited company (*société anonyme*) ("**SA**") is a type of corporate entity used by large businesses and listed companies. SAs are heavily regulated by the Commercial Code (on the contrary to the SAS) and their structure is prescribed by law. SAs are managed either by a board of directors (*conseil d'administration*) and a general manager (*directeur général*) or by a management committee (*directoire*) overseen by a supervisory board (*conseil de surveillance*). It is not possible to set up an SA with a single shareholder as the minimum number of shareholders is 2 (7 if the SA is listed). The minimum capital requirement is EUR 37,000. SAs can be listed on stock exchange markets and they can offer their securities to the public.

Several other corporate structures exist and may be used to meet specific legal or tax needs, including partnership (*société en commandite simple*), partnership by share (*société en commandite par action)*, non-commercial company (*société civile*).

B. Foreign Investment

3. Are there any restrictions on foreign investors incorporating or acquiring the shares of a company in your jurisdiction?

As a general principle, foreign investments are not restricted in France.

However, French regulation provides for an obligation to obtain the prior authorization of the French Minister of Economy (MINEFI) for investments considered to be strategic in France. Specifically, the MINEFI authorization must be sought when an investment meets three cumulative conditions relating to (i) the investor, (ii) the transaction itself and (iii) the strategic activity carried out by the French target company of the transaction.

For purposes of foreign investment regulations, an investor may be a non-French individual, a French individual who is not a resident of France within the meaning of tax regulations, a legal entity governed by foreign laws or a legal entity, governed by French law, that is controlled by one or more person(s) or entity(ies) mentioned above. In addition, any person or legal entity belonging to a chain of control (from the direct investor to the ultimate controller) is deemed to be an investor within the meaning of French foreign investment regulations.

The investments that require the MINEFI authorization are those made by an investor that result in:

- the acquisition of control of a legal entity governed by French law within the meaning of article L.233-3 of the French Commercial Code;
- the acquisition of all or part of a line of business of an entity governed by French law;
- the crossing (upward), directly or indirectly, alone or as part of a concerted action, of the threshold of 25% of the voting rights of a legal entity governed by French law (the latter applying only for investors outside the EEA or the EU); and
- since a decree dated December 28, 2023, the crossing (upward), directly or indirectly, alone or as part of a concerted action, of the threshold of 10% of the voting rights of a legal entity governed by French law (the latter applying only for investors outside the EEA or the EU).

The list of activities deemed to be strategic is wide and subject to interpretation. It is set out in article R. 151-3 of the French Monetary and Financial Code and include for instance the defense, aerospace, telecommunications and public health sectors.

As a condition for granting its authorization, the MINEFI may require that the investor agrees to certain undertakings meant to protect national interests, notably in order to ensure the continuity of the target company's business activities and assets.

Should a transaction subject to the French foreign investment regulation be completed without the MINEFI authorization, the transaction could be declared null and void and the investor could be prosecuted. The MINEFI also has specific powers in case of breach of an undertaking granted by an investor.

In cases where a transaction requires the MINEFI authorization, such authorization shall be required as a condition precedent and the filing may be done as soon as the parties have agreed on the main terms of the transaction. The process for the granting of the MINEFI authorization is subject to stringent deadlines and, in cases of undertakings, may last around 4 months after the submission of a complete application.

Finally, note that the MINEFI may reject an application for authorization by a reasoned decision on various grounds. However, such rejections are rare in practice.

4. Are there any foreign exchange restrictions or conditions applicable to companies such as restrictions to foreign currency shareholder loans?

There are no general restrictions under French law regarding the use of foreign currency as there are few controls in France over foreign exchange transactions. Payment of consideration is generally made in euros but payments in other currencies (or payment in kind) are possible. However, the euro equivalent of the purchase price would need to be determined (or determinable) as it will be required by the tax authorities for purposes of tax registration.

5. Are there any specific considerations for employment of foreign employees in companies incorporated in your jurisdiction?

Employing foreign employees in France involves various legal and administrative considerations that need to be addressed to comply with French labor laws and regulations. Foreign employees (*i.e.,* employees whose citizenship is outside the EU or the EEA) must have the legal right to work in France. In practice, this means that they need to obtain a residence permit (*carte de séjour*) and/or a work permit (*autorisation de travail*) depending on their situation, especially (i) the length of their stay, (ii) their nationality and their (ii) functions and qualifications.

Employers must ensure that their employees have a valid work permit before they start their employment. In principle, foreign employees must be enrolled with the French social security system and pay French taxes (as applicable) on their income. They are also subject to French employment regulations, such as minimum wage or working time.

C. Corporate Governance

6. What are the standard management structures (e.g., general assembly, board of directors, etc.) in a corporate entity governed in your jurisdiction and the key liability issues relating to these (e.g., liability of the board members and managers)?

The standard management structure of the main corporate entities in France, including the SA, typically includes the following bodies:

- The general assembly (*assemblée générale*): This is the highest decision-making body of the company, comprising all the shareholders. It meets at least once a year and is responsible for approving the company's annual financial statements, appointing or dismissing members of the board of directors, voting on their compensation as well as on the compensation of the CEO of the company, and setting the company's strategic direction. The general assembly is the corporate body entitled to modify the by-laws of the company.
- The board of directors (*conseil d'administration*): The board of directors is responsible for the overall management of the company, including setting the company's objectives and policies, overseeing the performance of the management team, and making key decisions relating to the company's operations. The board of directors is typically composed of non-executive members, and at least half of the members must be independent.

- A chief executive officer (*directeur général*) or "CEO" who is responsible for the day-to-day management of the company and the implementation of the strategic objectives set by the board of directors. The CEO is accountable to the board of directors. The CEO is appointed by the board of directors and represents the company vis-vis third parties.

In some SAs, in addition to the general assembly, the management body is composed of the following bodies (which therefore replace the board of directors and the chief executive director):

- The management committee (*directoire*) which is a group of senior executives chaired by a president responsible for implementing the company's strategy and managing its day-to-day operations. The management committee members and president are appointed by the supervisory board. The chairman of the management committee represents the company vis-vis third parties.
- The supervisory board (*conseil de surveillance*): Similar to the board of directors, the supervisory board's role is to monitor the actions of the management committee and to ensure that they are acting in the best interests of the company and its shareholders.

SARLs, on the other hand, have a simpler management structure. They are managed by one or more managers (*gérant(s)*) who are responsible for the day-to-day management of the company and represent the company vis-vis third parties. Managers are appointed directly by the shareholders.

SAS governance can be tailored to the particular needs of its shareholders and governance structure range from basic structure where the Chairman (*president)* is entrusted with almost all the power or very sophisticated with boards and specific committees.

Managers (*i.e.,* either the CEO or the management committee members) and members of the board of directors or the supervisory board have a duty to act in the best interests of the company and its shareholders. They may be held liable, individually or jointly, if they breach such duty or act negligently, resulting in harm to the company or its shareholders. They may also be held liable in the event of breach of the applicable laws and regulations or of the by-laws of the company. For example, a manager who misuses company funds or engages in fraudulent activities can be held liable for damages and may be subject to criminal charges. As for shareholders, they generally have no personal liability, which means that they are not liable for the debts or obligations of the company apart from their initial financial contribution to the share capital. In rare circumstances, French courts have held shareholders liable when they considered that they were acting as *de facto* directors (*dirigeants de fait*), *i.e.,* that they were taking management decisions on behalf of the company. However, these cases are limited in number and the courts generally impose a strict standard in determining that a shareholder acts as a *de facto* director. Shareholders may also be held liable if they are *de jure* directors (*dirigeants de droit*), *i.e.,* if they have been appointed as such.

7. What are the audit requirements in corporate entities?

A company must elect a statutory auditor whenever it is (i) listed on stock markets or it (ii) reaches cumulatively two of the three following thresholds (the 5/10/50 rule): applicable since 2024

- a total balance sheet exceeding EUR 5,000,000;
- a total turnover excluding taxes exceeding EUR 10,000,000; and

- an average headcount exceeding 50 employees.

In addition, companies controlling other companies must elect a statutory auditor whenever the group that it forms with the controlled companies exceeds two of the three thresholds of the 5/10/50 rule.

Finally, controlled companies that (i) exceed two of the three following thresholds, *i.e.,* a total balance sheet exceeding EUR 2,500,000, a total turnover excluding taxes exceeding EUR 5,000,000 and an average headcount exceeding 25 employees, and (ii) belong in a group which exceeds two of the three thresholds of the 5/10/50 rule must also elect a statutory auditor. Companies controlled by a parent company which have already elected statutory auditors do not need to appoint supplementary ones, provided that in certain circumstances it may be required to appoint two separate and independent auditors.

The auditor can be any person (*i.e.,* a natural person or a legal entity), but where the auditor is a legal entity, an individual must be appointed to sign reports and bear the responsibility.

D. Shareholder Rights

8. What are the privileges that can be granted to shareholders? In particular, is it possible to grant voting privileges to shareholders for appointment of board members?

Shareholders rights include financial rights (in particular, right to receive their share of dividends) and political or governance rights (in particular, the right to vote in shareholders' meeting, information rights and the right to bring a legal against to defend their or the company's interests).

Except in specific structure such as partnership and absent specific provisions in the by-laws, all the rights referred to above are allocated between the shareholders proportionally to the percentage of share capital held by each of them.

French law however allows for the possibility to deviate from such proportionality principles either by creating specific class of shares and/or by granting specific rights to certain designated persons. In a SAS, which is the corporate form providing for the highest flexibility, the sole limits regarding disproportionate allocation of rights seem to be (i) the prohibition to fully deprive a shareholder from financial rights (*clause léonine)* and (ii) the prohibition to forbid the attendance (not voting) to shareholders meeting. Other corporate structures provide for additional limitations.

9. Are there any specific statutory rights available to minority shareholders available in your jurisdiction?

As indicated above, absent specific provisions, the principle is that each share entitles to one vote. In French SAS, the bylaws define the minority rights and there are almost no minimum requirements other than (i) right to attend shareholders' meetings and (ii) right to receive minimum accounting information.

In French SA, most of the decisions (including appointment of all the board members) are taken by a majority vote (50%+1 share), resulting in minority shareholders not being able to block a decision. However, decisions resulting in a change to the by-laws require a two-third majority vote, which can therefore be blocked by minority shareholders holding one third (+1 share). In addition, and depending on ownership level, minority shareholders may request access to certain information, ask questions to the management, and, in certain situations, request an audit or bring legal actions against management.

10. Is it possible to impose restrictions on share transfers under the corporate documents (e.g., articles of association or its equivalent in your jurisdiction) of a company incorporated in your jurisdiction?

In SAS and SAs, shares are freely transferable unless the by-laws provide for any restrictions. In SARLs, the transfer of shares to a third party is subject to the prior approval of the majority of the shareholders representing at least half of the shares comprising the share capital, unless a stronger majority is provided by the by-laws.

By-laws of the company or shareholders' agreement may provide for other restrictions on share transfers, such as, for instance, a prior approval of the shareholders, a right of first offer or first refusal, a lock-up, or a standstill. Minority investors also commonly benefit from a tag-along right and are commonly subject to a drag-along right exercisable by the majority investor in case of an exit. A pre-emption right may also be granted to the majority investor in the event of transfer of the minority investors' securities.

11. Are there any specific concerns or other considerations regarding the composition, technical bankruptcy and other insolvency cases in your jurisdiction?

Under French insolvency law, six types of proceedings are available: two amicable out-of-court proceedings (*mandat ad hoc* and conciliation proceedings) and four main judicial proceedings (accelerated safeguard, safeguard, reorganization and liquidation proceedings). Each of these proceedings apply accordingly to the gravity of the difficulties encountered by the debtor from minor operational or financial difficulties to cash-flow insolvency (*cessation des paiements*) and provide for different level of constraints on shareholder's rights.

In the event of the opening of judicial insolvency proceedings, shareholders may be required to comply with certain obligations such as paying any balance of the share capital not fully paid-up yet. Within the specific framework of reorganization proceedings (the debtor is deemed cash-flow insolvent) and under certain conditions:

- Shareholders may be required to consent to share capital increases to redress the distressed business in favor of a third party.
- Shares held by *de jure* managers (*dirigeants de droit*) or *de facto* managers (*dirigeants de fait*) are non-transferable as of the opening judgment of the proceeding and may only be transferred in accordance with the Court's instructions;
- Shareholders may be forced to sell their shares under very restrictive conditions and under the Court's supervision.

In accelerated safeguard and, in other judicial proceedings concerning companies with (i) 250 employees and over EUR 20,000,000 turnover or (ii) EUR 40,000,000 turnover, it is compulsory to regroup affected parties (i.e., parties impaired by the draft restructuring plan) within classes of affected parties, each representative of a sufficient commonalty of economic interest, to vote on the restructuring draft plan. Within this framework, shareholders are regrouped within one or several class(es) of "equity holders" (*détenteurs de capital*) to vote on the draft plan and could see, under certain conditions, a plan imposed on them through a "cross-class cram-down" (*application forcée interclasse*). It must be noted that such restructuring plan adopted by classes of affected parties cannot impose to shareholders that voted against to sell their shares, but it can impose dilution.

Negotiations with existing shareholders are taking place in light of the so-called "Absolute Priority Rule" which requires affected equity classes to be completely disenfranchised (equity value c. €0) when more senior classes are not fully repaid under the plan unless (i) all creditors classes (being by essence more senior than equity classes) approve a plan providing for a remaining interest for existing shareholders (ii) approved by the Court.

Shareholders may also face liability risks within insolvency proceedings either under insolvency law or tort law:

- It should be noted that shareholders of a limited liability company are not liable in case of insolvency of the company which they own simply because of the fact that they are shareholders. They could however become liable in case of liquidation of their company if they are considered as *de jure* managers or *de facto* managers of such company, provided that it can be shown that their mismanagement has contributed to an asset shortfall. Should this be the case, shareholders may typically be facing a claim under insolvency law for asset shortfalls (*action en responsabilité pour insuffisance d'actifs*) in liquidation proceedings;
- French courts also consider that employees could seek to recover damages for the loss of their employment from a group company or third party based on tort liability. For instance, in the Lee Cooper case, a U.S. investment fund, Sun Capital Partners, the main shareholder of the Lee Cooper group, was found liable for the dismissal of the employees of Lee Cooper France because it had taken decisions detrimental to Lee Cooper France, in its sole interest as a shareholder, which had led to the liquidation of Lee Cooper France.

E. Acquisition

12. Which methods are commonly used to acquire a company, e.g., share transfer, asset transfer, etc.?

There are three main methods to acquire a business in France: (i) a share transfer, (ii) an asset transfer and (iii) a merger or contribution of assets or shares.

The most common method of acquisition of a company is through the purchase of all or part of the target company's shares. Share purchases are the generally preferred way of acquisition for large businesses. Transfers of assets are usually preferred for the sale of smaller businesses and/or when there is a willingness to carve-out liabilities. As for mergers and contributions, they are more commonly used for internal reorganization purposes or in the context of strategic combinations of companies or joint ventures and are therefore less frequently seen in practice.

Public M&A transactions may occur in the form of share transfers, via voluntary takeovers or acquisitions of a controlling interest leading to a mandatory offer. French listed companies may also be acquired by a merger or contribution, or by an asset transfer. However, share transfers are more commonly seen, one reason being that shares of a listed company are more liquid than shares of a private company.

13. What are the advantages and disadvantages of a share purchase as opposed to other methods?

A share purchase is a simple, relatively fast and cost-effective operation. Such transaction implies the acquisition of all the underlying assets and liabilities of the target company. Therefore, it is crucial that appropriate representations, warranties and indemnities are included in the share purchase agreement. In the absence of a change of control provision, there are no consents to be obtained from third parties in order to assign the underlying contracts of the business to the buyer. In addition, it is not necessary to precisely identify each asset to be acquired, which constitutes therefore a lower risk for the buyer to not acquire a key asset. Finally, from a tax perspective, the share purchase agreement benefits from a tax rate of 0.1% of the purchase price (except for the transfer of SARL shares for which the applicable tax rate is 3%).

An asset transfer is usually a more complex operation to document, as well as to implement, than a share purchase agreement. Besides the precise identification of the assets to be acquired that need to be performed through thorough due diligence, each third party operating with the asset must consent to the change of control of the asset. In addition, an asset transfer must comply with certain formalities. In particular, a notice of the transfer must be published in a local legal gazette within 15 days from the date of transfer and in the national official bulletin for civil and commercial announcements (BODACC) within 3 days from the date of the publication in the local gazette. Creditors have an opposition period of 10 days from the notice to object to the payment of the transfer price to the seller. On the other side, an asset purchase allows for the buyer to only acquire the precise assets which might interest its business without acquiring any other liabilities that the target company might have on any other lines of business. From a tax perspective, an asset purchase has an applicable tax rate of 3% with respect to the portion of the price between EUR 23,000 and EUR 200,000 and then 5% with respect to the portion exceeding EUR 200,000.

As for mergers, they entail the automatic transfer of all assets and liabilities, by operation of law, of the absorbed company to the absorbing company. Mergers are more burdensome in terms of formalities and costs than share purchases. A draft merger agreement must be approved by the companies participating in the merger, filed with the Registry of Commerce and published to give advance notice of the proposed merger to creditors. Generally, auditors must also be designated by the commercial court on the request of the merging companies to prepare a report on the merger terms and to certify that the valuations of the companies or the assets contributed under the merger are valid. On the other side, a merger is an efficient way for a parent company to reorganize the structure of its group.

14. What are the approvals and consents typically required (e.g., corporate, regulatory, sector based and third-party approvals) for private acquisitions in your jurisdiction?

In share transfers and asset transfers, the selling entity must obtain the necessary corporate authorizations to transfer the shares or assets, *i.e.,* the consent of the shareholders and/or the approval from the board of directors, as the case may be.

The company's work council must be consulted and informed prior to any modification in the economic or legal structure of the company, including any disposal that would result in a change of control of the company. The works councils must be provided with detailed written information on the contemplated transaction and its consequences for the employees. Such information must be sufficiently detailed to enable the works councils to render their opinion on the proposed transaction, although their opinion will not be binding on the company.

Third party consents are also typically required so that the purchasing entity can benefit from the contracts entered by the selling entity without any consequences on such contracts due to the change of control.

Regulatory approvals may also be required, mainly from governmental authorities competent in competition law and/or for foreign investments. Sector-based approvals may also be required depending on the sector concerned by the acquisition, for instance from the Prudential Supervision and Resolution Authority (*Autorité de Contrôle Prudentiel et de Résolution*) (ACPR) in the banking and insurance sector or the Commission for Energy Regulation (*Commission de Régulation de l'Energie*) (CRE) for the energy sector.

15. What are the regulatory competition law requirements applicable to private acquisitions in your jurisdiction?

Under French merger control regulations (in particular art. L430-1 to L430-10 of the French Commercial Code and Merger Control Guidelines dated July 2020), any private acquisition which results in a change of control is subject to mandatory notification to the French Competition Authority (*Autorité de la Concurrence*) (FCA) if the following conditions are met:

- the total worldwide revenues of all the undertakings concerned exceeds EUR 150,000,000;
- the aggregate French revenues of each of at least two parties exceeds EUR 50,000,000; and
- the transaction does not fall within the European Commission's jurisdiction.

It should be noted that the French Commercial Code provides for lower alternative revenues thresholds for the retail sector and activities located in the French overseas territories (respectively (a) EUR 75,000,000 for total worldwide revenues and (b) EUR 15,000,000 of French revenues).

Filings to the FCA are subject to a standstill obligation, which means that the merger control procedure before the FCA is suspensive. Consequently, the parties cannot implement the transaction prior to the approval of the FCA and must include in their purchase agreement the clearance decision under French merger control as a condition for the completion of the contemplated transaction.

Failure to notify or implement an operation prior to clearance is qualified as gun-jumping and is therefore deemed illegal. The applicable penalties include a fine of up to a maximum of 5% of the notifying party's revenues in France during the last closed and audited financial year, an order to file with penalties, and/or an order to unwind the transaction.

The typical review period before the FCA for a non-complex deal, which does not raise any antitrust issue (no overlap and no vertical issues) would last between 3 and 6 weeks (including a short pre-notification period). For more complex deals, the review period could last from 10 weeks (full phase 1) until more than one year for a Phase 2 depending on the complexity of the issues raised by the transaction, which will have necessarily an impact on the duration of the pre-notification period.

16. Are there any specific rules applicable for acquisition of public companies in your jurisdiction?

The AMF provides for a set of rules which complete the rules imposed by the French Commercial Code and the French Financial Code. In the context of a public takeover, the AMF must review the takeover offer and declare it in conformity with applicable regulatory and legal provisions. Key principles governing public offers are equal treatment of all shareholders, market transparency, market integrity and fairness of transactions among bidders.

There are two main types of takeover bids: a voluntary takeover bid where the bidder voluntarily makes an offer to acquire all the shares issued by the target company and a mandatory takeover bid where the bidder is required to launch such bid.

In the case of a voluntary public offer, the bidder must file with the AMF the draft offer prospectus through a financial service provider (*prestataire de services d'investissement*) which will act on behalf of the bidder. The offer will set out detailed information regarding the identity of the bidder, the number of shares held as well as the percentage of the voting rights held, the identity of the target company and the price and terms of the offer. The offer must be unconditional and irrevocable but it may be subject to a limited number of conditions precedent, namely merger control clearance and minimum acceptance level. The offer must be made to all shareholders of the target company and the same offer terms must be offered to all shareholders. There is generally no requirement for a minimum price but the AMF will ensure that the information relating to the offered price is complete and coherent. The bidder must also disclose its shareholdings and intentions with respect to the remaining shares in the target company (whether to buy out or not the remaining minority shareholders, it being specified that such buy-out is mandatory if the 90% threshold is crossed by the bidder).

A mandatory public offer is required under French law where a shareholder crosses, alone or in concert, a threshold of 30% of the share capital or the voting rights of the target company or if it increases, within 12 consecutive months, its shareholding by more than 1% in shares or voting rights while holding a shareholding between 30% and 50% in shares or voting rights. Mandatory takeover bids are unconditional, and no condition precedent is allowed (except for a legal minimum acceptance level of 50%). With respect to price requirements, the same rules apply as in the case of a voluntary takeover bid. In addition, the offer price must equal at least the highest price paid by the bidder (or any person acting in concert with it) during a period of 12 months preceding the triggering event of the takeover bid. Absent such previous transaction in the preceding 12 months, the minimum price will be set according to a multicriteria valuation.

17. Is there a requirement to disclose a deal, for instance to regulatory authorities? Is it possible to keep a deal confidential?

Deals involving public companies must be disclosed to the AMF in a timely manner in order to preserve market transparency and integrity. However, the AMF allows the deferring of such disclosure where confidentiality (i) is temporarily necessary to carry out the transaction and (ii) can be maintained. Thus, it is generally possible for a deal to remain secret until a binding agreement is signed. Yet, if confidentiality can no longer be ensured, the bidder and/or the target must disclose the proposed transaction immediately.

Private M&As are generally not regulated by any disclosure requirements. However, they are usually disclosed to the competent authorities (in particular, regulatory authorities) in order to obtain the appropriate clearances.

18. Can sellers be restricted from shopping around during a negotiation process? Is it possible to include break fee or other penalty clauses in acquisition documents to procure deal exclusivity?

Parties commonly negotiate deal exclusivity in the form of an exclusivity provision in the letter of intent. Such exclusivity prohibits the parties from negotiating an agreement of the same nature with a third party during a certain period (usually the period necessary for the buyer to conduct its due diligence).

Deal protection may be granted via break-up fees or penalty clauses. The purpose of such provisions is to deter the buyer (and the seller in some cases) from deciding not to proceed with the transaction. Break-up fees and penalties usually cover all costs incurred in the context of the diligence process but they may be reduced by the courts if they are deemed excessive. In public transaction, the target must not agree to break-up fees whose amount could result in unfair competition amongst potential acquirers.

19. What are the conditions precedent in a typical acquisition document? Is it common to have conditions to closing such as no material adverse change?

Acquisitions may be subject to a number of conditions precedent. Common conditions precedents include the obtaining of corporate approvals (from shareholders and/or from the board of directors, as the case may be) and regulatory approvals (in particular, competition or foreign investment), the obtaining of third-party consents (notably in the event of change of control provisions in material contracts relevant to the business of the target company).

Acquisitions may also be subject to the obtaining of the relevant financing required to complete the acquisition of the target company. Market practice regarding condition precedent (and therefore deal certainty) is highly dependent on appetite for the target.

20. What are the typical warranties and limitations in acquisition documents? Is it common to obtain warranty insurance?

Typical representations and warranties cover both fundamental warranties (with respect to title, capacity and authority of the seller) and business warranties (which cover a broad range of topics, such as financial accounts, contracts, employment and social security, real estate, tax, litigation, IP and environment). Sellers might also give additional and more specific warranties regarding topics raised from the buyer's due diligence and which the buyers would like to have covered, depending on the architecture of the deal. Business warranties are typically subject to a number of limitations, including deductibles, a minimum aggregate claim threshold, a maximum aggregate cap and claim time limits.

Warranties and limitations are either incorporated directly in the share purchase agreement or negotiated through a separate warranty document. The parties commonly agree on either holding in escrow the total amount of the warranties granted by the seller (usually with a decreasing percentage over time until the completion of the time period of the warranty) or a bank guarantee granted by the seller.

Warranty insurance is also developing at a fast pace in France and is becoming more common, mainly due to the influence of the private equity market. Warranty insurance is usually subscribed by and paid by the buyer. It has many advantages: in particular in uncertain macroeconomic circumstances, it may reassure the buyer who has concerns over the seller's solvency. In addition, especially in private equity deals, the selling fund may be able to allocate the transaction proceeds faster to its limited partners or other ventures if the buyer directs its claims against the insurer.

21. Is there a requirement to set a minimum pricing for shares of a target company in an acquisition?

There is no requirement to set a minimum price for shares of a company in a private acquisition. In restructuring situation, the price may even be negative.

In public acquisitions, voluntary takeovers do not have a minimum price for shares but they must respect the fundamental principles of public takeovers, in particular equal treatment of shareholders, market transparency fairness of transactions amongst bidders. Mandatory takeover bids on the other hand must provide for a price per share which must at least equal either (i) to the highest price paid by the bidder during a period of 12 months preceding the triggering event of the takeover (threshold crossing) or absent such previous transaction in the preceding 12 months, the minimum price set according to a multicriteria valuation. The multicriteria valuation method involves a quantitative and qualitative analysis of the target company, including both financial and (ii) non-financial criteria. The financial criteria may include metrics such as revenue, EBITDA and cash flow, while the non-financial criteria may include factors such as market share and quality of the management team. The analysis may also consider the industry and the competitive landscape in which the target company operates, as well as any regulatory or legal factors that may impact the company's value. The AMF requires that the bidder provides a detailed valuation report, including the criteria used, the weights assigned to each criterion, and the resulting valuation of the target company.

22. What types of acquisition financing are available for potential buyers in your jurisdiction? Can a company provide financial assistance to a potential buyer of shares in the target company?

Acquisition financing is mainly provided through two main channels in France: bank financing via one or several banks or debt financing via debt funds. Bank financing is the common way to finance an acquisition in France with banks typically aggregating in a syndicate or a pool of banks in order to lower the individual risk of the operation. Usually, the buyers rely on banks with which they already have established relationships. Banks commonly require guarantees over the underlying assets and negotiate an interest rate over the loan granted. Generally, multiple layers of junior or senior debt are provided, depending on the structure of the deal.

In recent years, large cap financing has been restricted due to the macroeconomic climate and companies have increasingly turned towards debt funds, often with higher rates. . It is expected that the year 2024 will still follow this trend, despite the slight improvement in financial markets and expected reductions in interest rates. Uni-tranche financing is commonly used and operates like a one-stop shop for the borrower with only one loan and one final term. This solution presents the benefit of simplicity and is usually faster than bank financing. However, it is also more costly due to higher interest rates in compensation for the risk taken by the lenders.

Certain companies, usually industrial companies, may also finance their acquisitions directly with their own cash reserves. However, this scenario is not very common. It is also worth noting that companies are prohibited from entering into loan agreement with other companies in the context of acquisition financing due to the banking monopoly rules in place in France (with the exception of intra-group loans entered into at arm's length).

23. What are the formalities and procedures for share transfers and how is a share transfer perfected?

Shares are transferred through share transfer forms (*ordres de mouvement*) for shares of an SAS or an SA and share transfer deeds for shares of an SARL. Such documents must be registered both with the tax administration and, in respect of SARL, with the clerk of the relevant commercial court (*greffe du tribunal de commerce/tribunal des activités économiques*) within one month of the closing.

The transfer must also be recorded in the statutory books of the company (share transfer register and shareholders' register for an SA and SAS and minutes register and articles of association for an SARL).

24. Are there any incentives (such as tax exemptions) available for acquisitions in your jurisdiction?

No particular tax exemptions are available for acquisitions in France. However, France offers a comprehensive range of tax incentives and development subsidies to encourage investments in certain areas, notably for innovative businesses or underdeveloped areas *(zones franches)*. It is also usual to structure transaction with a view to offset target revenues against cost of financing via the creation of a French acquisition vehicle.

F. Enforceability

25. Can acquisition documents be executed in a foreign language?

Generally, documents can be signed and executed in any foreign language. However, in order for the documents to be registered with the clerk of the relevant commercial court, a translation into French would need to be provided. The same might be relevant for certain regulatory bodies, which will only review the provided documentation if it is drafted in French.

Certain transactions, however, need to be executed and written in French. This is the case in respect of real estate transactions and mortgages (which must be perfected by a notary public) or documents entered into by certain governmental bodies.

26. Can acquisition documents be governed by a foreign law?

Acquisitions documents can be governed by foreign law. However, enforceability of such documents governed by foreign law will be more difficult before French courts.

27. Are arbitration clauses legally permissible or generally included in acquisition documents?

Arbitration clauses (*clauses compromissoires*) are legal and valid under French law and are usually common in contracts involving multiple parties from various jurisdictions. Such clauses are more commonly found in mid- and large-cap transaction. The reasons are that arbitration trials are usually cost intensive and lengthy.

Paris is a major place of arbitration. It hosts the international chamber of commerce and benefits from a wide array of expertise as well as a vast pool of professionals. French courts are used to grant the execution of arbitration sentences (*exequatur*) in order to give them the full effect of a court judgment.

28. Are there any specific formalities for the execution of acquisition documents? Is it possible to remotely/digitally sign documents?

French law provides for the possibility to use electronic signatures but they must comply with certain European standards for identification purposes. Usually, the parties include a special clause in their contractual documentation pertaining to the service provider of the electronic signature process agreeing to grant the same force and effect to the signature as if it has been provided in wet ink. Electronic signatures are accepted by tax administrations as well as by clerks when carrying out formalities for the execution of such documents.

G. Trends and Projections

29. What are the main current trends in M&A in your jurisdiction?

Volumes of M&A transactions have declined further in 2024 compared to 2023 but M&A deal values have increased with the return of large-cap transactions in France. However, the combined effect of inflation, high interest rates, energy prices and the occurrence of various political and geopolitical challenges keeps the overall market in decline compared to 2021 and pre-pandemic era numbers. Nonetheless, the French market has been showing some resilience, despite the national and macroeconomic context. Consequently, and after a third and fourth 2024 quarters stalled by the political turmoil in France, the year 2025 is expected to confirm further the vivid early 2024 M&A activity, due in particular to the recent drop in interest rates as well as the trend of alternative financing sources.

In particular, the private equity sector is showing signs of recovery and is expected to pick-up. Indeed, as the increase of interest rates in the recent years influenced the private equity market to slow down drastically in 2023 and 2024, many exits are expected in 2025 as a result of the aforementioned recent drop in interest rates and better valuations are to be witnessed compared to those seen in 2024.

Following the trends of 2024, the due diligence will still be a high point of interest for buyers, with an increase of more advanced requests to anticipate risk and uncertainties. In the same vein, the incorporation of warranty insurance should remain steady.

30. Are any significant development or change expected in the near future in relation to M&A in your jurisdiction?

The French market legal framework for M&A transactions, whether PE or industrial, remains stable and flexible, allowing investors to conduct transactions with a high amount of security and certainty. Corporate taxes have also been lowered from 33% to 25%.

The legal and regulatory environment is not expected to change greatly in the near future in the main areas of business law in France. The areas of technology, defense, innovation and life-science are expected to be the main industries with improved activity in 2025. Distressed M&A should also pursue its steady pace due to debt restructuring within a number of companies in France. ESG criteria (especially environmental matters and gender equality) are still expected to influence the corporate environment in the upcoming year even though the European Commission is expected to simplify and soften the current regulation regarding corporate social responsibility. Finally, the rise of artificial intelligence is also likely to impact activity across all industries.

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A. General

1. What is the main legal framework applicable to companies in your jurisdiction?

There are 2 (two) general types of companies under German law; namely partnerships (Personengesellschaften) and corporate entities with limited shareholders' liability (Kapitalgesellschaften). Whereas the Germany Civil Code (Bürgerliches Gesetzbuch) and the German Commercial Code (Handelsgesetzbuch) contain rules general rules on companies as well as special rules on partnerships, the Stock Corporations Act (Aktiengesetz) and the Limited Liability Companies Act (GmbH-Gesetz) regulate the 2 (two) major corporate entity types with shareholders' limited liability.

2. What are the most common types of corporate entities (e.g., joint stock companies, limited liability companies, etc.) used in your jurisdiction? What are the main differences between them (including but not limited to with regard to the shareholders' liability)?

The 2 (two) major corporate entities are joint stock companies (Aktiengesellschaften) and limited liability companies (Gesellschaft mit beschränkter Haftung). Compared to limited liability companies, the joint stock companies are subject to a higher minimum statutory share capital and stricter capital maintenance as well as statutory capital reserve requirements. Generally, stock corporations are the preferred corporation type for businesses aiming to go public.

Therefore, the explanations provided here focus on privately held joint stock companies and private M&A in Germany.

One of the most important differences between the 2 (two) company types is the anonymous nature of the shareholding structure in privately held joint stock companies, whereas the shareholders' list of limited liability companies must be published in the commercial register and therefore is accessible by everyone.

The shareholder liability in both corporate entity types is generally limited to the subscribed share capital amount of individual shareholders. In certain exceptional cases, such as in insolvency proceedings, shareholders can be held liable for actions detrimental to creditors of the company and compensate certain damages to the company.

There can also be limited partnerships with corporate entity general partners (or also as limited partners) (such as GmbH & Co. KG), which can be preferred due to certain tax advantages. These corporate structures are also widely used, although they are not corporate entities, but (limited) partnerships. For the purposes of this questionnaire, we have only focused on corporate entities.

B. Foreign Investment

3. Are there any restrictions on foreign investors incorporating or acquiring the shares of a company in your jurisdiction?

The incorporation of a company is usually not subject to any restriction, whereas there may be additional license or permit requirements applicable to certain businesses.

Acquiring of shares in a German company may be subject to screening under the investment screening procedure where an investor aims to acquire ownership of at least 25% of the voting rights of a company resident in Germany (foreign direct investment – FDI). If the domestic target company operates critical infrastructure within the meaning of the Act on the Federal Office for Information Security, or if it provides other services of particular relevance to security within the meaning of the Foreign Trade and Payments Ordinance, the threshold applicable for screening is only 10%. If the direct buyer is resident in the territory of the EU, such review may only be performed if there are indications of an abusive approach or a circumvention transaction.

Additional special rules for investment reviews apply to the acquisition of companies that operate in sensitive security areas. This includes manufacturers and developers of war weapons and other key military technologies, specially designed engines and gearboxes for military tracked armoured vehicles, and products with IT security features that are used for processing classified government information. Similar special rules also apply to the acquisition of a company that operates a high-grade earth remote sensing system.

Any acquisition of a company by foreign investors whereby these acquire ownership of at least 10% of the voting rights of a target company resident in Germany can be subject to such review. The review considers whether the respective acquisition poses a threat to essential security interests of the Federal Republic of Germany.

With the implementation of the NIS-2-Directive of the EU, which still finds itself in the legislative process, further sectors are expected to be subject to investment screening process.

4. Are there any foreign exchange restrictions or conditions applicable to companies such as restrictions to foreign currency shareholder loans?

There are no specific foreign exchange rules imposing restrictions or conditions.

5. Are there any specific considerations for employment of foreign employees in companies incorporated in your jurisdiction?

Generally, employing EU member state nationals is possible without any restrictions or conditions. Non-EU nationals must obtain first a valid residence and work permit in Germany.

C. Corporate Governance

6. What are the standard management structures (e.g., general assembly, management board, etc.) in a corporate entity governed in your jurisdiction and the key liability issues relating to these (e.g., liability of the board members and managers)?

The joint stock companies are subject to comparably more detailed corporate governance rules and have to set up a supervisory board regardless of their size, in addition to a management board and the shareholders' meeting.

Limited liability companies on the other hand must have generally only at least 1 (one) managing director and a shareholders' meeting, unless their employee number exceeds certain statutory defined thresholds (codetermination). Setting up supervisory board is from a certain employee number threshold mandatory. Setting up an advisory board is voluntary.

Both board members of a joint stock company as well as managing directors of a limited liability company are subject to certain statutory and case law liability regimes. They must apply the business judgment rule and act with the diligence of a prudent businessman. In insolvency proceedings, board members and managing directors may be held liable for public debts of the company, such as tax and social security debts.

7. What are the audit requirements in corporate entities?

The audit requirements for corporate entities differ according to the size of business as follows:

- Small corporate entities are not subject to mandatory audit for their annual financial statements and annual report. Small corporate entities are those which do not exceed at least 2 (two) of the following 3 (three) conditions:

• do not have a balance sheet exceeding EUR 6,000,000,

• have not generated revenues exceeding EUR 12,000,000 in the last 12 months prior to the balance sheet date; or

• have not employed in average 50 employees annually.

Mid-size and large corporate entities as well as public companies (+ partnerships and general partnerships with general partners consisting of only corporate entities) are subject to mandatory audit by an auditor.

- Mid-size corporate entities are those exceeding at least 2 (two) of the thresholds for small corporate entities but not exceeding at least 2 (two) of the following 3 (three) conditions:

• do not have a balance sheet exceeding EUR 20,000,000

• have not generated revenues exceeding EUR 40,000,000 in the last 12 months prior to the balance sheet date; or

• have not employed in average 250 employees annually.

Large corporate entities are those exceeding at least two out of three thresholds listed for mid-size companies above.

Also, certain companies depending on their activity are subject to mandatory audit, such as:

- Credit and finance institutions;
- Insurance companies; and
- Cooperatives.

D. Shareholder Rights

8. What are the privileges that can be granted to shareholders? In particular, is it possible to grant voting privileges to shareholders for appointment of board members?

In addition to general membership rights, the articles of association of a joint stock company may grant special rights for individual or group of shareholders, commonly such as shares without voting rights but a preference in profits, a right to delegate members to the advisory board (which in return elects the management board) and rights to use company facilities.

In limited liability companies, examples of special rights for certain shares/ shareholders to be established in the articles of association include: entitlement to preferred dividends, purchase of company's goods and services at discount, consent rights regarding transfer of shares, right to appoint managing directors or give instructions to managing directors.

9. Are there any specific statutory rights available to minority shareholders available in your jurisdiction?

In joint stock companies, in addition to statutory rights available to general shareholders, the minority shareholders having an aggregate shareholding of at least 5% of the registered share capital may request the management board to convene a general meeting. Furthermore, shareholders having an aggregate shareholding of at least 5% of the registered share capital or a nominal value of EUR 500,000 may request that items are announced as agenda items for a resolution of a general meeting. Shareholders having an aggregate shareholding of at least 1% of the registered share capital or a nominal value of EUR 100,000 may apply to court to assets certain claims of the company for damages (such as against the board members).

In limited liability companies, all shareholders have a right to inspect books and records of the company. Additionally, shareholders holding at least 10% of the share capital may request the shareholders' meeting to convene or certain items are added to the meeting agenda. Unlike in joint stock companies, individual shareholders have more minority rights as a result of the personal nature of limited liability companies.

10. Is it possible to impose restrictions on share transfers under the corporate documents (e.g., articles of association or its equivalent in your jurisdiction) of a company incorporated in your jurisdiction?

It is possible for a joint stock company articles of association to make the transfer of registered shares subject to the consent of the company, which may be exercised by the management board in its own discretion. However, the articles may provide that the shareholders' meeting or the supervisory board must adopt a resolution granting consent to share transfer. Furthermore, the articles can also contain reasons to withhold such consent.

The articles of a limited liability company may make the assignment of shares contingent upon the approval of the company, the shareholders' meeting or individual shareholders, the supervisory board (if existing), the advisory board or even third parties. The articles may also contain details about consent requirement such as further specifying approval requirement, limiting it to specific cases, stipulate new criteria for selection of new shareholders or exempt certain cases from the approval requirement.

11. Are there any specific concerns or other considerations regarding the composition, technical bankruptcy and other insolvency cases in your jurisdiction?

Insolvency proceedings pursuant to the Insolvency Code (Insolvenzordnung, abbr. InsO) are the only judicial proceedings available in Germany in cases of companies' bankruptcy. These proceedings may be directed either at a sale of the debtor's assets (liquidation) or at an insolvency plan by which the insolvent company's business can be restructured. A liquidation may occur by selling the individual assets of the debtor or by an asset deal, i.e., a sale of the debtor's business as a going concern in whole or in part to an investor. It is up to the creditors to decide on which course the proceedings shall take.

German insolvency law provides for a strict obligation of a company's management to file for the opening of insolvency proceedings if the company becomes illiquid (zahlungsunfähig) or overindebted (überschuldet). The filing has to be made without undue delay, but within a maximum period of 3 (three) weeks from the occurrence of illiquidity and 6 (six) weeks in the case of overindebtedness. A violation of such duty results in personal liability and constitutes a criminal offence.

A third ground for the opening of insolvency proceedings is imminent illiquidity (drohende Zahlungsunfähigkeit). In this case, only the company itself, not a creditor, may file for the opening of proceedings. The possibility to file if illiquidity is only imminent is meant to contribute to an early filing and thus to increase the chances of a reorganization of the company. No filing obligation exists in this case.

Since January 1, 2021, a new German law known by its abbreviation StaRUG (which implemented EU Directive 2019/1023 on preventive restructuring frameworks) affords debtors with a statutory regime for a non-consensual pre-insolvency balance sheet restructuring. The key instrument of the StaRUG is the restructuring plan which largely resembles the insolvency plan in formal insolvency proceedings. Access to a restructuring plan requires that no insolvency, but merely imminent illiquidity exists and that the debtor is able to restore its viability (Bestandsfähigkeit) by means of the restructuring plan. Thus, in case of imminent illiquidity, the debtor has 2 (two) options, proceedings under the InsO (which, other than the StaRUG, provides for the possibility to terminate executory contracts and encompasses all creditors) or the StaRUG (which may be limited to certain creditors, i.e. finance creditors).

E. Acquisition

12. Which methods are commonly used to acquire a company, e.g., share transfer, asset transfer, etc.?

Share transfers are the dominant acquisition method in Germany, whereas asset transfers are also possible. Furthermore, similar to share transfers, the company reorganization methods such as spin-offs, mergers, hive-down or splits under the Transformation Act (Umwandlungsgesetz) may also be useful in structuring M&A transactions.

13. What are the advantages and disadvantages of a share purchase as opposed to other methods?

By acquiring all of the shares or partnership interests in a legal entity, a purchaser acquires all rights associated with the ownership of the shares or partnership interests. In an asset deal, only those assets of the seller entity will be transferred that have been individually determined in the asset sale agreement. In a share deal, the purchaser indirectly (as the new owner of the legal entity) acquires all liabilities and risks associated with the legal entity. Except for any third-party consent requirements such as in change-of-control clauses, even the contractual relationships continue with the same parties in share deal transactions, and thus the continuity of business is to a larger extent secured in comparison to asset deal transactions, where individual contract partners must consent to the change of contract party. In share-deal transactions, since the change in ownership of the shares or partnership interests occurs only on the shareholder level, the legal entity and its business will not change as a result of the acquisition.

Share transactions are generally also more preferred due to tax reasons, whereas the particular circumstances of each deal must be taken into consideration. Furthermore, there is usually no issue with the transfer of employees in share-deal transactions, the employee consent must generally be obtained in asset transactions, which may make it less favorable in certain circumstances due to deal uncertainty.

One of the major disadvantages of share deals is that they are not suitable for the purchaser to do a cherry-picking in terms of assets purchased, so that the target company is transferred as a whole business with all liabilities and risks.

14. What are the approvals and consents typically required (e.g., corporate, regulatory, sector based and third-party approvals) for private acquisitions in your jurisdiction?

In both share and asset deal transactions, corporate approvals (like shareholders' meeting approval) can be necessary depending on corporate documents or individual circumstances of the deal.

Third party approvals to transactions as a whole are generally unusual, but transfer of certain assets or change-of-control can be subject to approval of third parties, which may affect a major aspect of the transaction.

Regulatory approval is required in transactions which are subject to foreign investment screening mechanism explained in section B above. Furthermore, merger control approval may be necessary if certain thresholds are exceeded (see question 15 below).

Furthermore, the acquisition of banking or financial institutions or insurance companies are generally subject to regulatory approval.

Finally, following the entry into force of the EU Foreign Subsidies Regulation ("**FSR**") in 2023, certain transactions are subject to a further notification requirement to the European Commission. In addition, the European Commission may initiate ex officio investigations into (and require ad hoc notifications for) matters not meeting the thresholds below where there is a suspicion of foreign subsidies distorting competition in the EU. As in merger control proceedings (see question 15 below), companies may not close a notifiable transaction until the European Commission has granted its approval under the FSR

The obligation to notify applies to transactions, where

1. 2 (two) or more previously independent undertakings or parts of undertakings merge, or
2. 1 (one) or more undertakings acquire direct or indirect control of the whole or parts of 1 (one) or more other

undertakings (including the creation of a joint venture),

and where the following thresholds are met:

- at least one of the merging undertakings, the acquired undertaking or the joint venture is established in the EU and
- generates an aggregate turnover in the EU of at least EUR 500.000.000.
- The undertakings (groups, i.e. including affiliated companies) involved in the transaction have received financial contributions of more than EUR 50.000.000 from third countries in the last 3 (three) years.

The concept of a financial contribution is extremely broad. It includes

- The transfer of funds or liabilities (e.g., loans, loan guarantees or debt forgiveness),
- the foregoing of revenue that is otherwise due (e.g., tax exemptions) and
- even the provision as well as the purchase of goods and services. Even small purchases or sales to authorities or the like are covered.

15. What are the regulatory competition law requirements applicable to private acquisitions in your jurisdiction?

The following transactions are considered to be a concentration and may hence be subject to German merger control law, if they also fulfill the turnover thresholds mentioned further below:

- The acquisition of all or a substantial part of assets of another undertaking
- The acquisition of sole or joint control with regard to another undertaking
- The acquisition of shares if the shares reach (i) 50% or (ii) 25% of the capital or the voting rights concerning another undertaking
- Any other combination of undertakings enabling 1 (one) or several undertakings to exercise directly or indirectly a material competitive influence on another undertaking

A concentration has to be notified to the German Federal Cartel Office (Bundeskartellamt) if in the last business year preceding the concentration all of the below conditions were met:

- The combined aggregate worldwide turnover of all the undertakings concerned was more than EUR 500,000,000.
- The domestic turnover of at least 1 (one) undertaking concerned was more than EUR 50,000,000; and
- The domestic turnover of another undertaking concerned was more than EUR 17,500,000

The alternative thresholds based on the transaction are fulfilled if all of the following conditions are satisfied:

- The combined aggregate worldwide turnover of all the undertakings concerned was more than EUR 500,000,000
- The domestic turnover of at least 1 (one) undertaking concerned was more than EUR 50,000,000
- The domestic turnover of no other undertaking concerned was more than EUR 17.500.000
- The value of consideration paid in return for the concentration is more than EUR 400,000,000
- The target company is significantly active in Germany

It should be noted that sector-specific rules may apply, i.e., for the media sector, where the turnover by 4 (four) or 8 (eight), as the case may be.

Under certain conditions and after having conducted a second inquiry, the Bundeskartellamt may, by order, require an undertaking to notify any merger in one or more specific sectors of the economy even if the turnover thresholds mentioned above are not met.

During the review of the concentration by the Bundeskartellamt, the relevant market and the market shares and market power of the undertakings involved need to be analyzed.

If the undertakings concerned have high market shares and as a result the concentration raises competition concerns, to satisfy the concerns of the Bundeskartellamt, the undertakings can offer certain remedies (conditions or obligations), e.g., divest a business to a suitable buyer, to secure effective competition.

The undertakings concerned may not implement a concentration unless (i) it has been cleared by the Bundeskartellamt or (ii) the time limits for the Bundeskartellamt's review have expired. The Bundeskartellamt can issue a fine of up to 10% of the worldwide aggregate turnover of the undertaking concerned for early implementation prior to the Bundeskartellamt's clearance or for failure to notify.

Note that the German provisions do not apply if the European Commission has jurisdiction ("one stop shop" principle). Under European merger control law, a concentration only includes transactions that imply a lasting change of control, i.e., the mere acquisition of a minority share, for instance, does not trigger merger control requirements if no change of control takes place. Under European law, a concentration needs to be notified to the European Commission if it meets turnover-based thresholds set out in the EU Regulation.

16. Are there any specific rules applicable for acquisition of public companies in your jurisdiction?

The transfer and of shares in public companies are mainly subject to the detailed special rules in the Securities Acquisition and Takeover Act (WpÜG) and Securities Trading Act (WpHG), besides the general rules in the Stock Corporations Act (AktG) and the Civil Code (BGB), among others.

17. Is there a requirement to disclose a deal, for instance to regulatory authorities? Is it possible to keep a deal confidential?

In addition to the regulatory approval requirements explained in question 15 above, tax authorities may request the deal documentation for assessing the tax situation applicable to a deal.

Furthermore, in public company share acquisitions or transactions, the relevant regulatory disclosures must be made.

In limited liability companies (GmbH), the change in share ownership must be registered in the commercial register by submitting a new shareholders' list, as a result of which anyone can learn about the share transfer (but not the deal details, as the transaction documents must not be submitted to the commercial register).

18. Can sellers be restricted from shopping around during a negotiation process? Is it possible to include break fee or other penalty clauses in acquisition documents to procure deal exclusivity?

In most transactions other than bidding/auction transactions, it is customary to prepare a letter of intent or term sheet setting out the main parameters of the future transaction. These documents are generally only binding to a limited extent such as for confidentiality, exclusivity, choice of law and jurisdiction clauses.

The start of negotiations and execution of preliminary documents usually trigger pre-contractual obligations of the parties under German law. Pre-contractual obligations may be relevant in the case of breaches of exclusivity or the abandonment of negotiations without reasonable grounds. For example, a seller that breaches its exclusivity undertaking may become liable for that purchaser's transaction expenses incurred up until that point (due diligence, etc.). This may even apply if even if the preliminary documents signed have been designed as non-binding. Due to the inherent difficulty of proof for the purchaser, purchasers generally have an interest in requesting a breakup fee or liquidated damages in the preliminary documents like in the letter of intent, in particular if it provides for exclusivity.

19. What are the conditions precedent in a typical acquisition document? Is it common to have conditions to closing such as no material adverse change?

It is in general not very common to have material adverse change closing conditions in German transactions. Also, in seller-friendly environments, it can be rather difficult for purchaser to negotiate a MAC closing condition.

Merger control clearance is one of the most important closing conditions, to the extent the relevant thresholds are exceeded. Furthermore, where relevant, foreign investment screening and approval may be one of the deal-breaker condition precedents.

Other conditions precedents are generally deal-specific requirements parties wish to have completed prior to closing. If the transaction is structured as an asset deal, there may be also some fundamental conditions precedents such as employee or customer approvals to the asset transfer.

20. What are the typical warranties and limitations in acquisition documents? Is it common to obtain warranty insurance?

Typical warranties in acquisition documents under German law are:

- title guarantee;
- good standing of the target;
- no insolvency;
- financial statements;
- IP rights (if applicable to the target business);
- material contracts;
- employment matters;
- assets;
- subsidies;
- sanctions;
- absence of litigation;
- compliance with statutory rules (including competition and anti-bribery rules);
- tax warranties
- compliance with data protection rules; and
- IT-related guarantees.

The common liability cap is typically between 10% and 25% of the purchase price. Title to shares is often capped at 100% of the purchase price. Deductibles, baskets and de minimis are common. The warranty liability usually lasts for 18-24 months for non-fundamental warranties and 3 (three)-7 (seven) years for fundamental warranties.

It is not uncommon to obtain W&I insurances, especially in seller markets like in the last few years, where sellers usually do not agree to accept liability for more than 1 Euro for their warranty liability.

21. Is there a requirement to set a minimum pricing for shares of a target company in an acquisition?

The purchase price can be freely determined within the limits of capital maintenance and disguised distribution rules. In acquisition transactions between independent parties, this will generally be fulfilled, whereas transactions between related parties should be generally made on arm's length; otherwise tax consequences may occur.

22. What types of acquisition financing are available for potential buyers in your jurisdiction? Can a company provide financial assistance to a potential buyer of shares in the target company?

There is a financial assistance ban applicable to joint stock companies (Aktiengesellschaft) which prohibits the target from providing financial assistance to the purchaser of its own shares. German law has one of the most complex financial assistance bans and should be carefully structured.

Limited liability companies on the other hand are not subject to the financial assistance bank in the Stock Corporations Act (AktG). However, the statutory and case law capital maintenance and the related corporate rules must be observed when structuring a financial assistance system as part of the acquisition.

Most globally recognized acquisition financing models are available in the German market. The classical loan financing (senior loans) plays usually the fundamental role in acquisition financings. Mezzanine or second-lien credit lines are also common in the market. Also syndicated loans may be used depending on the deal size and structure. In addition to those, subordinated debt financing tools such as second-lien loans, mezzanine loans or PIK-loans also play roles in acquisition financings.

23. What are the formalities and procedures for share transfers and how is a share transfer perfected?

The sale of shares in a German limited liability company as the most common acquisition structure requires the share purchase agreement, including all exhibits and annexes, to be notarized by a German notary. Share purchase agreements relating to shares in other types of companies (such as joint stock companies or partnerships) generally do not require notarization and may be entered into by simply signing the agreement by the parties, if the transfer agreement does not concern the transfer of real property. The statutory notary fees triggered by the notarization depend on the value of the transaction and can be quite significant.

Notarization is also required for certain corporate acts (i.e., change of articles, capital measures) for a limited liability company or joint stock company and in relation to certain reorganization measures under the Transformation Act. If the notarization requirement is not duly satisfied, the legal act will typically be void and cannot be implemented in public registers as the commercial register or the land register.

An asset sale does not typically require any notarization unless the sold assets include owned real estate, shares in a GmbH or the seller is selling all or almost all of its assets.

For joint stock companies, the share transfer is performed privately between the parties and the target company and perfected without involving notaries and commercial register (unless in connection with a capital increase). The different types of stock company shares, namely bearer shares and registered shares, may be transferred in different methods depending on the particular case. In any case, in order to be able to exercise the shareholders rights against the company, the acquirer of registered shares has to be registered in the share ledger of the company.

24. Are there any incentives (such as tax exemptions) available for acquisitions in your jurisdiction?

There are some incentives for small venture capital investments or general investment incentives (in form of loans) of the German government via the state-owned bank KfW.

Section 7g of the German Income Tax Act (EStG) provides tax incentives to small and medium-sized enterprises (SMEs) in Germany to promote investments by allowing them to use investment deduction amounts (IDA) and special depreciation to reduce their tax burden and support investments.

The IDA permits companies to deduct up to 40% of the expected acquisition or production costs of an eligible asset from their taxable income before the actual investment. This reduces the tax burden immediately in the year the IDA is formed.

In addition, eligible SMEs can claim special depreciation of up to 20% of the acquisition or production costs in the year of acquisition and the following four years, on top of regular depreciation under § 7 EStG.

These rules apply to depreciable movable assets used mainly for business purposes and to SMEs whose profits do not exceed EUR 200,000. In order to benefit from the IDA and the special depreciation, the investment can also be made through an SME set up specifically for this purpose, subject to certain conditions

F. Enforceability

25. Can acquisition documents be executed in a foreign language?

Acquisition documents in private M&A transactions can be executed in foreign language. However, due to the notarization requirement of certain transaction structures (share deal with limited liability companies or certain asset deals), such foreign language will usually be only English, as the notary notarizing the transaction documentations should be able to fully understand and validly notarize them.

This, however, does not exclude the potential requirement to have German language translations in the event of tax related reviews or submissions to public authorities such as commercial registers (such as for corporate resolutions or steps as part of the transaction), land registers or courts in the event of future disputes.

26. Can acquisition documents be governed by a foreign law?

Under German law, the parties to an M&A transaction are free to choose the law governing the sale and purchase agreement, but have no choice regarding the law applicable to the transfer of shares or assets, since these legal acts are mandatorily governed by the law of the country where the assets are located or, as to shares, where the company is incorporated. Thus, a share or asset purchase agreement in relation to German assets or shares subject to a foreign law would be difficult to navigate. Therefore, the parties almost always agree on German law as governing law where the transaction has a strong connection to Germany.

27. Are arbitration clauses legally permissible or generally included in acquisition documents?

Arbitration clauses are permissible and generally included in acquisition documents, especially if the deal size is larger. Arbitration is more common with German arbitration rules (DIS) being applicable, the place of arbitration is typically Germany or sometimes Switzerland. German parties may also agree to foreign arbitration rules and organizations such as the ICC.

German parties to transactions may also prefer the dispute resolution via German courts, which are generally capable of seeing complex M&A related disputes. This is usually the case for rather smaller deals.

28. Are there any specific formalities for the execution of acquisition documents? Is it possible to remotely/digitally sign documents?

For form requirements, please refer to questions 23 above.

In transactions where notarization is not mandatory, it is generally possible to remotely/digitally sign documents and exchange digital copies and signature pages.

G. Trends and Projections

29. What are the main current trends in M&A in your jurisdiction?

After the rather quite 2023 for the German M&A market due to increased interest rates and difficulty to find funding for transactions, 2024 has witnessed some increased M&A activity, but more in the venture capital market. W&I insurance market has been developing for the last few years and it has become part of many M&A transactions, which is expected to continue, at least in the short term.

30. Are any significant development or change expected in the near future in relation to M&A in your jurisdiction?

The deal numbers increased in 2024 compared to 2023, but remained rather low compared to previous years. With the more decreasing interest rates and more available funding, especially in the VC sector, more increase in deal numbers is expected.

GIBRALTAR

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A. General

1. What is the main legal framework applicable to companies in your jurisdiction?

Gibraltar is a common law jurisdiction based on the British legal system but unlike Great Britain, however, Gibraltar has a constitution. In the absence of any Gibraltar authority on any particular matter, English and Commonwealth case law is highly persuasive in Gibraltar and is usually followed, however, as they may concern the interpretation of different statutory provisions, any such English common law decisions cannot be expressed to be binding.

The key rules and laws relevant to companies in Gibraltar are largely dependent on firstly identifying whether the nature of the relevant transaction is: (i) private; (ii) public; and/or (iii) involves a Gibraltar regulated activity. Generally speaking, all matters will be subject to the Companies Act 2014 ("**Companies Act**"). However, to the extent that any transaction is being pursued in relation to a Gibraltar company which is publicly listed on a regulated market, the corresponding rules and regulations governing such regulated market will also need to be adhered to (e.g., an M&A transaction involving a Gibraltar target company which is listed on the London Stock Exchange will need to comply with the City Code on Takeovers and Mergers). Further, the Financial Services Act 2019 (together with such applicable subsidiary legislation in the form of industry specific regulations) will apply in relation to transactions where the target company and/or group is carrying out a form of licensable activity as regulated by the Gibraltar Financial Services Commission.

The key regulatory authority in Gibraltar is the Gibraltar Financial Services Commission, although depending on the nature and process of the applicable transaction, each of the Supreme Court of Gibraltar, the Gibraltar Companies Registry and Gibraltar Income Tax authorities may also feature.

2. What are the most common types of corporate entities (e.g., joint stock companies, limited liability companies, etc.) used in your jurisdiction? What are the main differences between them (including but not limited to with regard to the shareholders' liability)?

Companies

The Companies Act allows for the incorporation of both private companies and public companies.

A private company under Gibraltar law is a company that restricts the right to transfer its shares and does not offer its shares to the public. Four types of private companies may be incorporated under the Companies Act s 4(2), namely:

(a) a company limited by shares;

(b) a company limited by guarantee and having a share capital;

(c) a company limited by guarantee and not having a share capital; and

(d) an unlimited company with or without a share capital.

A public company under Gibraltar law is a company whose certificate of incorporation states that it is a public company, has a share capital and meets the 2014 Companies Act's requirement in terms of share capital and net assets.

Two types of public companies may be incorporated under the Companies Act s 4(1), namely:

(a) a company limited by shares; and

(b) a company limited by guarantee and having a share capital.

Partnerships

Gibraltar partnership law is outlined in the Partnership Act where a partnership may be created simply by execution of a deed by all the partners concerned or even by mutual verbal agreement. If the partnership has a place of business within Gibraltar, it must register the name under which it carries on business with the local authorities. Partnerships are viewed as transparent entities for tax purposes and therefore the profits or gains from the partnership are attributed to the partners for tax purposes. A partner is not liable for the unpaid tax of another partner.

Limited Partnerships

The Limited Partnerships Act 2021 permits the free association of partners, upon the terms that the liability of partners is limited to the amount contributed by them in cash or property at the establishment of the partnership. It allows limited partnerships to make a one-time election whether or not to have legal personality and it also affords limited partners a statutory footing on which to play an active role in the affairs of the limited partnership in certain permissible ways, including giving them the ability to vote on permissible actions pro-rata to their interests without vitiating their limited liability.

Each limited partnership should have at least one general partner who is responsible for the management of the business of the partnership and whose liability is unlimited, and at least one limited partner who does have limited liability but is prevented from taking part in the management of the partnership business and has no power to bind the firm.

Limited Liability Partnerships

Limited liability partnerships ("**LLPs**") may be incorporated under Gibraltar law pursuant to the Limited Liability

Partnerships Act 2009. Unlike partnerships or limited partnerships, LLPs are bodies corporate with unlimited capacity, with their respective members' liability being to contribute to the LLPs' assets in the event of the LLP being wound up.

Foundations

A foundation is an entity with separate legal personality that is able to hold and deal with property in its own name as absolute legal and beneficial owner, for the specific purposes that are detailed in its Foundation Charter. The purposes can be very wide, with no obligation to be charitable. The purposes can be "anything capable of fulfilment", but must not be illegal, immoral, or contrary to public policy. A foundation is initially established by its "founder", the person who contributes the initial endowment or assets to the foundation. The foundation is governed by its foundation charter and corresponding foundation rules, which detail the purposes, beneficiaries, and guardian of the foundation, as well as the rules on its administration.

Trusts

As a common-law jurisdiction, Gibraltar fully recognizes the concept of a trust, a legal construct by means of which high net worth individuals and their families can structure their tax and succession plans and these include corporate vehicles such as discretionary trusts, private trust companies, asset protection trust and purpose trusts.

B. Foreign Investment

3. Are there any restrictions on foreign investors incorporating or acquiring the shares of a company in your jurisdiction?

There are generally no Gibraltar law restrictions on foreign investments in Gibraltar, subject to compliance with any employment requirements of general application as well as any typical conditions of the Gibraltar Financial Services Commission for pursuing a prescribed regulated activity (which could require e.g., physical presence or other requirements).

4. Are there any foreign exchange restrictions or conditions applicable to companies such as restrictions to foreign currency shareholder loans?

There are no exchange control restrictions, as there is complete freedom to remit funds into and out of Gibraltar and to convert funds into other currencies. Gibraltar companies and individuals may purchase real and personal property in the world without restriction.

5. Are there any specific considerations for employment of foreign employees in companies incorporated in your jurisdiction?

Subject to the wider agreement between the UK and the EU over Gibraltar in relation to Brexit, for the time being, nationals of EU Member States have the right to enter, live and work in Gibraltar provided that they can demonstrate that they have independent means or have an offer of employment or are actively seeking employment. Persons who are not entitled to work in Gibraltar (i.e., non-EU nationals) need to apply or have their prospective employer apply for the issue of a work permit before commencement of employment.

C. Corporate Governance

6. What are the standard management structures (e.g., general assembly, board of directors, etc.) in a corporate entity governed in your jurisdiction and the key liability issues relating to these (e.g., liability of the board members and managers)?

In both public and private companies, the company's board of directors are the key decision-making body. The directors must have regard to their fiduciary duties, and act in the best interests of the company as a whole (essentially considering all interested persons, including the company in itself, its shareholders and third-party creditors).

More generally, directors' duties are not generally codified in Gibraltar statute but by virtue of the common law's application in Gibraltar, directors are subject to certain fiduciary duties, and which include: (i) a duty to act in the best interests of the company as a whole; (ii) a duty to exercise a degree of skill and care that may be reasonably expected from them; and (iii) a duty to act for a proper purpose (typically as more particularly set out in the company's articles of association, which ordinarily impose certain specific duties to secure proper use of the powers bestowed upon directors).

The articles of association of a Gibraltar company dictate how the company is to be managed and administered. Unless the articles of association specifically restrict the objects of the company, its objects are unrestricted. Articles of association usually provide for procedures regarding director and shareholder meetings and resolutions, for any restrictions on the ability of shareholders to transfer shares and set out the powers of the directors of the company. The articles of association are often made to measure to suit particular requirements of a company's shareholders.

7. What are the audit requirements in corporate entities?

All Gibraltar companies must file accounts each year in accordance with the relevant accounting principles prescribed under Gibraltar law. The size of the company is the decisive factor, together with the prescribed criteria which is determinative of the form of accounts each company is required to file, which may range from, *inter alia*, an abridged balance sheet to audited financial statements. The accounts are to be approved by the company's board of directors and/or at a general meeting of shareholders, and subsequently filed at the Companies Registry.

D. Shareholder Rights

8. What are the privileges that can be granted to shareholders? In particular, is it possible to grant voting privileges to shareholders for appointment of board members?

Shareholders do not owe fiduciary duties to other shareholders, whether majority or controlling shareholders, or otherwise. Whilst minority shareholders do not, per se, have any right to challenge the majority, there are limited exceptions to this general rule. These exceptions include a claim for unfair prejudice, whereby a shareholder of a company may apply to the court where such member feels that the company's affairs are being, have been or are proposed to be conducted in a manner that is unfairly prejudicial to the interests of members. If the court finds the application to be successful, it can order the company to refrain from doing any act complained of, authorise civil proceedings, or make a compulsory share purchase order.

9. Are there any specific statutory rights available to minority shareholders available in your jurisdiction?

Statute and common law provide, and provisions of the articles of association of a company may provide, a number of protections to minority shareholders, and the minority shareholders may petition the Gibraltar courts for relief if they believe they have been unfairly prejudiced.

10. Is it possible to impose restrictions on share transfers under the corporate documents (e.g., articles of association or its equivalent in your jurisdiction) of a company incorporated in your jurisdiction?

A transfer of shares shall require to be approved by board resolution of the target entity and the making of corresponding private and public updates to its register of members. The transfer may also require advance regulatory approval of the Gibraltar Financial Services Commission where a Gibraltar entity subject to its regulation is directly or indirectly involved or affected by the transfer.

Further terms, conditions and restrictions can be stipulated with the articles of association of the target entity.

11. Are there any specific concerns or other considerations regarding the composition, technical bankruptcy and other insolvency cases in your jurisdiction?

The law on insolvency is governed by the Insolvency Act 2011 and it affords the following possible options:

- With a Company Voluntary Arrangement (CVA), a company is able to approach its creditors in an attempt to try to reach a compromise arrangement. The arrangement may be (for example) to repay them from future profits, to repay the creditors less interest or the directors may be prepared to sell assets to repay the creditors within a period of time.
- Administration is an insolvency process that is designed to encourage the restructuring and refinancing of a company in order to avoid liquidation. The administration procedure involves the appointment of an administrator who displaces the directors of the company.
- Fixed charge holders have the option of appointing a receiver. Receivership is a procedure whereby a receiver is appointed by the court or under a debenture or other debt instrument in respect to a particular asset with the aim of selling that asset to satisfy the debt owed to the secured creditor.
- Administrative Receivership is a procedure whereby an administrative receiver is appointed by the holder of a debenture or other instrument of the company secured by a *floating charge*. Similar to a receiver, the administrative receiver takes control of the specific assets charged under the floating charge with the aim of selling these and paying the secured creditor.
- Liquidation is a procedure whereby a liquidator has custody and control of the company's assets. The purpose of liquidation differs depending on whether the liquidator has been appointed by the members or by the court as the purpose of a liquidator appointed by the court is to recover and realise a company's assets and where possible, distribute these or their proceeds, amongst the creditors of the company.

More generally, the Insolvency Act penalises directors for engaging in fraudulent trading and any act resulting in a fraudulent preference of its creditors is liable to be set aside together with unfair preferences, undervalue transactions, voidable floating charges, and extortionate credit transactions all being void.

The Insolvency Act also introduced insolvent trading. A director is guilty of insolvent trading even if the director honestly had no idea that the company could not avoid going into insolvent liquidation, A director guilty of such an offence can face a disqualification order for up to ten years (as well as personal liability) if he/she should have realised that the company was going to become insolvent, or if any other person in a similar position would have realised that the company was going to become insolvent.

E. Acquisition

12. Which methods are commonly used to acquire a company, e.g., share transfer, asset transfer, etc.?

The primary technique/legal means for acquiring a company in Gibraltar is through the purchase of a company's issued share capital, and which will ordinarily include entry into a form of share purchase agreement (with tailored representations, warranties and undertakings), together with a related instrument of transfer. Less commonly used methods are asset transfers and mergers.

13. What are the advantages and disadvantages of a share purchase as opposed to other methods?

Some advantages are as follows:

- No need for re-valuations and retitles of individual assets.
- Buyers can typically assume non-assignable licenses and permits without having to obtain specific consent.
- Simpler and more commonly used than asset transfers that can be covered under a single share purchase agreement.

Some disadvantages are as follows:

- All assets and liabilities are transferred and at their carrying value with the unwanted liabilities having to be dealt with via separate agreements.
- For target entities that have employees, the purchaser will inherit all employees with particular consideration to be given to the employees' statutory rights under applicable legislation.

14. What are the approvals and consents typically required (e.g., corporate, regulatory, sector based and third-party approvals) for private acquisitions in your jurisdiction?

Generally, transfers of shares require that an instrument of transfer (e.g., stock transfer form) is executed and delivered by the relevant sellers and buyers to the directors of the target company, that the directors are not only satisfied with the same but that they provide express approval to the transfer and related updates, and with the company secretary updating the Register of Members and making certain filings at Companies House, Gibraltar for a prescribed filing fee in order to reflect the transfer as a matter of public record. The articles of association of the company usually specify additional requirements, which usually include (where the shares are certificated) the delivery and cancellation of relevant share certificates.

To the extent, the target entity is licensed under the Gibraltar Financial Services Commission, depending on the licensable activity, relevant approvals, consents and/or notifications are to be provided.

15. What are the regulatory competition law requirements applicable to private acquisitions in your jurisdiction?

The Competition Act 2020 was introduced into Gibraltar law effective 1 January 2021 and is the primary legislation governing Gibraltar merger control. This Act establishes the Gibraltar Competition and Markets Authority (the "**GCMA**") for the purposes of certain mergers and affords it various functions and powers – additionally, it makes provision about competition law and the abuse of dominant market positions in Gibraltar.

Summarily, save in the cases of mergers and other general exclusions, this Act prohibits agreements or conduct of undertakings, decisions by associations of undertakings or concerted practices which may affect trade within Gibraltar, and which aim or have the effect of preventing, restricting or distorting competition within Gibraltar, or such that may amount to the abuse of a dominant position if deemed to affect trade within Gibraltar. Under the terms of this Act, the GCMA has wide powers of investigation, monitoring and enforcement over aspects including transactional arrangements, conduct, and mergers which can raise competition law concerns (and which include initial enforcement orders on completed and/or anticipated mergers, which are capable of preventing parties from pursuing transactions and/or mergers which integrate their businesses pending prior resolution and approval by the GCMA). This Act also provides authority for GCMA investigation when there may be cases of public interest.

16. Are there any specific rules applicable for acquisition of public companies in your jurisdiction?

The acquisition of shares in a publicly traded company would firstly require consideration and adherence to the applicable rules and regulations of the relevant regulated market on which the shares of said public company are being traded on. Furthermore, the Gibraltar Companies Act 2014 permits the acquisition of a publicly traded company by undertaking a scheme or arrangement by way of a merger. Alternatively, a share for share exchange may also be pursued, or an outright contractual sale and purchase of shares may be pursued.

Further, and to the extent that the publicly traded company carries out a form of licensable activity in Gibraltar which is regulated by the Gibraltar Financial Services Commission, the general provisions of the Financial Services Act 2019 will also need to be adhered to (together with such applicable subsidiary legislation in the form of industry specific regulations), including but not limited to the obligation of notifying the Gibraltar Finances Services Commission of any acquisition of control, or increased control, over a Gibraltar regulated public company.

17. Is there a requirement to disclose a deal, for instance to regulatory authorities? Is it possible to keep a deal confidential?

Other than in the case of transactions directly or indirectly involving a Gibraltar regulated entity (for which the Gibraltar Financial Services Commission requires that any bid be made public without delay and the bidder is so required to inform them of said bid at the first reasonable opportunity), and absent any regulated market rules and regulations (in the context of a public M&A transaction directly or indirectly involving a Gibraltar entity that is publicly listed on a recognized stock exchange), or any private contractual agreement (whether pursuant to a Gibraltar entity's articles of association, under a shareholder agreement or otherwise) there are generally no Gibraltar law provisions stipulating at which stage a target company is required to disclose a deal. Ultimately, this is likely to be negotiated and agreed upon by the parties and will likely be driven by commercial factors and the parties' requirements.

Further, although there is no requirement to do so at any stage of negotiation if said arrangement requires court sanction where a court hearing will be required, the relevant disclosure is made to the court of the intended arrangement and shall become public at that stage. Similarly, the directors of each of the public merging companies must deliver a copy of the draft terms to the Registrar which is then published in the Gazette at least 1 month before the date of any meeting of that company summoned for the purpose of approving the scheme.

18. Can sellers be restricted from shopping around during a negotiation process? Is it possible to include break fee or other penalty clauses in acquisition documents to procure deal exclusivity?

Absent any regulated market rules and regulations (in the context of a public M&A transaction where the target entity is a publicly listed Gibraltar company), or restrictions or conditions stipulated by the Gibraltar Financial Services Commission (in the context of an M&A transaction concerning a Gibraltar regulated entity), there are generally no provisions inhibiting a seller of a target company from seeking to secure deal exclusivity. In the context of private transactions, parties are broadly free to negotiate and agree on whatever exclusivity arrangements they may wish, including but not limited to entering into such applicable exclusivity agreements and/or break fee arrangements.

19. What are the conditions precedent in a typical acquisition document? Is it common to have conditions to closing such as no material adverse change?

Although the conditions precedent may differ on a case-by-case basis given the relevant terms of each deal, the standard ones are as follows:

- Corporate authorizations (board resolutions, formalities certificate etc.);
- Share transfer forms;
- Legal opinions;
- Due diligence reports;
- Finance documentation (if the purchase includes 3rd party financing);
- Purchase price funds flow documents/ structure;
- Latest filed accounts and tax returns together with current dated management accounts; and
- Itemized list of current assets and liabilities.

Yes, it would be common to have conditions to closing such as no material adverse change in the body of the acquisition documents together with relevant representations and warranties.

20. What are the typical warranties and limitations in acquisition documents? Is it common to obtain warranty insurance?

Although the representations and warranties may differ on a case-by-case basis given the relevant terms of each deal, the standard ones are as follows:

- The seller is the legal and beneficial owner of the relevant shares and has the right to sell said shares free from Encumbrances and have the capacity to perform their obligations under the acquisition documents;
- The relevant parties to the acquisition documents are validly organized and existing and in relation to corporate entities, they have the power and authority to enter into the acquisition documents and perform the obligations thereunder; and
- The execution and the performance of the acquisition document by the relevant corporate entities have been duly authorized by the company and no further corporate action on the part of the relevant corporate entities is necessary to authorize the acquisition documents and/or its performance.

Obtaining warranty insurance is not generally common, particularly in acquisition where the value may be considered to be 'low'. However, the buyer may insist on the seller taking out such an insurance especially where the seller puts forth assurances of inadequate value, or where no third-party guarantor is available to back the seller's obligations in the case of inaccuracy of the seller's statements.

21. Is there a requirement to set a minimum pricing for shares of a target company in an acquisition?

In a private transaction, the consideration payable is a commercial matter for the parties and in a public transactions, there could be certain conditions as set by the relevant stock exchange. When it comes to regulated entities, depending on specific percentages of voting rights being acquired by a buyer or a buyer together with any person acting in concert with a buyer and as a means for protecting the minority shareholders, an "equitable price" is typically set.

22. What types of acquisition financing are available for potential buyers in your jurisdiction? Can a company provide financial assistance to a potential buyer of shares in the target company?

All standard types of financing (i.e., loans etc.) are generally available for potential buyers, however, pursuant to the Companies Act, it shall not be lawful for a public company or any of its subsidiaries to give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of or in connection with a purchase made or to be made by any person of any shares in the company. Nothing in the relevant section shall be taken to prohibit (a) where the lending of money is part of the ordinary business of a company, the lending of money by the company in the ordinary course of its business; (b) the provision by a company, in accordance with any scheme for the time being in force, of money for the purchase by trustees of fully-paid shares in the company to be held by or for the benefit of employees of the company, including any director holding a salaried employment or office in the company; and (c) the making by a company of loans to persons, other than directors, bona fide in the employment of the company with a view to enabling those persons to purchase fully-paid shares in the company to be held by themselves by way of beneficial ownership.

In relation to private companies (and if regulated, may have additional requirements), the Companies Act does not generally prohibit a private company from giving financial assistance in a case where the acquisition of the shares in question was an acquisition of shares in the company or, if it is a subsidiary of another private company, in that other company. The relevant legislation provides further conditions and procedural aspects which must be adhered to in order for a private company to avail itself of the same. Directors must also consider the company's articles of association, their fiduciary duties and corporate benefit when weighing up this option.

23. What are the formalities and procedures for share transfers and how is a share transfer perfected?

Generally, transfers of shares require that an instrument of transfer (e.g., stock transfer form) is executed and delivered to the directors of the target company, that the directors are not only satisfied with the same but that they provide express approval to the transfer and related updates, and with the company secretary updating the Register of Members and making certain filings at Companies House, Gibraltar for a prescribed filing fee in order to reflect the transfer as a matter of public record. The articles of association of the company usually specify additional requirements, which usually include (where the shares are certificated) the delivery and cancellation of relevant share certificates.

There are no registration, stamp, documentary or any similar taxes or duties of any kind payable in Gibraltar in connection with the transfers of shares (unless the shares in question relate to real property situated in Gibraltar). Stamp duty is however payable on an increase of share capital in the fixed nominal amount of GBP10.00.

24. Are there any incentives (such as tax exemptions) available for acquisitions in your jurisdiction?

Although no specific incentives are available for acquisitions in Gibraltar, companies are taxed on profits accrued in or derived from Gibraltar (i.e., a territorial basis of taxation). In case of companies licensed and regulated in Gibraltar, the profits are deemed to accrue in and derive from Gibraltar, except for activities carried on or outside Gibraltar by a branch or permanent establishment.

Companies are taxed at a rate of 15% in regard to accounting periods commencing after 20 July 2021. However, energy and utility providers have to pay tax at a rate of 20%.

Gibraltar does not levy any tax on VAT, capital gains, accumulated profits, gifts, wealth and/or estate duty. A company registered in Gibraltar that receives royalties to it from another company is chargeable to Gibraltar tax at a rate of 12.5%.

The following are exempt from tax:

(a) dividends paid by a company ordinarily resident in Gibraltar to a company;

(b) dividends paid by a company the shares of which are quoted on a Recognised Stock Exchange;

(c) interest paid by a bank, building society or other financial services institution licensed to take deposits under the Financial Services (Banking) Act or equivalent legislation in any other jurisdiction;

(d) income derived from a friendly society, sporting club, or ecclesiastical, charitable, or educational institution or trust of a public character;

(e) the gains or profits derived by a non-resident owner, charterer or operator of ships or aircraft for the carriage of passengers or cargo to or from Gibraltar in any ship or aircraft owned, chartered, or operated by them;

(f) medical insurance premiums paid by an employer to an approved scheme on behalf of employees up to an amount of £3,000 for individuals taxed under the Gross Income Based system, and £5,395 for individuals taxed under the Allowance Based system;

(g) benefits in kind to an annual value of £250 per employee;

(h) income from debentures issued by a company the shares of which are quoted on a Recognised Stock Exchange, including debenture stock, loan stock, bonds, certificates of deposit and any other instruments creating or acknowledging indebtedness including bills of exchange accepted by a banker other than instruments included in (j) below;

(i) income from loan stock, bonds, and other instruments creating or acknowledging indebtedness issued by or on behalf of a government, a local or public authority;

(j) income from units in a collective investment scheme which is marketed and available to the general public, including shares in or securities of an open-ended investment company;

(k) income from rights to and interests in anything falling within (a) to (k) above; and

(l) a dividend paid out of the profits or gains of a company which has profits or gains on which the company is not liable to pay tax by virtue of (a) to (l) above to the extent of the amount of the dividend represented by the proportion which the amount of the income not liable to tax by virtue of (a) to (l) above bears to the entire income of the company for the year of assessment.

F. Enforceability

25. Can acquisition documents be executed in a foreign language?

Yes, it is common and standard market practice for these to be in the English language. Further, any documents that require to be submitted to any authority (i.e., the Gibraltar Financial Services Commission, the Companies Registry etc.) must be in English (or append a certified English translation).

26. Can acquisition documents be governed by a foreign law?

Notwithstanding that any governing law may be used, typically Gibraltar law is used on Gibraltar situs acquisitions. Further, with Gibraltar law being a common law jurisdiction and as such English law being persuasive, it is common to see English law agreements being used.

27. Are arbitration clauses legally permissible or generally included in acquisition documents?

Arbitration clauses are legally permissible and are generally included in acquisition documents with an independent arbitrator to be appointed as mutually agreed by the relevant parties but where the disputing parties cannot reach an agreement as to the identity of an Arbitrator then the arbitrator can be appointed by the Chairperson of the Gibraltar Bar Association.

28. Are there any specific formalities for the execution of acquisition documents? Is it possible to remotely/digitally sign documents?

Gibraltar law provides for documents and/or deeds to be signed by a Gibraltar company either by a director in the presence of a witness, two authorized signatories or a director and the company secretary. For parties to the agreement which are not Gibraltar corporate entities, then applicable binding jurisdictional provisions are to apply. Further, Gibraltar law does generally provide for documents to be signed remotely/digitally but specific attention is to be given on a case by case basis to ensure conformity with relevant practices.

G. Trends and Projections

29. What are the main current trends in M&A in your jurisdiction?

Other than in limited areas where Gibraltar has prominent activity, such as online gaming (where it is a market leader), insurance (primarily UK-facing, with one in five cars in the UK presently covered by Gibraltar insurers) and more recently fintech (where it has pioneered the provision and continuing development of a regulatory framework), Gibraltar has not traditionally been a primary M&A jurisdiction, with most activity involving mergers or acquisitions of large multi-national groups of which a Gibco forms part (sometimes as the target entity but typically as an indirect subsidiary).

However, (i) the continuing negotiations by way of agreeing on the precise form of treaty intended to seek to provide for an arc of shared prosperity between

Gibraltar and the nearby Spanish hinterland following an in principle agreement revealed on 31 December 2020 by way of a proposed framework for said UK-EU legal instrument setting out Gibraltar's future relationship with the EU, allowing steps to be taken to eradicate the physical border between Gibraltar and Spain through the application of certain aspects of the Schengen acquis in Gibraltar (including but not limited, to those extending to the enhanced movement of goods and people), (ii) Gibraltar and the UK's agreeing of a temporary (expected to become permanent in 2024) permissions framework affording to continue post-Brexit market access to a wide range of licensed financial services firms to passport their services to – and from – each other (and which is already beginning to bear fruit in terms of influx of UK-facing financial services operations to Gibraltar), (iii) latent effects of the Covid-19 pandemic on the market in terms of consolidation of larger players (including by way of acquisition of smaller groups), and (iv) Gibraltar's recent re-vamping of its funds and limited partnership legislation to make this more practical and attractive, each of the above against the wider backdrop of a new-found relative freedom from some of the restrictions and 'red-tape' that its hitherto fully-blown EU membership required, including allowing for a more bespoke and adaptive regulatory approach (with our regulator attuned to the developing and often different needs by way of protection of customers and operators alike in each of the key areas where Gibraltar's market standing exceeds its size), is leading to substantial growth in the Gibraltar M&A market. In particular, the established gaming, insurance and fintech sectors have been very active, with a number of high profile mergers and acquisitions of groups with prominent Gibraltar operating companies within their structures – we are also seeing this growth of activity with respect to wider financial services (as Gibraltar continues to work on getting its message across regarding its viability as a gateway to the UK, including for EU firms facing the loss of automatic passporting rights into the UK previously available, as well as of the attractiveness of its general offering as a compliant yet business-friendly, quick to market, common law, 'right touch' regulated jurisdiction levying tax on a primarily territorial basis), and which is contributing to various relocations of individuals and firms to Gibraltar, and some of whom are finding themselves included as targets in the wider increase of M&A activity that has ensued by way of emergence from recentCovid-19 transactional stagnation.

30. Are any significant development or change expected in the near future in relation to M&A in your jurisdiction?

The most significant development or changes expected in the near future will be: (i) the precise form of the Schengen-style treaty governing Gibraltar's future relationship with the EU and the mutual benefits this may afford in terms of fluidity of particular goods and people in Gibraltar, the nearby Spanish hinterland and wider Schengen area beyond that; (ii) the continuing UK-Gibraltar post-Brexit financial services mutual market access regime; and (iii) global trends and developments in both the corporate and tax space (including by way of latent effect of the Covid-19 pandemic, how and by whom OECD Pillar 1 and 2 tax aspects are ultimately implemented and enforced, as well as consolidation of the crypto market into fewer, larger more comprehensively governed and regulated including by our Gibraltar Financial Services Commission in Gibraltar players given recent market challenges and difficulties encountered by existing limited levels of regulation globally).

GREECE

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A. General

1. What is the main legal framework applicable to companies in your jurisdiction?

The key corporate law provisions applicable to companies in Greece are the following:

- Law 4548/2018 on Sociétés Anonymes, i.e., the Greek Stock Corporations (*Anonymi Eteria or AE*);
- Law 3190/1955 on Limited Liability Companies (*Eteria Periorismenis Efthinis or EPE*);
- Law 4072/2012 on Private Companies (*Idiotiki Kefaleouchiki Eteria or IKE*), General Partnerships (*Omorrythmi Eteria or OE*), and Limited Partnerships (*Eterorrythmi Eteria or EE*).

Specifically, regarding the M&A field, Greece does not have a dedicated M&A legal framework. Any private M&A activity is subject to the general corporate law provisions regulating the form of the relevant legal entity, as laid down above, as well as applicable civil, commercial and criminal law provisions and the respective tax rules. In this respect, the key pieces of legislation are:

- Law 4548/2018 on Sociétés Anonymes, Law 4072/2012 on Private Companies and Law 3190/1955 on Limited Liability Companies regarding corporate matters;
- The Greek Competition Act (Law 3959/2011) and Council Regulation (EC) No 139/2004 regarding merger control aspects;
- Law 4601/2019 on Corporate Transformations;

- The relevant provisions of the Geek Civil Code as regards contractual matters, provided the parties opt for Greek law as the governing law of the transactional agreements; and
- Law 3777/2009 on Cross-Border Mergers of Capital Companies, which will be shortly replaced by the newly passed Bill on Cross-Border Corporate Transformations transposing Directive (EU) 2019/2121 as regards cross-border conversions, mergers and divisions into Greek law.

2. What are the most common types of corporate entities (e.g., joint stock companies, limited liability companies, etc.) used in your jurisdiction? What are the main differences between them (including but not limited to with regard to the shareholders' liability)?

As mentioned under Question 1 above, the most common types of corporate entities in Greece are:

- the stock corporation ("**AE**");
- the limited liability company ("**EPE**");
- the private company ("**IKE**");
- the general partnership ("**OE**"); and
- the limited partnership ("**EE**").

The following brief description of the key features of each corporate entity will also bring light to their main differences:

Anonymi Eteria

The AE is the equivalent of a Société Anonyme, namely, a stock company. Law 4548/2018 governing the AE, provides that the liability of shareholders is limited to the amount of their shareholding participation, i.e., their contribution to the share capital, which is divided into and represented by shares of stock. The AE may issue different classes of shares (common and preferred), which may only be registered shares, while the AE is the only corporate vehicle that can issue bond loans. Incorporation requires at least one of the shareholders – either a natural or a legal person – to obtain a Greek tax registration number ("**AFM**").

The lawful formation of an AE is subject to a minimum capital requirement of EUR 25,000 which must be fully paid-up within 2 (two) months as of the effective date of AE's incorporation, unless partial repayment is permitted. Contributions in the AE are of a capital nature, although payment may take place either in cash or in kind, i.e., by contribution of other assets (including intangibles). To be noted that the option of payment in assets triggers a valuation procedure, completion of which requires the conditions of Article 17 of Law 4548/2018 to be met. In particular, there are requirements for evaluation reports that shall certify the value of the contributions in kind, which shall be composed by 2 (two) chartered auditors-accountants or an audit firm or, as the case may be, by 2 (two) independent certified valuators, and which must include all information expressly provided under Law 4548/2018. However, without prejudice to the aforementioned, in the event of share capital carried out by means of contribution in kind, the valuation procedure may be shortened or even waived in certain circumstances, when the provisions of Article 18 of Law 4548/2018 may apply.

The AE is generally considered the most appropriate form for large multi-stakeholder businesses and may be privately held or publicly traded.

Limited Liability Company

The EPE is governed by Law 3190/1955, as amended and in force. As a general rule, the liability of the partners is limited to the amount of their contributions. However, such liability is joint and several until the due formation of the company upon completion of the publication formalities before the General Commercial Registry take place. It should be noted that the establishment of a single-partner EPE is invalid if:

- the sole partner (individual or legal entity) is the sole partner of another single-partner EPE; or
- the sole partner of the single-partner EPE is another single-partner EPE.

Additionally, foreign entities and foreign individuals must be registered with the competent Greek fiscal authorities and obtain an AFM in order to become partners in an EPE. The due formation of an EPE is not subject to a minimum capital requirement. Therefore, the partners may freely determine the amount of capital to be contributed. Contributions in an EPE are of a capital nature, although payment may take place either in cash or in kind. It is to be noted also that each company part must have a nominal value of at least EUR 1,00.

The EPE constitutes the common vehicle for small and medium-sized businesses since it combines features of a partnership and a corporation.

Private Company

The IKE is governed by Law 4072/2012, as amended and in force. As a general rule, an IKE is solely responsible for any and all its liabilities, without joint liability on behalf of its partners. It may be established by 1 (one) or more natural or legal persons or be incorporated as (and later become) a single-member company. Moreover, foreign entities and foreign individuals must be registered with the competent Greek fiscal authorities and obtain an AFM in order to be partners of an IKE.

The due formation of an IKE is not subject to a minimum capital requirement. It is worth noting that the IKE's capital may even amount to EUR 0. In light of this, contributions to an IKE's capital can be made either through capital contributions (meaning contributions in cash or in kind), non-capital contributions (e.g., an employment relationship, know-how or other goods which are not of a monetary nature) or contributions of guarantee (namely the undertaking of liability for company debts vis-à-vis third parties).

An IKE is often the most cost-efficient form and offers such a flexible structure that it has become increasingly popular in recent years (especially with start-up businesses).

General Partnership

The OE is governed by Law 4072/2012, as in force. It constitutes a partnership in which all partners are liable, jointly and severally, for the partnership debts.

Such a business type is very flexible and requires minimum costs for establishment and legal compliance, yet entails a serious risk for the partners, as they are subject to unlimited personal liability for corporate debts. All partners of an OE qualify as "merchants", by operation of law, solely on the basis of their participation in an OE (*derivative commerciality* of the partners). The bankruptcy of the legal entity of the OE results *ipso facto* in the parallel bankruptcy of its partners. The OE is therefore most used for small family businesses. There are no minimum capital restrictions for due formation of an OE.

Limited Partnership

The EE is also regulated by Law 4072/2012, as in force. An EE is a partnership with 1 (one) or more general partners and 1 (one) or more limited partners. Specifically, an EE cannot exist without at least 1 (one) general partner. Should the general partner cease to participate for any reason whatsoever, such partner must be replaced in due course, otherwise the partnership will be dissolved. Conversely, if the EE has 1 (one) limited partner and such limited partner ceases to participate in the EE in any way, the partnership may continue trading in the form of an OE.

The general partners in an EE have unlimited personal liability, whereas the limited partners have limited liability up to the amount of their contribution. General partners are fully liable for any of the EE's debts jointly and severally with the latter. Thus, any third party may seek settlement of any of its claims against the EE from a general partner, without being obliged to firstly turn against the partnership itself.

A limited partner may be held fully liable for the EE's debts solely If their name is included in the partnership's corporate name and the debtor in question is not aware that they are a limited partner. There are no minimum capital restrictions for the due formation of an EE.

B. Foreign Investment

3. Are there any restrictions on foreign investors incorporating or acquiring the shares of a company in your jurisdiction?

Generally, foreign investments do not require approval from Greek authorities, except for certain restrictions on foreign investments involving real estate occupation or ownership in border regions and on certain islands, with regard to national security considerations.

More specifically, non-EU/European Free Trade Association individuals or legal entities may not proceed with any transaction in which a contractual right or a right *in rem* is granted in their favor, or such individuals or legal entities may not acquire shares of companies (irrespective of the companies' legal forms) that own real estate property located in certain border regions of Greece prescribed by Article 24 of Law 1892/1990, as amended and in force, without the prior approval from the competent decentralized administration office which shall lift the relevant restrictions upon the interested parties' filing of a lawful petition to that end. Another example is Legislative Decree 210/1973, which allows special approval of contracts for the transfer to foreign (natural or legal) persons or for the use/exploitation of mining rights by such persons.

Additionally, industry specific legal framework shall also apply for share acquisitions that exceed minimum thresholds in certain sensitive industries including banking, telecommunications and media, gaming, investment management, insurance etc.

4. Are there any foreign exchange restrictions or conditions applicable to companies such as restrictions to foreign currency shareholder loans?

No. There are currently no foreign exchange restrictions applicable to Greek corporate entities.

5. Are there any specific considerations for employment of foreign employees in companies incorporated in your jurisdiction?

The Greek Immigration Code operates on a *numerus clausus* basis, meaning that provides for specific types of residence permits the requirements of which have to be met by the individual in order for him/her to be entitled to its acquisition. In this respect, the entrance of the third-country nationals to Greece for working purposes is subject to certain requirements (e.g., issuance of a visa and or obtainment of a residence permit) that have to be followed by the individuals themselves and their employers.

The appropriate type of visa or residence permit depends on a number of factors related to the employment relationship (direct employment, secondment, teleworking etc.), the job position, the employee's specialty (highly qualified, managerial, trainee, etc.), the employer's status (Greek entity, Greek branch, Intra-Company transfer, EU based company, specific legal framework entity, etc.), the length of employment and more, depending on the characteristics of each case. In general, almost all work-related Greek residence permits are valid for a 3 (three)-year period with the option of further renewals.

After determining the suitable type of work permit, the applicant must gather the supporting documentation and submit the application with the relevant documents at the competent Greek Consulate of his/her permanent residence abroad. Upon the submission of a complete application file at the Greek Consulate, in principle within 10 (ten) to 15 days, the Consulate will issue the required Visa D, in order for the third-country national to enter Greece with the purpose of obtaining the respective residence permit.

Shortly after his/her entry into Greece, the third-country national must proceed to the filing of the application for his/her residence permit and then receive an interim residence permit which will be valid up to the issuance of the Greek residence permit. Said document will entitle him/her to lawfully reside and work in Greece. However, said document does not constitute a resident permit thus is not a travel document permitting the travel and stay in the Schengen Area. At a later stage, the competent immigration authority will set an appointment for the provision of his/her biometric information (i.e., fingerprints and signature specimen) and then, upon review of the full file, issue the applicable residence permit card.

C. Corporate Governance

6. What are the standard management structures (e.g., general assembly, board of directors, etc.) in a corporate entity governed in your jurisdiction and the key liability issues relating to these (e.g., liability of the board members and managers)?

The management structures found in the most common legal entities are:

- the General Meeting of Shareholders ("**GM**");
- the meeting of partners for EPEs and IKEs;
- the board of directors ("**BoD**" or "**Administrative Body**");
- the board of administrator/s for EPEs and IKEs; or
- the sole director/administrator for small AEs.

Greece follows the one-tier governance model. The typical governing body in Greece is the BoD/Administrative Body. In AEs the BoD consists of at least 3 (three) members and not more than 15 (the exact number is determined by the GM or the articles of incorporation), while the administrative body in EPEs and IKEs consists of 1 (one) or more administrators acting either separately or jointly.

Micro and small AEs have the right to appoint a sole director/administrator instead of a board of directors, but this is not applicable to medium, large and listed companies. The classification of companies as "micro", "small", "medium" and "large" is based on quantitative criteria, provided for under Law 4308/2014 on Greek Accounting Principles. The sole director/administrator must always be an individual and the rules governing the BoD apply accordingly. Large and medium-sized companies, or companies with shares admitted to trading on a regulated market may not appoint a single-member board.

The administrative body's duty is to manage the company and represent it both judicially and out of court (in its relations with third parties). The administrative body, in general, is competent to administer the company's assets and perform the object of the company's activity, within the limits of the law save for reserved matters to be decided at the level of the GM. The administrative body may delegate the powers of management and representation of the company to 1 (one) or more persons – members or non-members – if this is permitted under the articles of incorporation. The articles of incorporation may also authorise the administrative body or require the administrative body to entrust internal control to 1 (one) or more non-members. Additionally, following a respective provision in the articles of incorporation or a resolution by the BoD, AEs may also elect an executive committee to which certain powers or functions of the BoD may be delegated. The executive committee's composition, responsibilities, tasks and manner of decision-making, as well as any matter relating to its operation, shall be governed by the articles of incorporation or the resolution of the BoD that elected the committee.

The Hellenic Federation of Enterprises has also issued the Code of Corporate Governance (**CGC**), which is not mandatory for companies but rather constitute "soft law". The code provides that companies admitted to a regulated market should, in addition to the BoD, establish an audit committee to audit financial information, operate the internal audit of the company efficiently, handle risk management and audit the independence and objectivity of the auditors of the company.

The BoD therefore operates through various separate committees (e.g., audit, remuneration and nomination committees) in public companies, which also have:

- an internal audit unit;
- a shareholders' relations unit; and
- a corporate announcements unit.

The GM in AE and the meeting of partners in EPE and IKE, are a company's supreme governing body and the only competent body to resolve on certain material issues set forth in the law and the articles of incorporation (i.e., amendment of the articles of association, increase or reduction of the company's share capital in AE, election of BoD members etc.). Its resolutions are binding on the BoD and managers as well as on all shareholders of the company including those absent or dissenting.

Key liability issues of the administrative body and managers

BoD members and administrators have 2 (two) fiduciary duties towards the company when managing its affairs, namely:

- a duty of loyalty (to promote the company's best interests, accomplish the company's objectives and omit actions that could be harmful to the company's interests); and
- a duty of care (to abide by their obligations provided in the law, the company's Articles of Incorporation and the resolutions of the GM).

As a general rule, under Greek law, a BoD member is liable only vis-à-vis the company for any default (either willful misconduct or negligence, including slight negligence), namely any act or omission that took place during the management of corporate affairs that was harmful to the company. This liability shall not exist if the BoD member proves that they showed the diligence of a prudent director operating in similar circumstances and thus met the requirements of the "business judgment rule" in the performance of their duties, taking into consideration their particular skills and capacities, their respective position and/or the duties that were assigned to them.

Liability does not exist, under the "business judgment rule" test, where acts or omissions:

- were performed on the basis of a lawful GM resolution; or
- constitute a reasonable business decision, which was reached in good faith in order to further the corporate interest, based on sufficient information available at the time.

It should be noted that, with respect to the aforementioned fiduciary duties, liability and exemption therefrom also apply to third persons (non-BoD members) who have been assigned representation and/or managerial powers by the BoD. Breach of the BoD members' fiduciary duties may trigger a legal action brought by the company against them. The company's claims are time-barred 3 (three) years after the act or omission.

A BoD member's liability vis-à-vis third parties may be on the basis of tort if it is established that an illegal act or omission has a direct causal link with damage sustained by the third party, including moral damages. This liability may apply where the company's suppliers, employees, shareholders or the Greek state are concerned.

Furthermore, directors and managers may be personally held liable under tax and social security legislation. Such liability extends to personal assets of the directors and managers. Directors and managers may also be held liable for certain criminal offences provided for by law. Monetary fines (and/or, in some cases, even imprisonment) are triggered for BoD members who fail to comply with obligations imposed by the law with respect to various issues, such as making false statements to the public about the registration and payment of share capital.

7. What are the audit requirements in corporate entities?

Law 4308/2014 on Greek Accounting Principles as in force, provides for the mandatory audit of the annual and consolidated financial statements of medium sized and large private AEs, drafted by the BoD, by external chartered auditors or auditing firms which are elected by the company's GM during the fiscal year in question to that end. Conversely, public AEs listed on a regulated market are also obliged to have an additional internal audit unit which operates in accordance with relevant applicable provisions.

D. Shareholder Rights

8. What are the privileges that can be granted to shareholders? In particular, is it possible to grant voting privileges to shareholders for appointment of board members?

Under Greek law an AE may issue both ordinary and preferred shares. Ordinary shares carry all the shareholders' rights provided for under the applicable legislation including financial, participation and ancillary rights. Preferred shares may be issued with or without voting rights (or with voting rights only regarding specific matters) and grant their holders with privileges. Such privileges may consist of preferential financial rights including the right to a preferential collection of dividends in whole or in part prior to the ordinary shares, the right to fixed dividends, interest, or the right to preferentially collect the company's liquidation proceeds or any other financial benefit as provided for under the company's articles of association. Preferred shares can be issued as convertible into ordinary shares. However, the issuance of preferred shares with multiple voting right is prohibited under Greek law.

In terms of the direct appointment of board members, pursuant to Law 4548/2018 on AEs, 1 (one) or more shareholders may be granted the right to directly appoint members of the BoD subject to a relevant provision in the company's articles of association which shall specify the conditions for the exercise of such right including but not limited to the required shareholding percentage as well as the appointment notice. A mandatory threshold is set by the law restricting the holder of such right to directly appoint more than the 2/5 of the entire number of the members of the BoD. Such right is often awarded to minority shareholders.

9. Are there any specific statutory rights available to minority shareholders available in your jurisdiction?

Law 4548/2018 on Societe Anonymes, sets out the statutory rights granted to minority shareholders of non-listed AEs. A distinction between blocking minority and other minority rights is useful. The blocking minority refers to the increased quorum and majority requirements for the adoption of certain decisions by the GM, that is, a quorum of 1/2 of the paid-up share capital and a majority of 2/3 of those present of represented at the GM.

On the other hand, other minority rights are recognized to any shareholder of an AE or a shareholder representing 1/20, 1/10, 1/5, 1/3 and 2/100 of the company's paid-up share capital respectively.

Minority rights available to any shareholder include the right to request specific information on the company's business by the BoD; the right to request information regarding the company's share capital, the classes of issued share, the amount of restricted shares; the right to obtain a copy of GM minutes; the right to petition the dissolution of the company etc.

Shareholders representing 1/20 of the company's paid-up share capital are entitled among others to request the convocation of the GM by the BoD within 45 days from the service of such request to the chairman; to request the inclusion of addition of items in the forthcoming GM's agenda; to request the postponement of the adoption of resolutions in certain or all items of the agenda by the GM; to request a competent court to order the company's extraordinary audit; to block "related party transactions" etc.

Shareholders representing 1/10 of the company's paid-up share capital are entitled to block the waiver of claims against directors; to file a petition to the competent court for the removal of BoD members which have been directly appointed by another shareholder etc.

Shareholders representing 1/5 of the company's paid-up share capital are entitled to request a competent court to order the company's extraordinary audit; the right to block the adoption of a GM resolution without a GM meeting being held in accordance with Article 135 of Law 4548/2018. Shareholders representing 1/3 may request the competent court to order the liquidation of the company on the grounds of an important reason which makes the continuation of the company impossible.

As mentioned above, minority shareholders may be granted the right to directly appoint members of the BoD. Sell-out rights are also available to minority shareholders pursuant to Greek law.

10. Is it possible to impose restrictions on share transfers under the corporate documents (e.g., articles of association or its equivalent in your jurisdiction) of a company incorporated in your jurisdiction?

Yes. Restrictions on share transfers may be imposed either by virtue of the articles of association of the company or through a private shareholders' agreement. In particular, the restrictions may consist of the issuance of restricted shares which may be lawfully transferred solely upon the prior approval of the company's BoD or GM, while Greek law also recognizes the right of first refusal, the right of first offer, drag and tag along rights, whereas the shareholders may also agree in other share transfer restrictions which may either be included in the company's articles of association and disclosed to third parties or form part of a shareholders' agreement enforceable between them.

11. Are there any specific concerns or other considerations regarding the composition, technical bankruptcy and other insolvency cases in your jurisdiction?

The main considerations regarding insolvency cases in Greece primarily relate to shareholder/partner liability under the provisions applicable to the specific corporate entity involved.

Pursuant to the provisions of Law 4738/2020 (Greek Insolvency Code), bankruptcy may be declared following a court decision when a debtor (being either a natural person or a private legal entity with an economic object) is in cessation of payments, i.e., when such debtor is unable to fulfil its/his/her overdue financial obligations in a general and permanent way (cessation of payments) or when the debtor foresees an imminent inability to fulfil its/his/her financial obligations when they become due and payable and requests to be declared bankrupt (threatened cessation of payments).

In cases of bankruptcy of legal entities, the liability of the shareholder or the partner of such entity for the bankrupt's entity debts depends on the company type of the bankrupt entity. The autonomous legal personality of capital companies (i.e., AEs, EPEs and IKEs) resulting in the distinction of their assets and liabilities from the assets and liabilities of their shareholders is a well-established principle under Greek law. Consequently, shareholders may not be held liable and their personal assets are shielded against insolvency, tort, and contractual claims of creditors of the company.

However, the doctrine of piercing of the corporate veil i.e., the possibility to reach the shareholders or partners of a company with a capital structure in order to obtain relief has been endorsed in a very small number of instances by the case law of the Supreme Court of Greece.

This is not the case however (i.e., distinction of the company's assets and liabilities from the assets and liabilities of its shareholders/partners) for personal company types, i.e., OEs and EEs where the general partner of such companies is liable also with his/her personal estate for the debts of the bankrupt entity.

By way of exception to what has been mentioned above for companies with an autonomous legal personality (AEs, EPEs and IKEs), there are certain exceptions constructed under the Greek Insolvency Code where the shareholder/partner might be found liable for compensating the company's debtors. More specifically:

- If the shareholder/partner exercised influence to the board members and as a consequence, the board members did not file for bankruptcy in a timely manner. In this case, the shareholder/partner is liable for the actual loss or loss of profit suffered by creditors as a result of any deterioration of the bankruptcy estate which has occurred due to such delay and for debts accrued from the 31st day following cessation of payments and until the filing for bankruptcy, provided that they have acted under willful misconduct or gross negligence. The liability of the aforementioned persons is joint and several and the relevant lawsuit is filed by the bankruptcy trustee on behalf of the creditors.

- If the shareholder/partner exercised influence to the board members and as a consequence, the board members proceeded with or omitted actions that lead the company to cessation of payments. In this case, the shareholder/partner can be held jointly liable with the bankrupt entity for compensating the company's debtors for any damaged caused.

E. Acquisition

12. Which methods are commonly used to acquire a company, e.g., share transfer, asset transfer, etc.?

In the Greek market, M&A transactions may be structured either as share deals or asset deals depending on various considerations of the parties involved as well as the particularities of each specific investment opportunity.

The option of a business transfer as a whole is also available where a group of assets forming a business may be sold and transferred to the interested investor but is subject to liability considerations of both the seller and the purchaser who may be held jointly liable under the provisions of the Greek Civil Code. For the due completion of a business transfer, the parties must comply with all specific formalities for the transfer of each separate asset forming part of the business.

Furthermore, pursuant to Law 4601/2019, the acquisition of a company may be concluded as a merger, demerger or spin-off which benefits from the universal succession of the business undergone corporate transformation by the transferee by operation of law.

13. What are the advantages and disadvantages of a share purchase as opposed to other methods?

As mentioned in our answer under Question 12 above, the structuring of a transaction vastly depends on the particularities of each specific deal in the sense that the advantages or disadvantages of a specific acquisition method are often highlighted or played down by the investors and their advisors taking into consideration the various legal, tax, regulatory and other aspects of said investment opportunity.

In light of the above, share deals are often opted for when the investor wishes to acquire the entire business operated by the target company and control all its assets by purchasing the entirety of the issued share capital or a controlling stake. Share deals are completed by the execution of a share purchase agreement ("**SPA**") and other ancillary agreements governing the parties' rights and obligations and/or enabling the smooth transition and integration of the acquired business to the purchaser's corporate entity. For the completion of a share deal, the negotiation and conclusion of the main transactional document, the SPA, shall suffice and no separate agreements will be required for the assignment and transfer of each separate asset or legal relationship of the target as in the case of a business transfer. Furthermore, the lawful transfer of shares from the seller(s) to the purchaser is a rather straightforward procedure under Greek law which typically does not entail complex regulatory and time hurdles. The key advantage of a share purchase lies in that the seller does not actually transfer any assets, liabilities or contracts of the company separately but rather simply sells and transfers the shares of the entity holding such assets, liabilities, and various legal relationships. Consequently, the purchaser by acquiring the shares acquires control over the entire business operated by the target entity.

Conversely, as mentioned above, the purchaser also acquires and undertakes the liabilities of the target company which are not exempted from such transaction structure as in the case of an asset deal where a specific asset of a company is acquired by the purchaser. In that sense, an asset deal may be the optimal structuring where the target company is in a distressed position.

With regard to a corporate transformation (merger, demerger, spin-off), as opposed to a share deal, this may result in the combination or separation of 2 (two) businesses under the universal succession effected by operation of law rather than the holding of the shares of the target entity. In view of the potential synergies, a corporate transformation may be more beneficial for the investor compared to a share deal. Finally, the tax incentives as applicable by the recently introduced Law 5162/2024 (or other regimes that could apply on a case by-case basis i.e. law 4395/2022 providing incentives to SMEs' transformations and the special regime of law 2515/1997 for credit institutions may also play a key role in the investor's choice. However, the disclosure formalities, the deadlines as well as the 30-day cool-off period provided for the protection of creditors' rights may advocate in favor of a share deal structuring.

14. What are the approvals and consents typically required (e.g., corporate, regulatory, sector based and third-party approvals) for private acquisitions in your jurisdiction?

Regarding share deals, subject to the specific statutory provisions, the execution of the SPA does not typically require any corporate approval from the target. Regulatory clearance (e.g., merger control clearance) and sector-based approvals (e.g., acquisition of participations in insurance companies, gaming companies, credit and financial institutions and investment firms etc.) may be required in accordance with the applicable framework. A change of control in the target may also trigger the requirement for the issuance of new administrative licenses. Third-party consents may also be required in the context of contractual arrangements of the parties (e.g., bank financing, commercial agreements with suppliers etc.).

Regarding corporate transformations, a GM resolution for the approval of the transformation adopted with an increased quorum and majority is required by all entities involved. Regulatory clearance and approvals may also be required (e.g., in cases of a merger or a demerger involving the incorporation of an entity for the purposes of completion of the latter). Corporate transformations may also be subject to third-party consents in the context of contractual arrangements of the parties.

15. What are the regulatory competition law requirements applicable to private acquisitions in your jurisdiction?

Greek antitrust legislation reflects EU competition law principles, namely Articles 101 and 102 of the Treaty for the Functioning of the European Union and the respective European merger control rules. Law 3959/2011, as in force (Greek Competition Act) prohibits certain business agreements whose object or effect is the restriction of free competition (Article 1) as well as the abuse of dominant position (Article 2). The scope of application of such laws extends equally to nationals and non-nationals. The competent national authority monitoring adherence to the national framework is the Hellenic Competition Commission (“**HCC**”).

Notification obligations are triggered in the event of contemplated concentrations (i.e., changes of control on a lasting basis, such as mergers, acquisitions of control etc.) that are likely to raise competition-law concerns. In particular, in order to qualify for notification to the HCC, a concentration must cumulatively:

a. Meet the turnover thresholds specified in Article 6 (1) of Law 3959/2011, i.e., the total turnover of the parties to the concentration in the worldwide market must exceed EUR 150,000,000, and at least 2 (two) of the undertakings concerned must have a turnover exceeding EUR 15,000,000 each in the national market (it has to be noted that turnover thresholds may differ per sector); and

b. Not be otherwise subject to merger control by the EU commission (one-stop-shop principle), i.e., it must not meet the requirement of European dimension under EU Regulation 139/2004; rather it must only affect the Greek market or a substantial part thereof.

Concentrations meeting the above criteria must be notified to the HCC within 30 days from the date of the relevant “triggering event”, such as the conclusion of the agreement giving rise to the concentration.

16. Are there any specific rules applicable for acquisition of public companies in your jurisdiction?

The main legal framework set forth in our answer under Question 1 above, do also apply in the context of acquisition of public companies taking into consideration that only an AE may be admitted for trading on a regulated market. Furthermore, several dedicated pieces of legislation which are also applicable in public M&A transactions are listed below:

- Law 3461/2006 transposing Directive 2004/25/EC into Greek law (Greek Tender Offer Law) on takeover bids for listed Greek companies;
- Law 3556/2007 transposing Directive 2004/109/EC into Greek law (Greek Transparency Law) on disclosure obligations in the case of acquisition of significant holdings in listed companies;
- Regulation (EU) 596/2014 on market abuse (Market Abuse Regulation);
- Regulation (EU) 2017/1129 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market (Prospectus Regulation) and Articles 57–68 of Law 4706/2020;
- ATHEX Regulation on disclosure requirements of listed companies on the regulated market of the Athens Exchange.

17. Is there a requirement to disclose a deal, for instance to regulatory authorities? Is it possible to keep a deal confidential?

Subject to the competition law requirements mentioned above and other regulatory approvals or notification requirements which are industry-specific, it is possible to keep a deal confidential.

It is to be noted though that, regarding asset deals, business transfers or corporate transformations, under the Presidential Decree 178/2002 transposing the TUPE legislation (Transfer of Undertakings - Protection of Employment Regulations) into Greek law, the transferor and the transferee are obliged to inform the affected employees of the date or proposed date of the transfer, its reasons, the legal, economic and social implications of the transfer and any relevant measures to the benefit of the employees in due course before the transfer.

18. Can sellers be restricted from shopping around during a negotiation process? Is it possible to include break fee or other penalty clauses in acquisition documents to procure deal exclusivity?

Yes, exclusivity clauses and relevant restrictions are often negotiated and included in the transactional documentation of an M&A deal in Greece. The parties may also be held liable under the Greek Civil Code for any loss suffered by the other party during the negotiation phase.

Break fees could be included in a foreign law governed SPA but seem rather unusual in the current Greek M&A market. Conversely, their enforceability under Greek law is contested. In any case, if the SPA is terminated by the seller this will grant compensation rights to the purchaser. Other penalty clauses could be included in the SPA but may be challenged as excessive on the grounds of proportionality.

19. What are the conditions precedent in a typical acquisition document? Is it common to have conditions to closing such as no material adverse change?

Yes, it is common to include conditions precedent to closing in an acquisition agreement in Greek M&A transactions. These may consist of regulatory approvals (e.g., merger control clearance, environmental licensing, industry-specific regulatory approvals etc.), third-party approvals or waivers (in cases of contractual arrangements restricting the change of control) or the due completion of other requirements by the seller based on the specificities of the transaction. Furthermore, the parties may agree for the SPA to provide for the non-occurrence of a Material Adverse Change ("**MAC**") as a condition to closing, with the MAC definition to widely vary based on the industry and the negotiations of the parties.

20. What are the typical warranties and limitations in acquisition documents? Is it common to obtain warranty insurance?

Subject to the negotiations of the parties and the due diligence findings which may affect the level and extent of warranties provided, the acquisition agreement usually includes representations and warranties covering title to the shares and capacity of the seller, the share capital structure of the company, the company's incorporation and existence, the company's compliance with applicable law, regulatory, tax and employment law compliance, solvency of the company and the sellers, title to the real estate assets and movable assets, title to intellectual property rights, lack of encumbrances and liens on the company's assets, lack of material ongoing litigation, environmental law licensing and compliance, taxation and employees etc. The representations and warranties provided by the seller are governed by the applicable provisions of the Greek Civil Code on the liability of the seller in case of breach but may be qualified by the information provided to the purchaser during the due diligence process.

Depending on the due diligence findings, the parties may also agree on the provision of specific indemnities (typically for tax and employment matters) which are enforceable under Greek law.

In terms of the available limitations, the parties may agree to limit their liability (time limitations, caps, de minimis amounts included in SPAs etc.) but such limitation may not extend to cases of gross negligence or willful misconduct which even if contractually agreed between the parties will be null and void and not enforceable. Furthermore, the statute of limitations 2 (two) years for movable assets including shares and 5 (five) years for immovable assets) may not be shortened or extended unless under the warranty period provided for under the SPA/acquisition agreement in accordance with the provisions of the Greek Civil Code.

Warranty and indemnity insurance is not yet a widely spread practice in the Greek market although its use has been increasing over the past few years in Greek M&A transactions.

21. Is there a requirement to set a minimum pricing for shares of a target company in an acquisition?

Under the Greek Tender Offer Law on takeover bids for listed Greek companies, there is a minimum pricing requirement providing that the offeror who is obliged to proceed with the mandatory bid must offer a fair and equitable consideration in cash per share which cannot be lower than: (a) the average market value of the securities which the takeover bid concerns for a period of 6 (six) months preceding the date on which the offeror became obliged to make the takeover bid; or (b) the highest price at which the offeror or any persons acting on behalf of or in concert with him have purchased such securities during a 12 month period preceding the date on which the offeror became obliged to make the takeover bid.

22. What types of acquisition financing are available for potential buyers in your jurisdiction? Can a company provide financial assistance to a potential buyer of shares in the target company?

Similar to many other jurisdictions, debt acquisition financing can be sourced through traditional bank loans or by issuing debt securities. In practice, issuing a bond loan under Article 59 et seq. of Law 4548/2018 (i.e., a loan represented by bonds to be subscribed for by creditors / investors either through private placements or through public offerings) is often the preferred method for raising funds to acquire a target company.

This is mainly because, under Greek law, bond loans enjoy a stamp duty exemption, regardless of whether the lender is a licensed credit institution. In addition, bond loan instruments benefit from the banking levy exemption, i.e., they are exempted from a levy 0.6% on the annual outstanding amount of the loan that is applicable for standard loans provided by Greek banks. Lastly, notarial and security registration fees related to Greek bond loans are fixed at a nominal fee of EUR 100, as opposed to notarial and registration fees in the context of other loans which are calculated proportionately to the principal amount of the loan/secured amount.

Moreover, in any financing taking the form of a bond financing the security interests securing the claims thereunder are established, as per the provisions of the law, directly in the name of the bondholder agent for the benefit of all lenders/ bondholders. Therefore no '*parallel debt'*; structure would be required in the context of bond loan financings.

To be noted however that bond loans enjoying the aforementioned legal and tax benefits may only be issued by companies in the form of Greek Société Anonymes

As regards the second question regarding financial assistance, we note that in order for a Greek company to lawfully and validly grant guarantee and/or security on its own assets to secure debt which was drawn by any party to finance the acquisition of such company's shares (or the shares of such company's parent entities, as the case may be), the company shall maintain a non-distributable reserve in the liabilities section of its balance sheet being equal to the guaranteed/secured amount used to finance such acquisitions (the non-distributable reserve). In addition, under Greek law in no case shall such guaranteed/secured amount be such to turn the Company's net equity to an amount lower than its paid-up share capital plus non-distributable reserves (the financial assistance statutory limit). Provided that the financial assistance statutory limit is met at all times and also provided that financially the non-distributable reserve can be viably kept in the company's financial statements, the shareholder's meeting of the Greek company may vote in favor of the provision of guarantee/security for the financial assistance purposes. The board of directors of the company would need to provide such shareholders' meeting in advance with a report explaining the benefits of the transaction to the company and the safeguards that are in place for it. It is on the basis of this BoD report that the shareholders will resolve upon granting or not the financial assistance. All in all the conditions to whitewash financial assistance in Greece are the following:

(i) the non-distributable reserve;

(ii) no breach of the financial assistance statutory limit at any time;

(iii) BoD report justifying the need for financial assistance provision;

(iv) Shareholders' resolution on the basis of the BoD report. To be noted that the BoD report and the shareholders' resolution are published with the General Commercial Registry.

23. What are the formalities and procedures for share transfers and how is a share transfer perfected?

A share transfer is completed in accordance with the provisions of Law 4548/2018 on AEs, by virtue of the following steps:

- the execution of a share transfer agreement for the transfer of rights *in rem* on the shares;
- the annotation of the share certificates (if any) and their delivery to the purchaser by the seller or the issuance of new share certificates by the target company in the name of the purchaser and their delivery to the purchaser; and
- the lawful registration of the transfer with the company's shareholders' registry. Such registration is dated and executed by the transferor and the transferee or their proxies.

Under the applicable provisions, the parties are not obliged to sign and execute the registration with the shareholders registry if the company receives a copy of the share transfer agreement which has been executed between the parties.

Additional formalities apply for the lawful transfer of shares of listed companies.

24. Are there any incentives (such as tax exemptions) available for acquisitions in your jurisdiction?

Share acquisitions are exempt from indirect taxes (VAT and stamp duty), real estate transfer taxes and transfer taxes, with an exception of a 0.20% sales tax that applies exclusively in case of transfer of listed shares admitted for trading in a stock exchange.

Pursuant to recent legislation (Law 4935/2022) providing for tax incentives in corporate restructurings, it is provided that in case of acquisition of shares by Greek legal entities in other companies, any costs incurred at the level of the acquiring company should be tax deductible to the extent that they are related to said acquisition. More specifically, said costs may be deductible provided that the following conditions are cumulatively satisfied:

- the total turnover of the company, whose shares are transferred, and of the acquiring company should be equal or exceed the amount of EUR 450,000 based on the latest approved and published financial statements or the latest income tax returns, where applicable; and
- the total amount of tax-deductible expenses should not exceed 30% of the average turnover of the acquiring company during the last 3 (three) years prior to acquisition.

These conditions are not required to be satisfied, in case the acquiring company has not completed 1 (one) full year since its incorporation or has no other activity other than the holding of the acquired participation.

In parallel to the aforesaid rule, the Greek Income Tax Code provides a restriction as regards the deduction of costs related to participations that generate tax exempt dividends on the basis of the conditions set under the EU Parent-Subsidiary Directive (2011/96/EE) and tax-exempt capital gain from the disposal of shares which applies under similar conditions. However, up until today the relationship of the deductibility incentive provided under Law 4935/2022 with the complete restriction provided under dividend & capital gain exemption regime, has not been clarified by the Tax Administration and relevant guidelines are anticipated to shed light into this issue.

To the extent that acquisitions are accomplished through a restructuring, there are several frameworks for achieving tax-neutrality of the said restructuring. Available options are mergers, demergers, partial demergers, spin-offs, contributions of businesses or business sectors, share exchanges, and conversions. Greek laws providing for a tax neutral restructuring are the Greek tax incentive laws (i.e., 2166/1993 or 1297/1972), Law 2578/1998 on cross-border mergers among EU entities and Law 4172/2013 introducing the provisions of the EU Merger Directive for both domestic and cross border restructurings among EU entities as well as Law 4935/2022 providing incentives mainly for restructurings for micro, small and medium sized enterprises in accordance with the definition of the Commission Regulation (EU) No 651/2014 (to be noted other special regimes apply to restructurings of specific sectors). The requirements, procedure and impact (e.g., entitlement to carry forward tax losses, restrictions upon future sale of assets, reduction of tax going forward) vary depending on the legal framework to apply. Therefore, an analysis is to be made prior to opting for the tax framework to apply in each restructuring taking into account the background of the companies involved.

F. Enforceability

25. Can acquisition documents be executed in a foreign language?

Yes, acquisition documents may be executed in a foreign language. It is quite common for the transactional documentation in an M&A deal to be drafted in English and if required for the purposes of registration of documents with the public authorities, be accompanied by an official translation thereof in Greek.

26. Can acquisition documents be governed by a foreign law?

Yes, pursuant to the Regulation (EC) No. 593/2008 of June 17, 2008 on the law applicable to contractual obligations (Rome I), subject to any mandatory provisions of

Greek law which will prevail and apply in all material respects. Notwithstanding the choice of a foreign governing law on the acquisition document, the provisions of Greek law will also apply to rights *in rem* located in Greece (i.e., real estate assets, shares etc.). In this regard, a share purchase agreement to be entered into for the sale and purchase of shares in a Greek entity, which is governed by foreign law as per the choice of law of the parties, shall include the Greek law provisions governing the sale and lawful transfer of shares of Greek entities.

27. Are arbitration clauses legally permissible or generally included in acquisition documents?

Yes. Arbitration clauses are legally permissible under Greek law and may be incorporated in the acquisition documents. ICC arbitration is often opted for given its wide acceptance as the most trustworthy institutional arbitration available. In such case, standard or model ICC arbitration clauses are safe to adopt and be included in the acquisition document.

28. Are there any specific formalities for the execution of acquisition documents? Is it possible to remotely/digitally sign documents?

Under Greek law, there are no specific formalities for the execution of an acquisition document in the context of M&A deals, save for the transfer of real estate assets where the acquisition agreement must be drawn up in the form of a notarial deed and be executed before a Greek Notary Public.

Under the Greek Civil Code, where the law provides for or the parties have agreed upon the contractual type, for the acquisition agreement to be valid and enforceable the handwritten signature of the parties is required to be set on the same document. However, if the agreement has been drawn up in counterparts, then the execution by the one party of the counterpart which is to be delivered to the other party suffices. In addition, digital transaction management solutions may also be useful to parties wishing to remotely sign a single transaction document.

Furthermore, as regards the digital execution of documents, Greece has enacted Law 4727/2020 on digital governance which in conjunction with Regulation (EU) No. 910/2014 on electronic identification and trust services for electronic transactions in the internal market (eIDAS Regulation) rules that a qualified electronic signature has the same legal effect as a handwritten signature. In light of this, it is possible for parties to a transaction to digitally sign private documents (notarial deeds and other public documents are exempted under the applicable framework) as long as they hold a qualified electronic signature. However, if the requirements for a qualified electronic signature are not met, such documents shall be freely admissible and assessed as legal evidence in legal proceedings.

G. Trends and Projections

29. What are the main current trends in M&A in your jurisdiction?

Following the distress of the COVID-19 and early post COVID-19 era, the Greek M&A market seem to have been bouncing back and currently demonstrates significant developments in technology, energy, insurance and food and beverage sectors. The new digital universe in conjunction with legislative developments, the increasing commitment and sophistication of investors and advisors and the enhanced incentives for investment opportunities portends an upcoming growth in the M&A transactions in Greece. What remains to be seen is whether such growth patterns are likely to be affected by the increasing inflation and economic turbulences or whether M&A stakeholders will maintain the momentum.

30. Are any significant development or change expected in the near future in relation to M&A in your jurisdiction?

The new Law 5055/2023 on cross-border corporate transformations transposing Directive (EU) 2019/2121, as regards cross-border conversions, mergers and divisions into Greek law is a landmark development for the Greek M&A market. The new provisions which came into force and effect as of the publication of the law with the Government Gazette on September 29, 2023 (GG Issue A' 161/29.09.2023), form part of the wider Greek framework on corporate transformations, Law 4601/2019, which was amended to include both national and cross-border mergers, demergers and conversions of entities constituting a comprehensive tool for M&A lawyers, advisors, and stakeholders.

HUNGARY

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A. General

1. What is the main legal framework applicable to companies in your jurisdiction?

The corporate and contractual legal system in Hungary is based on its civil law. Therefore, the main rules governing businesses and their transactions are set forth in acts and regulations, although a limited precedent system has been introduced in Hungary requiring lower courts to follow the interpretation of laws adopted by the precedents of the Hungarian supreme court.

2. What are the most common types of corporate entities (e.g., joint stock companies, limited liability companies, etc.) used in your jurisdiction? What are the main differences between them (including but not limited to with regard to the shareholders' liability)?

In Hungary, the two main types of capital companies carrying legal personality distinct from their owners and most commonly used for pursuing profit-oriented business operations are: the limited liability company *(Korlátolt Felelősségű Társaság)* ("**Kft.**") and the private company limited by shares (*Zártkörűen működő Részvénytársaság*) ("**Zrt.**").

The Kft. is characterized by the contribution of a fixed amount of initial registered capital to the company by its owners (known as "*quotaholders*" or "members"), whose liability is thereafter generally limited, except for events when the corporate veil is pierced on the basis of the relevant laws. Ownership interests in a Kft. are in proportion to the amount of the members' contribution and referred to as "quotas," as Kfts do not formally issue any shares. Hungarian Forint ("**HUF**") 3 million is the minimum registered capital of a Kft. required by law. The Kft. is managed by its managing directors and does not require a board of directors for the purposes of its operation.

The Zrt. is founded with an initial registered share capital consisting of shares of a pre-determined number and face value, in the case of which the obligation of the shareholder(s) to the company extends to the provision of the face value or issue value of shares. HUF 5 million is the minimum registered capital of a Zrt. required by law. The Zrt. is managed either by its board of directors or the appointment of a chief executive officer is also possible.

Although the Zrt. is seen as a company form entailing more formalistic corporate governance rules and more cumbersome operational requirements (which from a cost perspective means that a Kft may be registered and operated with significantly lower costs), both offer the same level of reasonable flexibility in terms of designing the daily operation in the legal sense. In practice, however, the overwhelming majority of companies established, also by large corporations with extensive operations in Hungary, is in the form of Kft's.

Both types of these companies can be established by either one or more shareholders (or members) who can be either private individuals or legal entities of any nationality. The shareholders' liability in both instances is shielded from the liabilities of the company, unless classic instances (e.g., abusive business practice forced on the company in a situation threatening with insolvency) require the concept of piercing the corporate veil to prevail. Also, after the occurrence of the threat of insolvency of the company, its management must perform their duties for the benefit and in the interest of the company's creditors, instead of those of the company and the company's shareholders. Violation of this obligation may result in the personal liability of the management members. (See also question D 11 below for more details.)

A change of the legal form (i.e., transformation of a Kft. to a Zrt. or vice versa) is always possible.

B. Foreign Investment

3. Are there any restrictions on foreign investors incorporating or acquiring the shares of a company in your jurisdiction?

As of the date of drafting this chapter, there is no distinction between domestic and foreign nationals with respect to their ability to set up newly or acquire ownership in existing Hungarian companies.

Hungary has been advocating a welcoming legal and regulatory environment for foreign investors, successfully attracting significant amount of investments over the past decades. Before 2019, no investor screening regime had existed in Hungary, except for certain sectorial reviews available in selected regulated industries. These included energy, utilities, media, banking, and mining, in which the acquisition of certain controlling stakes had long been subject to prior approval of the competent national regulator. (See also question E 14 below for more details.)

In 2018, the Hungarian Parliament adopted an act setting out rules to enable the screening of acquisitions of certain Hungarian companies engaged in providing strategic services, or otherwise handling critical infrastructure or technologies by foreign investors that have a background outside the EU (the "**FDI Act**").

Since 2020, certain additional foreign direct investment ("**FDI**") screening requirements have complemented the existing regime applicable under the FDI Act (the Alternative FDI Regime).

Although FDI screening was designed not to capture any investors from the EU, the European Environment Agency (EEA) or Switzerland, now the Alternative FDI regimes requires investors from outside and inside these locations to make a filing for prior Minister approval. Furthermore, the industries caught by the Hungarian FDI screening requirements are sweeping in nature and go far beyond what has been captured under the relevant EU framework regulation. Therefore, in quite a number of instances, investors find themselves facing an FDI screening requirement in respect of the Hungarian angle of their deals, even if otherwise simultaneous signing and closing would be possible.

In addition to the straightforward acquisition of shares, the deal structures that are also captured include the acquisition of convertibles or rights in usufruct, as well as corporate transformations, asset acquisitions, capital injections and even in-kind contributions, irrespective of whether the deal is for good consideration or for free.

With respect to the procedural aspects, the filing must be made within ten days of concluding the relevant agreement. The review periods are quite lengthy (i.e., 60 calendar days under the lasting regime, whereas 30 business days under the Alternative FDI regime) which, under both regimes can be further extended at the discretion of the acting Minister (with up to another 60 calendar days under the lasting regime and 15 calendar days under the Alternative FDI regime).

Both FDI screening regimes currently applicable in Hungary trigger a mandatory filing obligation with a clear standstill obligation and, furthermore, both relevant laws provide that any transaction implemented without having first obtained the competent Minister's prior acknowledgement would be considered null and void from the Hungarian law perspective. Furthermore, the Minister can impose administrative fines for any breach of the approval requirement in the amount of at least 1% of the acquirer's annual net turnover and up to double the transaction value.

Without the Minister's approval, a transaction is considered null and void under Hungarian law, and no changes can be entered into any relevant public registries (such as the corporate registry), nor will the acquirers be permitted to be entered in the relevant books of shareholders.

4. Are there any foreign exchange restrictions or conditions applicable to companies such as restrictions to foreign currency shareholder loans?

As of the date of this chapter, there is not any foreign exchange restrictions or conditions applicable to companies set up in Hungary.

5. Are there any specific considerations for employment of foreign employees in companies incorporated in your jurisdiction?

As of the date of this chapter, there are not any restrictions or conditions applicable to companies set up in Hungary in respect of the nationality of their management members (who are legally not required to assume any employment position within the company either). In respect of proposed employment of foreign nationals by the company, the customary work permitting, and residency rules will need to be observed. With a few special exemptions, the employment of third country nationals in Hungary will be subject to prior authorisation. Foreign members of the company's management, however, can assume employment at the company with foreign shareholding with less amount of administrative hurdles. The same less demanding regulatory requirements will apply to intra-group secondment of foreign employees to Hungary.

C. Corporate Governance

6. What are the standard management structures (e.g., general assembly, board of directors, etc.) in a corporate entity governed in your jurisdiction and the key liability issues relating to these (e.g., liability of the board members and managers)?

The key decision-making body of the company, responsible for making decisions in fundamental business and personal matters of the company, is the meeting of its shareholders. In the case of sole shareholder companies, the only member has the powers otherwise vested in the supreme body and communicates its decisions in writing to the company's management. The competence of the shareholders' meeting extends, in particular, to the approval of the company's financial statements, decision on the distribution of any profit as well as enforcement of claims against a shareholder, the management members.

Any number of managing directors manage a Kft., while a Zrt. is managed by a board of directors or a chief executive officer. However, due to the dispositive regulation of Hungarian law, the forms of management bodies may be established flexibly at companies, therefore a board of directors may also be appointed for a Kft. Executive officers may be granted independent or joint rights to represent the company. Both an independent and a joint signing authority can be further restricted contractually (e.g., in the company's articles as well as management's own mandate or employment contract), however, such restriction is void vis-à-vis third persons unless the third person was aware of the restriction.

Executives manage the company independently with the priority of the company's interest and, in this capacity, the executive officer is superseded by legal regulations, the deed of foundation, and the resolution of the company's supreme body and, with the exception of sole member companies, may not be instructed by the shareholders.

If shareholders so prefer, the management can be placed under the supervision of a supervisory board, which must be in place for all public companies and for certain larger private companies.

The management of a company facing solvency difficulties is under the obligation to observe and safeguard the interests of the company's creditors, instead of the interests of the company or its shareholders (as during the ordinary course of business). This is particularly delicate because the thin line between the ordinary course of business and the threat of insolvency is not always clearly identifiable. The same cautiousness is expected from management when acquiring assets from a company in solvency difficulty, as transactions disregarding creditors' interests may later be challenged or be subject to claw-back claims.

In general, there is no obligation for the directors of a company to proactively file for insolvency. If the company is threatened with insolvency, however, its management must without delay escalate the matter to the shareholders by way of convening the shareholders' meeting in order to adopt the relevant resolutions on providing supplementary capital contributions or securing the equity situation by other means, or reducing the initial capital.

7. What are the audit requirements in corporate entities?

Hungarian law provides that with certain exceptions, the auditing of the annual accounts is mandatory for all companies running double-entry books. In cases when an audit is not mandatory on the basis of the law, still the shareholder of the company is free to decide whether to engage a chartered auditor.

The auditing of annual accounts is not mandatory if both of the following conditions are met:

- the company's annual net sales (calculated for the period of one year) did not exceed HUF 600 million on the average of the two financial years preceding the financial year under review, and
- the number of employees of the company on average of the two financial years preceding the financial year under review did not exceed 50 persons.

D. Shareholder Rights

8. What are the privileges that can be granted to shareholders? In particular, is it possible to grant voting privileges to shareholders for appointment of board members?

The Hungarian corporate laws offer wide room for shareholders to deviate from ordinary voting rules and patterns and so it is possible to allocate under the company's articles voting privileges or other preferences to some of the shares. Such preferences include preference to receive dividend in priority, liquidation priority, voting priority; priority regarding the appointment of management members; right of first refusal; as well as any combination of the same. In fact, the law allows shareholders to regulate classes of shares carrying any preferences and privileges other than those specifically defined in law as long as the company's articles specify the content and extent of those rights.

9. Are there any specific statutory rights available to minority shareholders available in your jurisdiction?

The law in Hungary allows minority shareholders to potentially obtain a wide range of minority protection tools from the controlling shareholder on a contractual basis in addition to the statutory minimum. These additional minority protection tools would include anti-dilution protection, veto rights through their equity ownership in certain selected matters, such as the appointment of management, and other corporate or business matters involving the business or the holding structure.

Hungarian law recognises minority protection rights for shareholders holding at least 5% of the voting rights in Zrts and Kfts and for shareholders holding at least 1% of voting rights in public companies. These minority rights are as follows: (i) requesting the convening of the shareholders' meeting; (ii) requesting that an agenda item not included on the agenda is discussed; (iii) requesting special audits of the last financial statements of the company or any economic event in connection with the actions of the company's management in the previous two years; (iv) initiating the enforcement of claims on behalf of, and for the benefit of, the company against the members of the company, members of the company's supervisory board, the company's executive officers, or the company's auditor. There are also certain decisions that can only be passed by a three-quarter majority of the votes (e.g., changing the form of the company or decreasing the company's registered capital) and a decision on amending the articles of association that changes rights of one or more shareholders to the detriment of such shareholder(s), may be vetoed by such shareholder(s).

10. Is it possible to impose restrictions on share transfers under the corporate documents (e.g., articles of association or its equivalent in your jurisdiction) of a company incorporated in your jurisdiction?

Shares (or quotas of a Kft.) may generally be freely transferred once the shareholder (or member of the Kft.) concerned has fully paid its contribution to the company. Transfer of quotas between the members of the Kft., and shares between the shareholders of a Zrt. can be generally transferred without any restriction.

In case of a Kft., both the shareholders (members) as well as the company itself has statutory pre-emption rights in case the quota is offered for sale to third-parties. In case the quota is sold in breach of such pre-emption rights, the aggrieved parties may initiate legal proceedings within a one-year deadline to establish the ineffectiveness of the transfer.

The articles of association of any company may introduce further restrictions to the share transfers or may render those subjected to the company's prior approval or even create option rights for the shares respectively. The company's articles may also exclude the transfer of shares to third parties other than by means of a sale and purchase agreement (e.g., division of marital assets or inheritance).

The shareholder may further establish other transfer restrictions regarding the shares in a separate agreement. Such restrictions can include the (i) requirement for prior approval in case of transfer of shares (which may be delegated to the management or board of the company), (ii) restriction on certain persons acquiring certain types or classes of shares, (iii) shareholders or shares themselves may have a call, put, pre-emption or voting rights (or the mixture of these rights) provided to them.

However, since these agreements are generally not apparent from the Hungarian companies' registry, and as such their effectiveness is limited to the contracting parties, third parties will not be bound by such provisions, unless those are apparent from the share certificates and the company's articles. Accordingly, any such transfer restriction or rights (pre-emption, option, etc.) must be physically recorded (i.e., printed or stamped) on the share certificates (or digitally recorded on the securities account where the shares are kept available in case of dematerialized shares) in order to be considered valid vis-á-vis third parties.

Shareholder's rights may only be exercised once the shareholder has been registered in the book of shares. In case the share has been acquired through the violation of the restrictions listed above, the shareholder may be denied registration into the book of shares and will not be entitled to exercise shareholders' rights.

11. Are there any specific concerns or other considerations regarding the composition, technical bankruptcy and other insolvency cases in your jurisdiction?

From the commencement of insolvency proceedings, the court-appointed administrator assumes the right to exercise all shareholder rights and represents the company, as shareholders and members of the company's management lose their powers over the company.

Hungarian law provides for a specific liability regime for shareholders of a Kft. and Zrt. with control over at least 75 % of the shares or the votes in the company requiring them to have unlimited liability for unsatisfied claims of the company's creditors if such shareholders have misused their limited liability.

Liability of the shareholders towards the company's creditors can also be established if the shareholders disposed of the assets of the company as those would have been their own; they have diminished the wealth of the company for their own or to third parties' benefit, in a way that they could have known if proceeded with due care, that the company would not be able to pay up its debts to its creditors. The shareholder's unlimited liability is also established if the shareholder has conducted disadvantageous business policy in the company.

E. Acquisition

12. Which methods are commonly used to acquire a company, e.g., share transfer, asset transfer, etc.?

The business decision on how to best structure an acquisition under Hungarian law needs to be examined on a case by case basis. Hungarian law recognizes all prevailing and commonly known methods used to acquire a company, such as share transfers, asset transfers as well as absorbing a part of business carved out from an existing company by way of a legal merger.

13. What are the advantages and disadvantages of a share purchase as opposed to other methods?

In case of a share purchase, the buyer acquires the shares of the target company thereby also taking ownership of all assets, which is the main advantage of such purchase. The practicality of the share purchase makes it the most popular method of acquisition in Hungary.

- Less complex and offers the benefit of continuity: share deals allow the parties of a transaction to transfer complete businesses in whole, by transferring ownership title of the acquired company. The main advantage of a share deal lies in the ability of the method to transfer the entire business of the target company in one step and does not carry the complexity related to transferring assets (i.e., IP rights, real properties, contracts, physical assets) individually.
- No requirement for the transfer of agreements: the main disadvantage of an asset purchase is that the transfer of individual assets often requires the consent of third parties. Alternatively, unless the affected agreements contain pre-agreed change-of-control provisions, commercial agreements will not be affected by the transaction.
- Limited effect on licenses: generally, share deals leave operational licenses held by target companies unaffected. Exceptions from this general rule are companies operating in certain regulated industries such as energy and utilities, telecommunications and financial services. Accordingly, even share transfers may be subject to the approval of the Energy Authority or the National Bank of Hungary.
- Employee consultation not required: if otherwise not provided in collective agreements, share purchases generally do not require approval by trade unions or other employee representative bodies. Nevertheless, where the retention of employees is an important element of the deal employees' representative bodies must be adequately notified and consulted.

Although asset purchases remain a less popular solution for acquisition purposes in Hungary, the method itself still provides convenient solutions for specific scenarios (i.e., spin-off, distressed sale situations, downsizing or sale of business line). In case of an asset purchase, the acquirer has widespread flexibility in terms of which assets of the targeted company it purchases. Therefore, an asset acquisition structure also allows the carving out of any liabilities to be assumed for assets disconnected with the business acquired, effectively avoiding spillover of any liabilities that remained hidden during due diligence exercise. In order to single out the subject of any such transaction the related sale and purchase agreement contains an annex with the detailed list of assets to be acquired. Asset transfer can also be more advantageous if the target company is financially distressed. In case of a share purchase, however, the target's liabilities are transferring to the purchaser together with the underlying ownership (unless contractually the parties agreed to carve out any such liabilities), which is usually the main disadvantage of a share deal.

14. What are the approvals and consents typically required (e.g., corporate, regulatory, sector based and third-party approvals) for private acquisitions in your jurisdiction?

Hungary has long been considered as a jurisdiction that is closely aligned with the key policy principles and follows the leading precedents regarding regulatory reviews and the resulting decision-making relevant to private equity funds and transactions that are generally applicable in the EU regulatory environment.

Accordingly, investors will face the same conventional regulatory requirements in terms of designing and completing their acquisitions as elsewhere within the EU. Sectorial consent requirements in banking and insurance or energy and infrastructure as well as media or mining are coupled with merger control review and the newly introduced requirement for the screening of FDI in selected strategic sectors by investors (see question B.3 above for more details).

15. What are the regulatory competition law requirements applicable to private acquisitions in your jurisdiction?

In the context of merger control regulations, acquisitions with a Hungarian angle that otherwise do not meet the EU's relevant turnover filing thresholds and require antitrust approval from the European Commission will still need to consider any filing requirement with the Hungarian national competition authority.

The merger control clearance requirement in Hungary may be triggered by purchases of assets forming a going concern, acquisitions of minority shareholdings coupled with veto rights, setting up joint ventures or changes in shareholder voting structures, provided the relevant local filing thresholds are exceeded.

The relevant Hungarian merger control thresholds are based on the parties' Hungarian net turnover. When calculating the thresholds, only net turnover derived from Hungary must be considered. The practice of the Hungarian competition authority regarding the method of calculating the relevant turnover and the allocation of such turnover among the members of groups of undertakings is fully in line with that of the European Commission in the context of the EU merger control rules.

The long-existing turnover-based notification threshold test in Hungary requires a transaction to file for prior clearance from the Hungarian competition authority if:

- the combined net turnover of all undertakings concerned (including companies controlled jointly by members of the groups of undertakings concerned) derived from Hungary in the previous financial year exceeded HUF 20 billion; and
- at least each of two undertakings concerned derived net turnover from Hungary in excess of HUF 1.5 billion in the previous financial year.

The practice the Hungarian competition authority pursues as to the method of calculating the relevant turnover and the allocation of such turnover among the members of the groups of undertakings respectively is closely in line with that of the European Commission in the context of the EU merger control rules.

In addition, according to an alternative filing test, a merger control review will also be necessary for the implementation of a concentration if it is not obvious that the concentration does not result in any significant impediment to effective competition in any of the relevant markets and the undertakings concerned have a combined aggregate net turnover derived from Hungary that exceeds HUF 5 billion. This alternative (voluntary) filing requirement intends to capture mergers concerning new emerging technology markets that are not necessarily generating the levels of net turnover that would trigger a merger filing requirement under the old filing thresholds.

Although there is no longer any filing deadline under Hungarian law, the parties are required to refrain from giving effect to the transaction prior to the merger clearance. A notification form must be lodged with the Hungarian competition authority following the signing of the contract or the acquisition of control (whichever is earlier), or, in the case of a public offer, following the publication of the public offer.

The Hungarian competition authority may attach conditions or obligations to its approval, which must be met by an appropriate deadline. The approval may be amended if the company does not fulfil an obligation or meet a condition prescribed by the decision for a reason which is not attributable to it. Unless the conditions are met, the approval is ineffective, and the Hungarian competition authority may initiate measures to recreate a state of effective competition on the market.

The Hungarian competition authority has the right to prohibit a concentration if it constitutes a significant impediment to competition in the relevant market, particularly as a consequence of creating or strengthening a dominant position.

16. Are there any specific rules applicable for acquisition of public companies in your jurisdiction?

Shareholders of a Hungarian public company (either direct or indirect owners of the issued share capital of the given public company or entities directly or indirectly holding any voting right in such public company) must report to the National Bank of Hungary ("**NBH**") and to the issuer if their voting rights or shares to which voting rights are attached reach, exceed or fall below 5%, 10%, 15%, 20%, 25%, 30%, 35%, 40%, 45%, 50%, 75%, 80%, 85%, 90%, 91%, 92%, 93%, 94%, 95%, 96%, 97%, 98% or 99%.

In their notification filed with the NBH, shareholders must disclose the identity of the company or person acquiring the shareholding, the date of the transaction, the relevant thresholds and the details of the securities. If the shareholder has not complied with its obligation to file the notification with the NBH and the issuer, it may not exercise its voting rights in the Hungarian public company.

The acquirer must make a public takeover offer if it acquires 25% of the shareholding interests in a Hungarian public company and, apart from the acquirer, no other shareholder holds more than 10% of the voting rights, or if it acquires 33 % of the shareholding interests. These provisions do not apply if the takeover is made during a formal restructuring or bankruptcy process.

The form of consideration is based on a commercial agreement between the bidder and the shareholder, although in Hungary one would typically see a cash consideration or a combination of cash and shares more often than just shares. If the bid reaches or exceeds the mandatory offer threshold, the bidder must offer cash for the shares upon the request of the shareholder.

The takeover rules in Hungary are rather restrictive and only permit a bidder to withdraw from its bid if the participating interest to be acquired is less than 50%, or if the Hungarian competition authority has not cleared the takeover of the target company from the antitrust perspective in the meantime.

Takeover offers in Hungary cannot be subject to any financing out, as the bidder is expected to provide evidence that it has sufficient funds available to cover the entire consideration payable for the shares. The funds can be cash, government securities issued by any Member State of the EU (as well as an OECD Member country) or a bank guarantee issued by a credit institution that is established in any Member State of the EU (or any Member country of the OECD).

Deal security measures (e.g., break fees, match rights, force-the-vote provisions, and non-solicitation provisions) are not acceptable pursuant to the mandatory Hungarian laws.

If the bidder has reserved the right in the bid documentation to launch a squeeze-out mechanism and successfully acquired at least 90% of the shares in the Hungarian public company, and further verifies that it has sufficient financial means to cover the purchase price, such bidder will legally be allowed to exercise a call option with respect to the remaining shares of the minority shareholders within three months of the last day of the acceptance period.

The put option reserved for minority shareholders must also be taken into consideration when a bidder acquires at least 90% of the shares of the Hungarian target company. In this case, the minority shareholders are entitled to offer their shares for sale to the bidder within three months of the date on which the target company published the acquisition.

In addition, Hungarian law allows that if the articles of association of the Hungarian target company provide that a bidder has acquired at least 75% of the shareholding interests, such bidder may convene a general meeting in order to amend the articles of association and remove and appoint the board members. At this general meeting, any special rights of the other remaining shareholders will not be applicable. As compensation for the requirement to waive these special rights, the remaining shareholders will enjoy a put option vis-à-vis the bidder within 90 days of the date of publication of the acquisition of voting rights reaching or exceeding 75%.

As a general rule, Hungarian law on takeovers requires the bidder to treat all shareholders equally. In practice, this means that the terms of an offer must be the same for all shareholders (taking the share classes into consideration), and no more favourable arrangement is permitted with any selected shareholders.

It is very common for the bidder to acquire shares from the principal shareholders of the Hungarian public target company before launching a mandatory bid for the rest of the shares. This sale and purchase agreement includes the typical contractual clauses concerning representations and warranties. Irrevocable commitments by the principal shareholders of the Hungarian target company would be applied in this context, which is permissible but not at all customary. However, any such agreement, including irrevocable commitments, must be drafted with a view to ensuring that none of the shareholders is placed in a more favourable position than others. There is no common practice in Hungary for irrevocable commitments, so the parties would be free to arrange for their withdrawal or termination.

During negotiations, the bidder must ensure that utmost confidentiality is maintained since an unintended information leak would trigger its obligation to launch a mandatory takeover offer.

17. Is there a requirement to disclose a deal, for instance to regulatory authorities? Is it possible to keep a deal confidential?

Unless the transaction triggers any regulatory filing requirement (e.g., sectoral regulator, merger control or FDI screening) or the company is publicly listed and so is subjected to certain disclosure requirements under the prevailing listing rules, there is no requirement under Hungarian law to formally make a public disclosure of the transaction. Note, however, that the new shareholder is required to notify the company's management, who, in turn, will be required to apply for the registration of such shareholder change with the Hungarian companies' register. Furthermore, the applicable anti money laundering rules regarding ultimate beneficiary owners ("**UBO**"s) also require that any new UBO is notified to the relevant Hungarian UBO register which is accessible, with certain restrictions and limitations, to the public.

18. Can sellers be restricted from shopping around during a negotiation process? Is it possible to include break fee or other penalty clauses in acquisition documents to procure deal exclusivity?

Break fees, or other penalty clauses to encourage the parties to remain at the negotiating table rather than take action that may unreasonably cause the transaction not to proceed, are generally available under Hungarian law on a contractual basis. Such arrangements are either included in the transaction agreement or agreed by the parties already earlier in the transaction process, usually before the buyer commences their due diligence. Break fee provisions (also known as broken deal fees) may be contained in a separate agreement or may be included in heads of terms.

19. What are the conditions precedent in a typical acquisition document? Is it common to have conditions to closing such as no material adverse change?

The typical level of conditionality in private transactions in Hungary is rather limited to the legal mandatory minimum, including obtaining all relevant (suspensory) regulatory approvals, such as antitrust clearance or seeking shareholder approvals (to the extent they are prescribed in the relevant corporate constitutive instruments or other shareholder arrangements) or other third-party consents (required on the basis of change of control clauses included in contracts with key account business partners material to the continuing of the target's business). Certainly, a novel condition is the need to obtain FDI screening approval from the competent Minister. Other conditions to completing a private transaction in Hungary, such as material adverse change provisions, are substantially less frequent and would routinely trigger sensitive discussions between the parties. Very apparently, deal certainty has become an even more important feature for the parties when discussing conditionality in their acquisition agreement and whenever possible simultaneous signing and closing is a preference.

Generally, the following conditions are introduced and must be completed for the consummation of a transaction:

- collecting approval of competition authorities or other industry specific bodies;
- carrying out changes to the management of the target company;
- drafting and preparing relevant corporate documents and passing relevant resolutions required under applicable laws to give effect to the transfer both substantively as well in local corporate registry;
- balance sheets evidencing the financial status of the target company at the time of completion/closing;
- acknowledgment letters confirming the settlement/repayment of loans, outstanding liabilities of the target company, if any;
- consents of third parties or transfer of relevant contracts (in light of possible change of control provisions discovered during the due diligence).

Condition precedents are generally to be satisfied until closing of the transaction and are either mutual undertakings of the parties or a unilateral obligation. Certain precedents, if falling within the exclusive competence of the contracting parties, may be waived by the other party. However, the non-completion of a condition precedent may give reason to claim damages for breach of contract or even lead to the parties rescinding from the transaction.

20. What are the typical warranties and limitations in acquisition documents? Is it common to obtain warranty insurance?

Following international standards, acquisition agreements usually provide for an extensive list of warranties, which generally cover:

- the corporate good standing of the target entity;
- lawfully acquired clear title free of any third-party claims, litigation or encumbrance;
- all asset types affected by the acquisitions (real estate, financials, tangibles);
- requisite power and authority to represent target;
- current and contingent liabilities;
- employees;
- contracts;
- tax issues;
- intellectual property rights;
- IT infrastructure;
- licenses and permits

The most common limitations on warranties include:

- rights of disclosure against warranties, generally including data room content. Accordingly, legal issues identified in the course of a due diligence and disclosed to both parties will effectively limit or prohibit one's ability to claim damages regarding the respective finding.
- setting a minimum claims threshold for both individual and aggregate warranty items;
- setting up a cap on seller's maximum liability (i.e., a maximum amount) or purchaser's recovery (i.e., a maximum percentage relative to purchase price);
- time limitations for bringing claims (except for items which have mandatory limitation periods i.e., real estate title, tax matters);
- exclusion of claims due to change in legislation/law;
- prevention of double recovery under warranties (i.e., indemnity and insurance); and

- qualification of warranties with the knowledge or awareness of the parties (or their respective management, advisers or key employees).

Warranties are most commonly subject to disclosure. A disclosure schedule (or disclosure letter) forms an integral part of a transfer agreement. Its purpose is to disclose matters that represent exceptions to the sellers' representations and warranties set forth in the agreement, qualifying the warranties.

Disclosure letters may include general disclosures (searches, publicly available information obtained by the buyer, information disclosed in the books and accounts of the target company, due diligence exercise etc.) and/or specific disclosures, which are tailored to the particular transaction and are cross-referred to warranties. Disclosure qualifications usually also include data room content substantiating any corresponding limitations.

Warranty and indemnity (W&I) insurance has been reasonably embedded in Hungarian transactions, although it is still not predominantly customary in Hungary. The coverage provided by the relevant insurance policy is most dependent on the warranties ultimately negotiated into the transaction agreement.

21. Is there a requirement to set a minimum pricing for shares of a target company in an acquisition?

There is no general legal requirement under Hungarian law for setting any minimum pricing for shares of a target company in an acquisition. When the transaction parties conclude their agreement, however, they will be advised to pay attention to their tax positions respectively resulting from the purchase price they have agreed (e.g., corporate income tax incurring over the value margin or transfer pricing considerations in dealings between affiliated entities).

22. What types of acquisition financing are available for potential buyers in your jurisdiction? Can a company provide financial assistance to a potential buyer of shares in the target company?

The most commonly used form of consideration is cash (equity), either funded by the buyer directly or partially or completely from debt.

Public companies may also opt to issue shares to acquire funds for acquisitions, which may also be combined with other elements (cash or debt). Other types of consideration are less common (rights, receivables, real estate) however, they can be negotiated by the parties for transactions involving private companies.

The factors in choice of consideration may be the seller's preferences, the financial/economic conditions of the target company and the parties' negotiations. However, both seller and buyer have different preferences – while the seller will opt to receive the purchase price in cash upon sale immediately or remain engaged in the business with the use of a joint venture setup or incentivized combined business, the buyer will try to pay consideration in the course of a longer period, introduce partial payment (which may be combined with share schemes to incentivize retained owners as management) or purchase price retention mechanisms, or even try to set up an earn-out mechanism with the relevant (usually complex) review and business integrity requirements.

Under Hungarian law, a Kft. and a Zrt. are allowed, indeed, to provide financial assistance without restrictions. However, as a general rule, a Hungarian public company limited by shares is prohibited from offering financial assistance for the acquisitions of its own shares unless such assistance is:

- subject to market conditions;
- provided from assets of the company available for the payment of dividends; and
- the general assembly approve such decision by at least a three-quarters majority upon a proposal put forward by the board of directors.

The above-mentioned recommendation of the board of directors must contain the reasons, the risks involved, the conditions, the price of the shares and the advantages the company is likely to gain by providing such financial assistance. The proposal of the board of directors is later to be submitted to the competent court of registry keeping the records of the public company.

23. What are the formalities and procedures for share transfers and how is a share transfer perfected?

Foreign companies must execute documents in accordance with the laws of their incorporation. If, however, documents are executed based on a power of attorney additional formal requirements may also be applicable, which based on the country of issuance may be either notarization or certification of signatures by a consulate or depending on the place of execution, attachment of an apostille.

Companies in Hungary must be represented by their duly authorized representative(s) either with joint or individual signatory rights. The details of such rights of representation are detailed in the articles of associations of the company and registered in the company's registry. Although not required by law, parties may opt to have the share purchase agreement signed with the addition of two witnesses, have it countersigned by an attorney or have their signature certified by a notary public. Such additional formalities will provide the document with full probative force, meaning its contents must be considered valid until proven otherwise in court. In case of certain documents, general practice has established that quicker enforcement is an essential requirement, as such incorporating documents (mostly security) into a notarial deed may also be considered (or required).

The following formalities are applicable in case of the transfer quotas of a Kft:

- a written business quota sale and purchase agreement;
- waiver of pre-emption rights of the members of the company or any third party having such rights (if applicable);
- any additional formal approval for the transfer or compliance with any restrictive provision (generally required under the articles of association);
- declaration of the buyer to the management of the company on its acquisition of the business quota;
- registration of the buyer in the member's list of the company following the member's declaration by the managing director;
- registration of the new member of the company in the company's registry.

The formal requirements of share transfer in a Zrt. vary depending on the actual method the shares were issued.

Formality requirements for the transfer of printed shares include the endorsement carried out on the printed share and the actual physical handover. A separate sales agreement can be concluded, although not required.

Transfer of electronic or dematerialized shares (i.e., kept available on specific securities accounts) are carried out by way of transfer between the individual securities accounts of the parties, accompanied by a separate sale and purchase agreement.

An additional important requirement is to register the new owner of the share (both printed and electronic) in the book of shares of the company. In the absence of such registration, the share transfer will not be considered effective vis-à-vis the company and the new shareholder will not be entitled to exercise shareholders' rights, regardless of its ownership of the share.

24. Are there any incentives (such as tax exemptions) available for acquisitions in your jurisdiction?

In a transactional context, the key area concerns the real estate transfer tax (RETT). As a general rule, the same RETT incurs for transferring equity in a Hungarian entity qualifying as a real estate holding company as if the real property would transfer in an asset deal. Otherwise, the acquisition of shares in a Hungarian entity is not subject to any transfer, sales or value added taxes.

If an entity qualifies as a real estate holding company for RETT purposes, then the acquisition resulting in at least 75% of its shares being held by the buyer and its related parties triggers RETT in Hungary at the buyer at a rate of 4% of the market value of the Hungarian real estate held by the real estate holding company. If the market value of a real estate property exceeds HUF 1 billion, the tax rate on the exceeding part is 2%, but the RETT liability is capped at HUF 200 million per real estate property. Under Hungarian RETT legislation, an entity should be regarded as a real estate holding company if the value of the real estate in Hungary owned by that entity exceeds 75% of the total value of the assets (excluding liquid assets, monetary claims, accruals, and loans) of the entity shown on the balance sheet most recently formally approved. An entity should also be regarded as a real estate holding entity if it holds directly or indirectly at least 75% of shares in a company that fulfils the aforementioned conditions.

The acquisition of shares in a real estate holding company is exempt from transfer tax if:

- the buyer has acquired the shares from its related party with the buyer's main activity being either renting and operating of own or leased real estate or buying and selling of own real estate; or
- it takes place within the frame of a preferential exchange of shares.

For the above-mentioned exemptions to apply, the legislation requires that the buyer not be resident in a low tax jurisdiction.

The acquisition of real estate from a related party is exempt from transfer tax, provided that the buyer's main activity is either renting and operating of own or leased real estate or buying and selling of own real estate. Further exemptions are set out in the legislation, for example acquiring real estate under a lease-back arrangement or activities in connection with the construction of a residential building.

F. Enforceability

25. Can acquisition documents be executed in a foreign language?

Hungarian law does not preclude that acquisition documents are negotiated and executed in a foreign language. As much as any such documents will need to be filed with some Hungarian authority or court in the context of their proceedings (e.g., registering new shareholder, conducting regulatory approval proceedings, a competent authority opening investigation of matters arising out of the transaction etc.), however, such authorities any courts will require an official Hungarian translation of the relevant transaction documents for their own procedural purposes.

26. Can acquisition documents be governed by a foreign law?

An acquisition agreement can provide for any foreign governing law. It is very common in cross-border transactions that the parties insist on having the relevant sale and purchase agreement governed by their local law, however.

In cases where the parties' national law is agreed as governing, Hungarian law will generally not apply, save for mandatory provisions which must be used for matters falling under the exclusive competence of Hungarian law, just to name a few examples most relevant to a share purchase:

- the transfer of shares and their registration in the corporate registry;
- certain parts of real estate law;
- laws related to the registration of financial securities;
- labour law; and
- competition law regulations.

27. Are arbitration clauses legally permissible or generally included in acquisition documents?

In private transactions, arbitration clauses (including international arbitration fora) are legally permissible any widely used by the transacting parties. An increasing number of contracts in commercial matters contain arbitration clauses. In transactions involving Hungarian state assets or other state interest, however, there are certain statutory restrictions on setting forth arbitration. Also, there are a number of disputes that cannot be submitted to arbitration, such as those arising from consumer contracts, orders for payment procedures, public administration and enforcement procedures.

Awards of arbitral tribunals are directly enforceable through the Hungarian judicial enforcement system in the same manner as state court judgements. Also, Hungary is party to, inter alia, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention), the European Convention on International Commercial Arbitration (European Convention), the Energy Charter Treaty and nearly sixty bilateral investment protection treaties, ensuring recognition and enforcement of arbitral awards also in an international context.

28. Are there any specific formalities for the execution of acquisition documents? Is it possible to remotely/digitally sign documents?

Unless otherwise provided by law, transfer documents do not require special legal formalities. A share sale and purchase agreement does not require special form, however, a real estate sale and purchase agreement must be prepared and countersigned by an attorney at law or incorporated into a notarial deed. A power of attorney granted with respect to a real estate sale and purchase must be provided in the same form having the same formalities as the documents executed based on such power of attorney.

According to the eIDAS Regulation (Regulation (EU) No. 910/2014 and its corresponding Hungarian implementation act), qualified electronic signature must have the equivalent legal effect of a handwritten signature. A digital document attached with a qualified electronic signature based on a qualified certificate issued in one Member State must be considered as a written document and the signature will qualify as an equivalent electronic signature in all other Member

States. However, one must note that the use of digital electronic signatures in share or asset transfers are to this date almost unprecedented.

G. Trends and Projections

29. What are the main current trends in M&A in your jurisdiction?

Hungary continues to be a popular investment destination within the Central and Eastern European (CEE) region. Investors also seem to favour Hungary's long-lasting political stability and the healthy condition of its macroeconomic environment and stable budgetary status.

Foreign investors also closely monitor the macroeconomic environment of Hungary, such as the inflation rate or the base rate of the National Bank of Hungary, which could have significant impact on their investment decisions.

Looking ahead, the local market sentiment is that deal activity is likely to remain reasonably stable in Hungary, despite uncertainties across global markets and slower trends elsewhere in Europe reflecting a more cautious and less active deal-making environment.

30. Are any significant development or change expected in the near future in relation to M&A in your jurisdiction?

As of the date of this chapter, not any major developments or changes are expected in respect of laws applicable to doing M&A in Hungary.

INDIA

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A. General

1. What is the main legal framework applicable to companies in your jurisdiction?

The corporate ecosystem in India has a set of exhaustive commercial laws governing the various aspects of companies. The parliamentary statutes delegated legislations and by-laws offer a comprehensive legal framework that govern and regulate the companies in India.

Some of the pivotal business regulations in India are as follows:

(a) The Companies Act, 2013 ("**Companies Act**"): Companies incorporated in India and foreign corporations conducting business in India are regulated by the provisions of the Companies Act. It regulates the incorporation, management, governance, operation, dissolution or winding up of the companies. The Companies Act contains provisions applicable to public companies, private companies, and one-person companies.

(b) The Competition Act, 2002 ("**Competition Act**"): The Competition Act prescribes provisions to keep the market in check as it promotes fair competition in markets in India. It protects the interests of consumers and ensures freedom of trade for market participants. The Competition Act: (i) prohibits anti-competitive agreements; (ii) prohibits abuse of dominance; (iii) regulates acquisitions, mergers and amalgamations, exceeding the prescribed thresholds; (iv) establishes Competition Commission of India ("**CCI**") including its investigative wing i.e., Office of Director General and sets out their functions and powers; and (v) lays down the procedure for appeal against the order of the CCI. On April 3, 2023, the Indian Parliament passed the Competition Amendment Bill, 2023, The amendments aims to streamline legal provisions and bring the law into sync with international best practices and changing economic reality.

(c) The Foreign Exchange Management Act, 1999 ("**FEMA**"): FEMA and the rules thereunder govern foreign investment, capital flow, remittance, establishment of liaison, branch and project offices, loans and external commercial borrowing.

(d) The Consolidated Foreign Direct Investment ("**FDI**"): The latest FDI policy (issued vide Consolidated FDI Policy of 2020), effective from October 15, 2020 ("**Consolidated FDI Policy**"), read with the FEMA regulations reflects the current policy framework on FDI. In the event of any change in the foreign investment regime during the year, the Government of India issues FDI Press Notes which are incorporated in the subsequent Consolidated FDI Policy.

(e) The Securities and Exchange Board of India Act, 1992 ("**SEBI Act**"): SEBI Act and rules thereunder offer a framework for listed entities and govern the capital markets and securities transactions.

(f) Indian taxation laws: The principal taxes and duties that the Central Government is empowered to levy are income tax, customs duty, and central excise. The principal taxes levied by the state governments are value added tax, stamp duty, state excise duty, land revenue, entertainment tax and tax on professionals. Goods and Services Tax ("**GST**") is levied on supply of goods and services by both central government as well as state governments and proceeds are shared by them.

In addition to above legislations, the labour laws, the environment laws, the Contract Act, 1872 and the sector specific legislations also apply to entities running businesses in India.

2. What are the most common types of corporate entities (e.g., joint stock companies, limited liability companies, etc.) used in your jurisdiction? What are the main differences between them (including but not limited to with regard to the shareholders' liability)?

In India, corporates have the option to set-up their business operations either in the form of incorporated entities (*i.e., as a company or limited liability partnership ("***LLP***")*) or unincorporated entities (*i.e., as a branch/liaison office*).

Incorporated Entities: In India, the most popular forms of companies are: (i) a private limited company, and (ii) a public company. Apart from these two, the Companies Act also prescribes provisions for setting up one-person company.

A private limited company is a joint stock company. It is governed under the ambit of the Companies Act. It is formed by a voluntary association of persons. The maximum number of members cannot exceed 200 (two hundred). The transfer of shares of a private limited company is typically restricted. It prohibits the entry of the public through subscription of shares and debentures. A public company means a company which is not a private company. As such, a public limited company is also governed under the provisions of the Companies Act. There is no limit on the number of members, and it is formed by the association of persons voluntarily. The transferability of its shares is not restricted, and the company can invite the public for subscription of shares and debentures. Other differences between a private and public company include composition of its board of directors ("**Board**"), constitution of committees including the audit committee, appointment of independent directors and retirement of directors by rotation.

In addition to the private and public companies, an LLP, which is a hybrid corporate business structure falling between a partnership firm and a corporate body, can be set up in accordance with the provisions of the LLP Act, 2008 ("**LLP Act**"). It provides the benefits of limited liability of a company but allows its members the flexibility of organizing their internal management on the basis of a mutually-arrived agreement, as is the case in a partnership firm. Following are certain requirements prescribed for setting up an LLP in India: (i) requirement to have minimum 2 (two) designated partners, which could be either individuals or corporate bodies; and (ii) out of the prescribed partners, at least 1 (one) partner should be a person resident in India.

Unincorporated Entities: Foreign entities not opting to be incorporated in India are permitted to conduct their business operations through any of the following forms: (i) Branch Office ("**BO**"); (ii) Liaison Office ("**LO**"); and (iii) Project Office ("**PO**").

The Foreign Exchange Management (Establishment in India a branch office or a liaison office or a project office or any other place of business) Regulations, 2016 as amended from time to time and such other circulars issued by Reserve Bank of India ("**RBI**"), including the Master Direction on Establishment of BO/LO/PO or any other place of business in India by Foreign Entities, regulate the establishment of BO/LO/PO in India and the nature of activities permitted to be undertaken.

B. Foreign Investment

3. Are there any restrictions on foreign investors incorporating or acquiring the shares of a company in your jurisdiction?

The Indian economy offers open and equal market opportunities to foreign investors. An investor can invest through two modes: Government route and Automatic route, subject to the threshold set by the Consolidated FDI Policy. Under the Government route, an investor is required to take the approval from relevant government bodies. Under the automatic route, investment is allowed to certain limits or up to 100%. However, for certain crucial sectors/activities, the Government of India has restricted foreign investment. These sectors/activities include (i) gambling and betting, including casinos, (ii) lottery business including government, private lottery and online lotteries, (iii) business of chit funds (except for investments made by Non-resident Indians ("**NRIs**") and Overseas Citizens of India ("**OCIs**") on a non-repatriation basis), (iv) real estate business or construction of farm houses, (v) trading in transferable development rights, (vi) manufacturing of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes, (vii) activities/sectors not opened to private sector including Atomic Energy and Railway Operations (other than permitted activities), (viii) Nidhi company and (ix) foreign technology collaboration in any form including licensing for franchise, trademark, brand name, management contract is also prohibited for lottery business and gambling and betting activities.

To safeguard the Indian industries, the Department for Promotion of Industry and Internal Trade issued Press Note 3 (2020 Series) clarifying that an entity of a country, which shares land border with India or where the beneficial owner of an investment into India is situated in or is a citizen of any such country, can invest only after it obtains government approval.

4. Are there any foreign exchange restrictions or conditions applicable to companies such as restrictions to foreign currency shareholder loans?

The Foreign Exchange Management (Borrowing and Lending) Regulations, 2018 governs the cross-border lending and borrowing by Indian entities. In recent times, we have seen a rise in external commercial borrowings ("**ECB**"), being borrowed by an eligible resident entity from outside India. The loan can be in foreign currency or in Indian Rupees as well. Pursuant to the ECB framework, foreign shareholders are permitted to provide loans in the form of ECBs under the automatic route. The ECB liability-equity ratio for ECBs raised under the automatic route cannot exceed 7:1. However, this ratio will not be applicable if the outstanding amount of all ECBs, including the proposed one, is up to USD 5 million or its equivalent. Such ECBs may be provided in foreign currency or in Indian Rupees. The 'recognized lenders' must necessarily be residents of FATF or IOSCO compliant countries. Foreign equity holders will have to meet this criterion to be ECB lenders.

ECBs need to be routed via an authorised dealer-Category I bank ("**AD Bank**") and must meet other prescribed aspects of the ECB framework, particularly the minimum average maturity periods, all-in-cost provisions and filing and reporting requirements with the AD Bank. The minimum average maturity of an ECB would vary depending on the purpose of the ECB. ECBs must have a minimum average maturity of 3 (three) years. However, for certain categories of ECBs, different minimum average maturity periods are prescribed which range from 1 (one) to 10 (ten) years.

5. Are there any specific considerations for employment of foreign employees in companies incorporated in your jurisdiction?

Indian entities are allowed to avail the services of foreign nationals. Short-term assignments with foreign nationals can be undertaken without prior approval of the RBI, subject to certain conditions, whereas for long-term engagements, prior RBI approval is required.

A foreign national who is:

(a) on a deputation in India is allowed to open, hold and maintain a foreign currency account with a bank outside India and may receive the entire salary payable to him in India by credit to such account abroad provided that the income tax chargeable should be paid on the entire salary in India.

(b) employed by an Indian company in India is allowed to open, hold and maintain a foreign currency account with a bank outside India and remit the whole salary received in India in Indian Rupees subject to the payment of income tax in India.

An employment visa is granted to foreigners desiring to come to India for the purpose of employment subject to the fulfilment of certain conditions, including:

(a) The applicant must be a highly skilled and/or qualified professional, who is being engaged or appointed by a company/organisation/industry/undertaking in India on a contract or employment basis.

(b) The foreign national being sponsored for an employment visa in any sector should draw a minimum salary of Indian Rupee ("**INR**") 1,625,000 per annum. However, this condition of annual floor limit is exempt for certain classes of jobs.

C. Corporate Governance

6. What are the standard management structures (e.g., general assembly, board of directors, etc.) in a corporate entity governed in your jurisdiction and the key liability issues relating to these (e.g., liability of the board members and managers)?

The Board represents the shareholders and is obligated to protect the interest of all stakeholders. It is the key body monitoring the operation and management of a company with certain matters reserved for the shareholders. In India, the corporate governance legislations prescribe a one-tier Board structure that is collectively responsible for the affairs of the company. Generally, the authority is delegated to officers to manage the business on a day-to-day basis, under the overall supervision of the Board, with material matters requiring Board approval. The Board is supposed to exercise strategic oversight over business operations. Simultaneously the Board must ensure compliance with the legal framework, financial accounting and reporting systems and timely regulatory and general disclosures.

Every year, companies are required to hold a minimum 4 (four) Board meetings in such a manner that not more than 120 (one hundred twenty) days must intervene between 2 (two) consecutive meetings and each year hold at least 1 (one) shareholders' meeting (*Annual General Meeting*).

The composition of the Board depends upon the nature of the company. A private limited company is required to have a minimum of 2 (two) directors whereas a public limited company can have a minimum of 3 (three) directors. A company can appoint a maximum of 15 (fifteen) directors, which can be extended by passing a special resolution. There is no restriction on appointing foreign nationals as directors. However, every company is required to have at all times at least 1 (one) resident director, who has stayed in India for a total period of minimum 182 (one hundred and eighty-two) days during the financial year. To maintain transparency and fair decision making, the Companies Act also provides for the appointment of independent directors to the Board. Every unlisted public company with a paid-up capital of INR 10,00,00,000 or having a turnover of INR 100,00,00,000 or having, in aggregate, outstanding loans and deposits exceeding INR 50,00,00,000 are required to appoint at least 2 (two) independent directors. Further, under the provisions of the Companies Act, certain classes of companies are required to have women directors on their Board. Companies are required to comply with the Secretarial Standards issued by the Institute of Company Secretaries of

India, which provide for certain compliances to be undertaken by a company in relation to the meetings of its Board of Directors and the shareholders.

7. What are the audit requirements in corporate entities?

Recently, there has been some activism among corporate entities for statutory, financial, and secretarial audits as the Companies Act mandates that every company is required to appoint an individual or an audit firm as an auditor, to hold office for 5 (five) years. The process of audit checks a company's finances and analyses the operational efficiency. It boosts the stakeholders' confidence and results in statutory hygiene. The following companies are mandatorily required to have an audit committee consisting of a minimum of 3 (three) directors with independent directors forming a majority: (i) every listed company; (ii) all public companies having paid up capital of INR 10,00,00,000 or more; (iii) all public companies having turnover of INR 100,00,00,000 or more; and (iv) all public companies having in aggregate outstanding loans or warrants or debentures or deposits exceeding INR 50,00,00,000 or more.

In addition to the above, the following classes of companies are required to undertake secretarial audits: (i) listed entities; and (ii) public companies with, paid-up capital of INR 50,00,00,000 or more; or a turnover of INR 250,00,00,000 or more; or outstanding loans or borrowings from banks or public financial institutions of INR 100,00,00,000 or more.

D. Shareholder's rights

8. What are the privileges that can be granted to shareholders? In particular, is it possible to grant voting privileges to shareholders for appointment of board members?

Shareholders have a say in the constitution of the Board as the appointment of directors requires shareholders' approval in a general meeting. A retiring director is also eligible for reappointment. In the case of a public company, if 2 (two) or more directors are to be appointed or elected by a single resolution, a motion to this effect must first be passed unanimously by all shareholders without a vote being cast against it. Alternately, each director should be voted individually and not through a single resolution. The Articles of Association ("**AoA**") may authorize the appointment of not less than 2/3rd directors of the Board in accordance with the principle of proportional representation.

Further, the appointment of independent directors is approved at a shareholders' meeting and is eligible for reappointment on passing of a special resolution by the shareholders and disclosure of the reappointment in the Board's report.

9. Are there any specific statutory rights available to minority shareholders available in your jurisdiction?

The Companies Act provides companies with an option to adopt a proportional representation mechanism for director appointments, so as to enable the representation of minority shareholders on the Board. Indian law also permits minority shareholders to file claims of oppression and mismanagement against the company or the member/members. The key protections for minority shareholders can be broadly classified as below:

(a) protection against reconstruction and amalgamation (*squeeze out provisions*);

(b) protection against oppression and mismanagement;

(c) class action suit;

(d) other statutory rights under the Companies Act to minority shareholders;

(e) contractual rights under shareholder agreements; and

(f) judicial protection to minority shareholders.

10. Is it possible to impose restrictions on share transfers under the corporate documents (e.g., articles of association or its equivalent in your jurisdiction) of a company incorporated in your jurisdiction?

In terms of the provisions of the Companies Act, a private company may restrict the transfer of its shares through its AoA. It protects the core of a private company, thus, any restriction on transfer of shares as agreed under the shareholders agreement and duly incorporated in its AoA are binding and can be enforced against the shareholders of a private company. However, transferability of the shares is not restricted in a public company, and the company can invite the public for subscription of shares and debentures.

11. Are there any specific concerns or other considerations regarding the composition, technical bankruptcy and other insolvency cases in your jurisdiction?

There is no separate test for technical bankruptcy under the current legal and regulatory framework and a formal corporate insolvency resolution process ("**CIRP**") of a corporate debtor prescribed under the insolvency law in India may be initiated based on the corporate debtor's inability to pay its debt. However, creditors have certain frameworks for restructuring defaulted loans of borrowers instead of resolving the borrower through a CIRP. We have outlined below a summary of the frameworks and the considerations for composition and re-organisation and insolvency.

Composition and Reorganisation:

A company that has defaulted on payments to banks and certain other categories of non-bank lenders can be reorganized/restructured under the Prudential Framework for Resolution of Stressed Assets Directions dated 7 June 2019 by the RBI (the "**Stressed Assets Framework**"), which prescribes the process that the lenders may follow after a default which includes formulating and implementing a resolution plan for resolution of stressed loans and giving incentives and disincentives by providing reduced provisioning for regulated lenders upon restructuring of the loan or additional provisioning based on the delay period. The process involves signing of an inter-creditor agreement and then any decision on the resolution to be agreed by lenders representing 75% by value of total outstanding credit facilities (fund-based and non-fund-based) and 60% of lenders by number, which shall be binding on the dissenting minority. Dissenting lenders are required to be paid a minimum liquidation value i.e., the realizable value of the assets of the debtor if such borrower were to be liquidated. If the restructuring is not successful under the Stressed Assets Framework, the lenders may proceed with a formal CIRP under the IBC.

Separately the Companies Act, also provides for a mechanism of a scheme of compromise or arrangement including between a company and its creditors or a class of creditors. This requires the consent of three-quarters of the creditors in value and the majority being present and voting and is court supervised i.e., requires the sanction of the relevant National Company Law Tribunal ("**NCLT**"). This is not a popularly used route due to protracted timelines due to court supervision and debtor control on the process.

Additionally, out of court or informal work out or restructuring or settlement of debt can also be separately contractually agreed between the parties outside the abovementioned statutory and regulatory frameworks.

Formal Insolvency Resolution and Liquidation Proceedings:

The Insolvency and Bankruptcy Code, 2016 ("**IBC**") provides a comprehensive insolvency framework in India, which for a corporate entity contemplates a CIRP and in case of failure of CIRP, liquidation of the entity. Under the IBC, certain types of creditors - operational creditors or financial creditors, are permitted to file an application for CIRP against a company ("**Corporate Debtor**") which has defaulted in making a payment of INR 10,000,000 or more.

Once the application is admitted, the NCLT by order declares a moratorium prohibiting initiation of any proceeding against the Corporate Debtor and transfer/disposal of and creation of encumbrance over any asset or any foreclosure, recovery or enforcement of any security interest on the assets of the Corporate Debtor. NCLT also appoints an interim insolvency resolution professional ("**IRP**"), who takes over the management of the Corporate Debtor and takes all actions on behalf of the Corporate Debtor. The IRP also forms a committee of creditors ("**COC**"), comprising only of financial creditors. The IRP may be confirmed as the resolution professional ("**RP**") by the COC or the COC may appoint another person or entity as a RP. After checking criteria requirements, the RP invites prospective applicants to submit plan or plans for the insolvency resolution of the Corporate Debtor as a going concern and then presents all resolution plans at the meetings of the COC. It is the duty of the RP to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.

Decisions are taken by the COC by 51%, 66% or 90% majority of financial creditors depending on the decision taken. The COC by a vote of 66% or more of the total financial debt may approve a resolution plan submitted by a resolution applicant. Therefore, for creditors who constitute less than 66% of the financial debt, the approval of other financial creditors will be required to accept a resolution plan. Operational creditors have to be paid in priority to the financial creditors of the Corporate Debtor as part of the resolution plan.

If the resolution plan is not viable/ sustainable or if it is not approved by the COC or the NCLT, the COC can choose to liquidate the Corporate Debtor. The waterfall mechanism setting out the priority of various classes of creditors is set out under the IBC which is required to be adhered to for distribution of liquidation proceeds. A secured creditor will have an option to realise its security and receive proceeds from the sale of the secured assets as a priority. In case of any shortfall in recovery, the secured creditors will rank junior to the unsecured creditors to the extent of the shortfall.

The CIRP is required to be completed within a period of 180 (one hundred eighty) days from the date of admission of application to initiate CIRP, which may be extended if approved by the NCLT by a period of 90 (ninety) days. The CIRP (except for the implementation of the resolution plan) must be completed within a period of 330 (three hundred thirty) days from the commencement date.

E. Acquisition

12. Which methods are commonly used to acquire a company, e.g., share transfer, asset transfer, etc.?

Subject to the objective and purpose of acquisition, a transaction can be structured in different ways such as share purchase, asset purchase and slump sale. Share purchase is a type of acquisition in which the buyer takes over the target entity by purchasing all the shares or majority shares of a target entity. Interestingly, the entire liability of the seller is taken over by the buyer in a share transfer.

A slump sale is a term commonly used to denote the transfer of business as a going concern (assets and liabilities are transferred). Another way of looking at it would be the sale of an undertaking or a business for a lump sum price. Notably, a 'slump sale' is defined under the Income Tax Act, 1961, as a sale of any one or more undertakings for a lump sum consideration, without values being assigned to the individual assets and liabilities of the undertaking being transferred.

On the other hand, an asset sale is an itemised sale involving transfer by way of sale of the constituent assets of a business, division or unit of an undertaking. The sale price is ascertained for each asset and there is no transfer of liabilities of the business.

The method of acquisition really depends on what the buyer is actually seeking to gain from acquiring the target as that will be a large influencer to decide the method of transaction.

13. What are the advantages and disadvantages of a share purchase as opposed to other methods?

As discussed in the response above, the mode of acquiring a company depends on several factors including the transactional requirements and business understanding among the parties. Often, the share purchase option is opted when the parties don't look forward to entering fresh contracts, licenses and are comfortable with the losses, liabilities and other tax credits to be carried forward. Share purchase can be time efficient, subject to regulatory or third-party approvals, if any. Also, it provides availability of double tax treatment benefits. Similarly, one of the major advantages of asset purchase and slump sale transactions over a share purchase is that it offers buyer an opportunity to pick and choose the assets and liabilities which are to be acquired. In an asset purchase, the buyer may also choose not to take over any liabilities but purchase only the handpicked assets whereas the slump sale offers comfort to the purchaser to acquire any arm or vertical of the company as per the business and transactional objectives.

14. What are the approvals and consents typically required (e.g., corporate, regulatory, sector based and third-party approvals) for private acquisitions in your jurisdiction?

There are several factors which determine the requirement for obtaining approvals and consents/ licenses, such as the sector in which the company operates, the nature of the acquisition, nature of company (whether listed or unlisted) and resident status of the acquirer. The Companies Act and rules thereunder provide for general framework for issuance and transfer of shares. Such transactions require sector specific compliances from the following regulators:

(a) RBI in case of banking and NBFC companies;

(b) Ministry of Defence in case of defence sector;

(c) Department of Telecommunication for telecom companies;

(d) Insurance Regulatory Development Authority for insurance companies;

(e) The Securities and Exchange Board of India ("**SEBI**") for listed entities, mutual and venture capital funds; and

(f) Ministry of Civil Aviation for aviation.

15. What are the regulatory competition law requirements applicable to private acquisitions in your jurisdiction?

The acquisition of shares/voting rights/ assets/control of an enterprise requires prior clearance from the CCI if it exceeds the assets or turnover threshold prescribed in the Competition Act. The Competition Act prohibits:

(a) Anti-Competitive Agreements: it includes contracts (horizontal and vertical) for production, supply, distribution, storage, acquisition or control of goods, or provision of services, which cause or are likely to cause an appreciable adverse effect on competition.

(b) Abuse of dominant position: abuse of dominance by an enterprise or a group. Establishing abuse of its dominant position according to the scheme of the Competition Act involves a three-stage process: (i) determination of the relevant market which is determined on the basis of relevant product and geographical market; (ii) determination of dominance in that relevant market; and (iii) determination of an abuse committed by the dominant enterprise in the relevant market.

(c) Combination: If any of one of the below *(assets or turnover threshold)* is exceeded, prior approval of the CCI is required.

India Thresholds				
Alternative	**Entity**	**Assets**		**Turnover**
1.	Acquirer and target, together	INR 2500 crores (USD 288 million)	Or	INR 7500 crores (USD 864 million)
2.	Acquirer's group and target, together	INR 10000 crores (USD 1152 million)	Or	INR 30000 crores (USD 3456 million)
World-Wide Thresholds				
Alternative	**Entity**	**Assets**		**Turnover**
3.	Acquirer and target, together	USD 1250 million (USD 1.25 billion) (INR 10847 crores)	Or	USD 3750 million (USD 3.75 billion) (INR 21648 crores)
	Of which in India	INR 1250 crores (USD 144 million)		INR 3750 crores (USD 432 million)
4.	Acquirer's group and target, together	USD 5000 million (USD 5 billion) (INR 28864 crores)	Or	USD 15000 million (USD 15 billion) (INR 86592 crores)
	Of which in India	INR 1250 crores (USD 144 million)		INR 3750 crores (USD 432 million)

16. Are there any specific rules applicable for acquisition of public companies in your jurisdiction?

In India, mergers and acquisitions of entities are the subject matter of the Companies Act. The National Company Law Tribunal approves amalgamations, mergers, and de-mergers for listed and unlisted companies. The provisions of the Companies Act and the Foreign Exchange Management (Cross Border Merger) Regulations, 2018, permit cross-border mergers in India. Thus mergers, amalgamations of foreign companies with Indian companies and Indian companies with foreign companies are permissible. Prior RBI approval is required when a foreign company wishes to merge with an Indian company.

SEBI through the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("**Takeover Code**") governs any direct or indirect acquisition of shares, voting rights or control of public companies listed on recognized stock exchanges in India. It is the obligation of the acquirer to make an open offer under the Takeover Code in case the acquisition exceeds the thresholds specified under the Takeover Code, and the obligation of the promoters and shareholders to make disclosures related to the shareholding beyond certain thresholds.

17. Is there a requirement to disclose a deal, for instance to regulatory authorities? Is it possible to keep a deal confidential?

The initial negotiation can be kept

confidential, however, as the deal is concluded, companies are required to fulfil certain obligations of regulatory filings and corporate compliances. The filings under the FEMA, SEBI rules and Competition Act and intimation to the Registrar of Companies and shareholders under the Companies Act make it difficult to keep a deal confidential. Interestingly, in case of an open offer, the acquirer itself is required to make the public announcement and disclose all vital information in the newspaper advertisement.

18. Can sellers be restricted from shopping around during a negotiation process? Is it possible to include break fee or other penalty clauses in acquisition documents to procure deal exclusivity?

Indian laws do not restrict the inclusion of contractual clauses prohibiting the sellers from accepting higher bids from third parties during the diligence or negotiation process. Usually, the purchasers prefer to add no-shop clause in the term sheet/ letter of intent and break fee clause in the share purchase/ subscription agreements. On the other hand, the seller may negotiate hard to bring the monetary value down under the break fee clause or add a reduced timeframe proviso in a no-shop clause while exploring for a better value of its stocks.

19. What are the conditions precedent in a typical acquisition document? Is it common to have conditions to closing such as no material adverse change?

To offer comfort to the parties in a transaction, a conditions precedent clause is inserted in the transactional documents. Generally, it details all the authorizations, permissions, novation and permits which are necessary before closing the deal. It also provides for the execution of certain agreements, settlement and fulfilling of obligations etc. in relation to the transaction.

In India, material adverse clauses are generally made a part of the acquisition documents where there is a time gap between signing and closing of the deal. This contractual mechanism averts the risks for the parties. Material adverse clauses give the buyer the right to walk away from the acquisition before closing if intervening events have a material adverse effect on the target.

20. What are the typical warranties and limitations in acquisition documents? Is it common to obtain warranty insurance?

Traditionally, the warranties in the acquisition documents cover title, capacity and authority, absence of conflicts and other similar matters. In addition to these, there are business warranties as well including those relating to assets, indebtedness, tax related liabilities, litigation etc. In order to safeguard their interests, sellers usually negotiate a cap on their liabilities through a limitation of liability clause in the acquisition documents through de minimis provisions, thresholds limit etc. Recently, warranty insurance has gained significance in share transactions as it offers comfort to the parties involved in the transaction.

21. Is there a requirement to set a minimum pricing for shares of a target company in an acquisition?

The RBI prescribes the pricing guidelines for subscription and sale of shares to non-residents:

(a) Listed entity: the price of shares must not be less than the price at which a preferential allotment can be made. The price per share must be certified by a

SEBI registered merchant banker or a chartered banker.

(b) Non listed entity: the price of a share must be at the fair value of the shares as determined by a merchant banker or a chartered accountant by following the internationally accepted pricing methodology.

(c) Rights issue allotment: for listed shares, the shares price must be determined as per the SEBI regulations; and for unlisted shares, the share price must not be less than the price at which shares are issued to resident shareholders.

22. What types of acquisition financing are available for potential buyers in your jurisdiction? Can a company provide financial assistance to a potential buyer of shares in the target company?

A company is not authorised to provide financial assistance to a potential buyer of shares in the target company as the Companies Act prohibits a company from giving any financial assistance, whether directly or indirectly and whether by means of a loan, guarantee or provision of security or otherwise, to any person to purchase or subscribe for any shares in such company or its holding company.

23. What are the formalities and procedures for share transfers and how is a share transfer perfected?

In a share purchase transaction, the seller and purchaser are required to agree to the terms of such transfer, *inter-alia*, the share purchase consideration, the title of shares, conditions precedent to transfer, conditions after transfer, relevant support and assurances, and adequate protection mechanism through representations, warranties and indemnities. In case shares are held in physical form, the executed share transfer deed (duly stamped), is required to be delivered to the company whose shares are being transferred along with the share certificates. Subsequently, the company approves the transfer of shares and records the transfer in its registers. It endorses the transferee details on the share certificate and returns it to the transferee. Where shares are held in dematerialized form, the delivery instruction slips relating to shares, signed by the transferor, is required to be deposited with the depository participant where the transferee is maintaining his/her demat account. Thereafter, shares will be credited in the demat account of the transferee.

24. Are there any incentives (such as tax exemptions) available for acquisitions in your jurisdiction?

The Indian jurisdiction offers a favourable business environment to conduct business, there are a lot of incentive schemes for promoting business, however there is no tax incentive or exemption available in India for acquisitions.

F. Enforceability

25. Can acquisition documents be executed in a foreign language?

It is preferred to execute an agreement in a language which offers comfort to all parties involved as some of the key principles of Indian contract regime are:

(a) *consensus ad idem* i.e., meeting of minds. It means that two or more persons agree on the same thing in the same sense; and

(b) free will and consent, without any undue influence, coercion, misrepresentation etc.

Thus, for a contract to be enforceable in India, there should be meeting of minds and the consensus among the parties must be a result of free will. In line with these principles, it is clear that parties executing acquisition documents in a foreign language need to understand the terms and sign/execute the same so as to not affect its validity.

26. Can acquisition documents be governed by a foreign law?

When a foreign company enters in a contract with an Indian company, it often prefers that the agreement is governed by a foreign law, and enforceable in a foreign court. As such, there is no established practice for international contracts since it is subject to negotiations among the contracting parties. The parties are free to choose the law governing their contract. However, insertion of this clause does not bar the Indian courts to investigate and identify the stated/unstated objective for inserting a foreign jurisdiction clause. The Indian courts may not enforce a choice of law clause and strike down the same if:

- it is not aligned to Indian public policy;
- it is intended to evade the indispensable Indian legal provisions.

27. Are arbitration clauses legally permissible or generally included in acquisition documents?

The Arbitration and Conciliation Act, 1996 ("**Arbitration Act**") was introduced to offer a quick and cost-effective resolution of domestic and transnational business and commercial disputes. The arbitration clause forms an intrinsic part of commercial contracts as the Alternative Dispute Resolution mechanism has become a sought-after option among parties to resolve disputes. Commercial entities often prefer institutional arbitration in contracts.

The arbitration clause offers comfort to foreign parties as Indian law also recognises the severability of an arbitration clause from the entire contract. It allows the parties to elect the substantive law governing the dispute to be different from the law governing the arbitration agreement. For convenience, the law also allows parties to choose a different venue for the arbitration as compared to the judicial seat.

The Arbitration Act makes it mandatory for pleadings to be completed within a period of 6 (six) months and the award to be passed within 12 (twelve) months from the completion of pleadings, which may be extended for a further period of 6 (six) months. An arbitral award is amenable to challenge before courts in India, however, the court's powers to interfere with arbitral awards are very limited.

Enforcement of a foreign award made by countries to which the New York Convention or the Geneva Convention applies and has a reciprocal arrangement with India is enforceable in India. Such enforceability is subject to compliance with certain conditions prescribed under Part II of the Arbitration Act.

28. Are there any specific formalities for the execution of acquisition documents? Is it possible to sign documents remotely/digitally?

To make any agreement enforceable, it is required to be stamped adequately along with attestation by at least 2 (two) witnesses for each signing party. Further, if a foreign company is authorising a third party to execute documents on its behalf in India, it will have to pass a board resolution approving the same.

The primary law governing e-signatures and their validity in India is the Information Technology Act, 2000 ("**IT Act**"). The IT Act eliminated the need for signatures to necessarily be made by hand to be considered credible thereby ushering more technologically-advanced era of e-signatures. It drew its inspiration from the Model Law on Electronic Commerce adopted by the United Nations Commission on International Trade Law ("**UNCITRAL**"). Subsequently, UNCITRAL also adopted the Model Law on Electronic Signatures to enable and facilitate the use of e-signatures. The IT Act was amended to substitute the word 'digital signature' with the word 'electronic signature' in several places thereby recognising digital signature as a part of the wider scope of electronic signatures. Pursuant to amending the IT Act, amendments were made to the Indian Evidence Act, 1972 in view of the evidentiary value of electronic records, e-signatures and e-contracts. By these amendments, digitally signing a document is recognised as a legally-compliant manner of signing a document. However, there are certain documents which specifically require a notarial process with a physical signature and are required to be registered in order to be legally enforceable. And hence, a digital signature will not be valid on such agreements.

G. Trends and Projections

29. What are the main current trends in M&A in your jurisdiction?

In 2023, due to the global uncertainties, there has been a subdued momentum in M&A activities in India. Companies are now shifting towards smaller, more strategic deals. However, sectors like aviation, banking, FinTech, and healthcare are showing promising signs. The recent steps by the Government of India have eased doing business in India by reducing several compliances. Indian startups also offer the promising scenario for the foreign investors.

Certain sectors such as energy, healthcare, infrastructure, defence information technology continue to catch the eyeballs of the institutional investors. As per some reports, in India, M&A activity fell reported at USD 83.8 billion in 2023, down 50.6 per cent from a year ago. In 2022, the total M&A activity stood at USD169.70 billion and USD123.14 billion in 2021. The slump in M&A activities is due to global geopolitical issues.

30. Are any significant developments or changes expected in the near future in relation to M&A in your jurisdiction?

Post pandemic, the Indian market has performed well. GDP during 2023-24 is estimated at 7.3 % as compared to 7.2 % in 2022-23. Certain policy measures such as production link schemes, green hydrogen regulations, infrastructure push may boost the drone, healthcare, pharma, automobile, green-energy, electronic, semiconductor sectors in India. Indian industries have also taken precautionary steps anticipating the slowdown in the global economy, though India, for the time being, seems to be resilient to this. Considering several factors, including the forthcoming elections, global investors are wary of deals. However, certain sectors, as discussed above, continue to garner interest, and look promising in the near future.

ITALY

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A. General

1. What is the main legal framework applicable to companies in your jurisdiction?

The companies in Italy are governed by Articles 2247 to 2620 of the Italian Civil Code.

2. What are the most common types of corporate entities (e.g., joint stock companies, limited liability companies, etc.) used in your jurisdiction? What are the main differences between them (including but not limited to with regard to the shareholders' liability)?

The minimum corporate capital for a *Società a responsabilità limitata* ("SRL") which is a limited liability company, is €10,000. A simplified limited liability company is available for a share capital lower than €9,900 This kind of structure is typical in small and medium-sized enterprises and allows significant flexibility as to governance rules to be established in the by-laws.

The minimum corporate capital of a *Società per azioni* ("**SpA**"), which is a joint stock company, is €50,000. Generally speaking, this is the form of company chosen by larger enterprises. It entails stricter and more comprehensive governance and control rules. Further differences between SpAs and SRLs shall be discussed below.

A variety of partnerships (*Società di persone*) are also available but they are not often used by international investors. Such entities do not provide any limitation to the members' liability for the partnership's debt.

B. Foreign Investment

3. Are there any restrictions on foreign investors incorporating or acquiring the shares of a company in your jurisdiction?

No general restrictions on foreign investment or ownership in Italian companies, and foreign investors can acquire a business and purchase interests under the same conditions applicable to national investors, subject to the conditions of reciprocity. Transactions concerning certain strategic industrial sectors related to Defense and National Security (including 5G technology and cloud services), as well as other strategic sectors (including communications, energy, transport, health, food, and finance), must be notified to the Italian Government under the so-called Golden Power regime. The notification obligation covers not only the acquisition of control but also, under certain conditions, transactions over minority shareholdings. Failure to notify a relevant transaction under the Golden Power regime may result in fines up to twice the value of the transaction and, in any event, at least 1% of the cumulative turnover of the parties.

4. Are there any foreign exchange restrictions or conditions applicable to companies such as restrictions to foreign currency shareholder loans?

No foreign exchange limitations. The ability of any foreigners to become shareholders or directors is subject to reciprocity rules unless a treaty has been established with the relevant jurisdiction providing otherwise.

5. Are there any specific considerations for employment of foreign employees in companies incorporated in your jurisdiction?

In principle, foreign employees need to obtain a work permit to work in Italy, with certain exceptions. The global number of permits available is fixed each year by the government.

C. Corporate Governance

6. What are the standard management structures (e.g., general assembly, board of directors, etc.) in a corporate entity governed in your jurisdiction and the key liability issues relating to these (e.g., liability of the board members and managers)?

The shareholders' meeting is the body in charge for approval of accounts and appointment of directors both for SpA and SRL. In an SRL, specific authorizations for decisions by the shareholders' meeting or specific shareholders may be required if specifically provided in the by-laws.

As to the management of the company:

SpA: Three distinct models of management are available:

- Traditional model: Management is by either a board of directors, or by a sole director. Traditional model is the more widespread model.
- Monistic model (*sistema monistico*): Management and control are carried out by a board of directors and a committee set up within it.
- Dualistic model (*sistema dualistico*): Management is entrusted to a management board (*consiglio di gestione*), elected by the supervisory board (*consiglio di sorveglianza*), which in turn is elected by the shareholders' meeting.

SRL: Management is carried out by a sole director or a board of directors. Directors can also act jointly or severally.

7. What are the audit requirements in corporate entities?

SpA:

- In the traditional governance system, the Board of Statutory Auditors shall control the company's compliance with the law and the by-laws, the respect of the good managing practices and the adequacy of the organizational, administrative and accounting systems. The statutory accounting control is entrusted to a registered auditor (*revisore contabile*) or to an auditing firm (*società di revisione*), registered in the official auditors' register. The by-laws of SpAs which are not subject to the obligation of drafting consolidated financial statements may provide that the Board of Statutory Auditors be also entrusted with the accounting control activities. In such case, all members of Board of Statutory Auditors are to be registered in the official auditors' register. In the Dualistic and Monistic governance systems, the accounting control is entrusted to a registered auditor or to an auditing firm.

SRL:

The By-Laws may provide for the appointment of either a Supervisory Body or an Auditor, determining the relevant powers and competences (including the accounting control). Should no provision be stated in the deed of incorporation, the Supervisory Body is formed by a sole individual.

Notwithstanding this, the appointment of the Supervisory Body/Auditor is compulsory, when the company has exceeded at least two of the following thresholds, for two subsequent accounting years:

– total value of the assets: € 4,000,000;

– profits: € 4,000,000;

– average number of employees: 20.

In such a case, the principles governing SpAs apply; if the By-Laws do not provide otherwise, accounting control shall be accomplished by the Supervisory Body or Auditor, as the case may be.

Furthermore, the appointment of a Supervisory Body or Auditor is in any case compulsory when a limited liability company: (a) is obliged to the drafting of the consolidated financial statements; (b) controls a company whose accounts are subject to compulsory audit.

D. Shareholder Rights

8. What are the privileges that can be granted to shareholders? In particular, is it possible to grant voting privileges to shareholders for appointment of board members?

SPA. By-laws may provide for special categories of shares such as: (i) shares assigned not in proportion with the subscribed corporate capital; (ii) shares which may discipline the holders' participation to losses or profits differently, save for the prohibition to wholly exclude the participation to losses or profits; (iii) the extraordinary shareholders' meeting may also resolve on the assignment of the profits to employees, by issuing special categories of shares; other similar financing instruments (different from the shares) may be resolved upon by the shareholders' meeting, although the holders are not granted any voting rights; (iv) shares conferring rights of vote limited to a certain business and/or a specific matter, or excluding the right of vote. Not listed companies may issue shares with plural voting rights, up to a maximum of three votes, limited to specific subjects or to the occurrence of specific conditions.

SRL:

By-laws may provide for quotas with a value not proportional with conferred contributions; therefore, quotas may entitle different corporate rights. They may also provide that quota holder be entitled to specific corporate rights concerning the management of the company, as well as the distribution of the profits, or the provision of accessory services.

9. Are there any specific statutory rights available to minority shareholders available in your jurisdiction?

SpA:

Ownership of at least 5% of the share capital allows a minority shareholder to:

- challenge a resolution that does not comply with the law or the articles of association;
- report facts deemed to the auditing body, requesting it to investigate and report and formulate any proposals to the shareholders' meeting.

A shareholding of at least 10% of the share capital allows the minority shareholder to;

- request the directors to convene the shareholders' meeting;
- denounce to the tribunal any facts on the grounds of a well-founded suspicion of serious irregularities in management that may cause damage to the company.

A shareholding of at least 20% of the share capital allows the minority shareholder to:

- initiate any legal actions for liability of directors and/or auditors.

A shareholding of at least 33% of the share capital allows the minority shareholder to:

- request the adjournment of the shareholders' meeting on the grounds that no sufficient information has been provided to pass resolutions on the matters on the agenda;
- veto the extraordinary shareholders' meeting on the second call.

SRL:

All quota holders, irrespective of their shareholding in the company, may:

- exercise their rights to information on the company's performance and consultation of corporate documents;
- challenge shareholders' meeting resolutions;
- initiate any legal actions for liability of directors.

Quota holders holding at least 2/3 of the share capital may decide on the waiver or settlement in respect of an action claiming liability of directors, provided that no quota holders representing at least 10% of the share capital oppose such decision.

Quota holders representing 33% of the capital may request that a quota holders' meeting be convened to resolve certain matters.

Both SpAs and SRLs:

Each shareholder/quota holder has the right to withdraw all or a part of their shares/quotas, if he has not voted in favor of any resolutions as a consequence of which the shareholders/quota holders have approved certain changes in the by-laws including the modification of the corporate purpose, the company's transformation into another form of company, the transfer of the registered office abroad or revocation of the liquidation (other specific grounds for withdrawal may differ in SpAs and SRL).

All shareholders hold certain information rights. They are entitled to inspect the Shareholders' (or quota holders') book and the Shareholders' (or quota holders') Meeting minute book and to obtain copies. The shareholders/quota holders may examine the copy of the yearly financial statements of the company together with full copies of the yearly financial statements of the controlled companies and a summary of the essential data of the last yearly financial statements of affiliated companies. These documents are to be available at the registered office of the company, along with the reports by the Directors, the Statutory Auditors and the entity entrusted with the accounting control, during the 15 days before the meeting to discuss the yearly financial statements and until its approval.

10. Is it possible to impose restrictions on share transfers under the corporate documents (e.g., articles of association or its equivalent in your jurisdiction) of a company incorporated in your jurisdiction?

It is possible to introduce limitations such as the right of first refusal or consent by the other shareholders (or the quota holders).

If the limitation is based upon mere consent (that is without providing a criterium as to the suitability of the new shareholder or quota holder) the clause must provide:

– for SpAs only, the obligation by the company to purchase the shares of the shareholder who intends to sell its stake at the company's expense (within the limits provided for the purchase of treasury shares);

– the obligation to purchase by the other shareholders/quota holders or third parties;

– a right of withdrawal in favor of the shareholder/quota holder who intends to sell.

11. Are there any specific concerns or other considerations regarding the composition, technical bankruptcy and other insolvency cases in your jurisdiction?

Insolvency law has been recently modified thoroughly.

Acquisitions in the framework of insolvency proceedings are to take place with the agreement of the relevant organs of the insolvency proceedings.

An additional concern typical to all kind of transactions under Italian law is that of the need for an "ascertainable date" of the transaction document in order to establish the term from which any maximum period for a claw back action aimed at its annulment is to be determined.

E. Acquisition

12. Which methods are commonly used to acquire a company, e.g., share transfer, asset transfer, etc.?

Both asset and share deals are often used. A specific feature of the Italian legal system are the rules governing the transfer of "*azienda*" or "*ramo di azienda*" (going concern) by means of a particular succession in title which contain a comprehensive regulation of the rights of the purchaser and the seller.

13. What are the advantages and disadvantages of a share purchase as opposed to other methods?

The aforesaid method (purchase of going concern "*ramo di azienda*") allows purchaser and seller to conventionally define the scope of the targeted assets. Still, legal provisions provide specific liabilities of the purchaser in a context where the purchaser is automatically takes over the contracts which are not of a strictly personal nature. In this context, the purchaser is jointly and severally liable with the seller for the debts of the going concern transferred that arose prior to the transfer provided they are recorded in the accounts.

All employment contracts are automatically taken over after the assignment and the parties are jointly and severally liable for debts to employees not yet paid. This kind of transaction may also be structured as a contribution to an existing or new company ("conferimento di ramo di azienda"). Tax and legal implications are to be examined carefully on a case-by-case basis.

14. What are the approvals and consents typically required (e.g., corporate, regulatory, sector based and third-party approvals) for private acquisitions in your jurisdiction?

Corporate: Authorities concerning the approval of the relevant transaction by the legal entities involved such as resolutions, PoA, etc.

Regulatory: It largely depends on the relevant sector. Authorization is typically needed in the banking sector to the extent that the each shareholder of a bank or a financial institution need to meet certain requirements. (See question 3 above for Golden Power).

15. What are the regulatory competition law requirements applicable to private acquisitions in your jurisdiction?

In general, mergers and acquisitions are to be authorized as long as the relevant national or European threshold is reached.

As to the Italian jurisdiction, a clearance is needed if the aggregate total turnover in Italy of all the companies involved exceeds € 582million (threshold updated as of 24 March 2025) and the domestic turnover of two of the target companies, branch or merged companies exceed, individually for each company, €35 million (threshold updated as of 24 March 2025).

16. Are there any specific rules applicable for acquisition of public companies in your jurisdiction?

There are no specific rules.

17. Is there a requirement to disclose a deal, for instance to regulatory authorities? Is it possible to keep a deal confidential?

Disclosure of prospective acquisitions to competition authorities (or to other authorities as the case may be) are covered by confidentiality.

18. Can sellers be restricted from shopping around during a negotiation process? Is it possible to include break fee or other penalty clauses in acquisition documents to procure deal exclusivity?

As a general rule, negotiations must proceed in good faith and a party arbitrarily interrupting negotiations may face some liabilities. Furthermore, a letter of interest is usually signed by the prospective purchaser at the beginning of the negotiations guaranteeing, to a certain point, that an arbitrary abandonment of the negotiations does not take place. The response to the question is largely in the hands of the parties and depends on the documents agreed at the outset of their negotiations.

19. What are the conditions precedent in a typical acquisition document? Is it common to have conditions to closing such as no material adverse change?

There are no particular restrictions as to the conditions precedent.

20. What are the typical warranties and limitations in acquisition documents? Is it common to obtain warranty insurance?

Warranties usually include title and value of certain assets.

Warranty insurance is not a common procedure under Italian acquisition practice. Usually, banks demand guarantees or escrow agreements combined with a price review formula are the usual scheme to mitigate risks by the purchasers.

21. Is there a requirement to set a minimum pricing for shares of a target company in an acquisition?

Not as such, but an unjustifiable law price could increment the risk of any claw back actions in case of insolvency of the seller or fraud to the seller's creditors and could give rise to tax concerns.

22. What types of acquisition financing are available for potential buyers in your jurisdiction? Can a company provide financial assistance to a potential buyer of shares in the target company?

In general, an acquisition may be financed either with equity or debt.

Prohibition of financial assistance has been seen in the past as an obstacle to leveraged buy-outs. Following the reform of corporate law in 2003, such transactions are now admissible under certain conditions. Usually, the acquisition of the shares of the 'target' company is followed by the merger between the acquiring company and the target. Otherwise, the acquisition of only certain assets is targeted. In any case a new 'vehicle' company shall be established, for the purposes of providing the financing necessary for the acquisition. Once the buy-out is completed, the vehicle will be integrated with the acquired company by means of a merger.

23. What are the formalities and procedures for share transfers and how is a share transfer perfected?

The deed of transfer (in case of a SRL) or the certification of the transfer of shares (*girata*, in case of SPA) are documents to be formalized before a Notary Public and therefore will be drafted in Italian (or at least translated into Italian if the form of the document is a *scrittura private autenticata* – private deed certified by the Notary Public).

24. Are there any incentives (such as tax exemptions) available for acquisitions in your jurisdiction?

Not linked to acquisitions, tax incentives are provided for start-up companies, and specific programmes including:

- tax credit for investments in capital goods: the incentive that supports companies investing in new, tangible or intangible assets relating to technological or digital improvement of production processes;
- measures to stimulate investment in research and development, technological innovation;
- incentives to support companies investing in training and development of managerial skills;
- incentives to strengthen the capital structure of companies;
- deductions for construction investments in business premises;
- tax incentives for investments in start-ups and innovative SMEs.

From the standpoint of the seller, it is worth mentioning a regime of participation exemption is provided for capital gains (difference between sale price and tax value of the shares) on sales of shares (95% exempt), subject to certain conditions.

As long as an equity investment is in place, a tax deduction is provided amounting to the net increase in the equity employed in the entity, multiplied by a rate yearly determined by the Italian Ministry of Finance.

F. Enforceability

25. Can acquisition documents be executed in a foreign language?

A share purchase agreement may well be executed in a foreign language, although it is recommendable that any documents to be potentially submitted to Italian courts are drafted in Italian. See also question 28 below for more details.

26. Can acquisition documents be governed by a foreign law?

Yes as to the acquisition documents, such as the share purchase agreement. Certain aspects inherent to the relevant target company such as the registration of the shares (in case of SRL) will be in any case submitted to the exclusive jurisdiction of the Italian Courts and shall be governed by Italian law. For these reasons it is not usual to insert foreign law or foreign jurisdiction in SPAs regarding acquisition of Italian companies.

27. Are arbitration clauses legally permissible or generally included in acquisition documents?

Yes, arbitration clauses are legally permissible and are generally included in acquisition documents.

28. Are there any specific formalities for the execution of acquisition documents? Is it possible to remotely/digitally sign documents?

See also question 23 above for more details.

Private documents are usually signed remotely. Documents to be formalized before a Notary Public are usually signed in person or by means of a proxy.

G. Trends and Projections

29. What are the main current trends in M&A in your jurisdiction?

From a business perspective, contrary to the general picture, M&A deals in Italy increased both in volume and value according to observers. Due diligence activities tend to become more financially focused and tend to include various scenarios of inflation, growth or even recession and foreign exchange trends with increasing attention to HR policies. These trends may not necessarily reflect in new contractual techniques.

30. Are any significant development or change expected in the near future in relation to M&A in your jurisdiction?

No significant developments are expected in the near future.

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A. General

1. What is the main legal framework applicable to companies in your jurisdiction?

The main legal framework applicable to companies in Côte d'Ivoire as far as M&A are concerned includes:

- 2002 WAEMU Regulation on Antitrust Procedures;
- 2014 OHADA Uniform Act on Commercial Companies and the Economic Interest Group;
- 2010 OHADA Uniform Act on General Commercial Law;
- 2017 OHADA Uniform Act on Accounting Law and Financial Reporting;
- 2010 OHADA Uniform Act on Securities;
- 2015 OHADA Uniform Act Organizing Collective Proceedings for Clearing of Debts;
- 2024 Cote d'Ivoire General Tax Code;
- 2018 Ordinance on the Investment Code;
- 2019 Ordinance Amending the 2018 Ordinance on the Investment Code;
- 2013 Ordinance on Competition;
- 2017 Law on the Repression of Offences by OHADA Uniform Acts; and
- 2016 Law on Setting up, Organization and Functioning of Commercial Courts;
- 2024 Law Creating a Register of Beneficial Owners of Legal Persons and Legal Arrangements
- 2024 OHADA Uniform Act on Organizing Simplified Recovery Procedures and Measures of Execution"

2. What are the most common types of corporate entities (e.g., joint stock companies, limited liability companies, etc.) used in your jurisdiction? What are the main differences between them (including but not limited to with regard to the shareholders' liability)?

Côte d'Ivoire/Ivory Coast is part of a regional organisation that aims at harmonizing business law across 17 African jurisdictions namely, the Organization for Harmonization of Business Law in Africa ("**OHADA**"). As a result, OHADA company law ("**OHADA Company Law**") applies to Côte d'Ivoire.

In the OHADA region, the most common type of company used in group structures is the private limited company also known by its acronym SARL (*société à responsabilié limitée*) and the public limited company also known by its acronym SA (*société anonyme*).

The main differences between the most common types of corporate entities are as follows:

***Société A Responsabilité Limitée* ("SARL")**

A SARL company is a company in which members are liable for the company debts only proportionally to their contributions and whose rights are represented by equity interests. A SARL company is formed by a natural person or legal entity, or by two or more natural persons or legal entities.

Under the OHADA Company Law, unless otherwise provided for by national legislation, the amount of stated capital shall be at least XOF1,000,000 divided into equal equity interests whose nominal value is not less than XOF5,000. In Côte d'Ivoire, national law removes these minimum capital requirements altogether.

Unlike the SA structure, a SARL company is not eligible for registration at the stock exchange. A SARL company is managed by one or more natural persons called *gérant*(s) appointed in the articles of association or in a subsequent instrument of the company. A SARL company is more suitable for small-size businesses.

Société Anonyme ("SA")

A SA company, also referred to as a public limited company, is a company in which shareholders are only liable for the company debts to the extent of their contributions and in which the rights of the shareholders are represented by shares. The SA company may have only one shareholder.

Under the OHADA Company Law, a SA must have a minimum stated capital of XOF10 million divided into shares with a minimum par value of XOF10,000 each.

One of the features that may be decisive when considering the SA corporate structure as opposed to the SARL structure is that a SA company is eligible for registration at the stock exchange, subject to the requirements of the Financial Markets Authority.

The management structure of a SA company is determined by the articles of association and consists of one of the following structures:

- SA company with board of directors, or
- SA company with a general director.

Appointment of Directors

In both SARL and SA companies, the directors are appointed by the shareholders in accordance with the rules set out in the articles of association, or in a subsequent instrument, subject to the limitations set out in OHADA Company Law. The proposed directors must consent to their appointment and certify that they are not subject to any incumbency preventing them from exercising their proposed functions.

In a SARL company, when the appointment is made in a subsequent instrument to the articles of association, the decision shall be taken by a majority of members holding more than half of the capital, unless otherwise provided in the articles of association. However, in a SA company, the first directors are appointed by the articles of association or, where appropriate, by the general assembly meeting.

During the life of a SARL or SA company, directors are appointed by the general assembly meeting. The appointment document indicates the duration of the director's mandate and their remuneration. A director's mandate can be renewed unless otherwise provided for by the articles of association.

In both SARL and SA companies, any directors' appointment shall be subject to the formality of registration with the competent Trade Registry and tax administration, together with publication in the relevant gazette.

Removal of Directors

Absent any provisions of the articles of association of a SARL company, the director(s) are appointed for a period of four years.

By contrast, the directors' term of office in a SA company may be freely specified in the articles of association, provided that if the appointment is made after the incorporation of the company then the term of office cannot exceed six years and if the appointment is made through the articles of association or with a general assembly meeting then the term of office cannot exceed two years.

Aside from the lapse of their mandate, any directors in a SARL company may be removed for just cause by a decision of either the shareholders holding more than half of the equity interests of the company, or the competent court in whose jurisdiction the company is headquartered. Failure by SARL company to provide just grounds for its decision to remove any directors will give rise to the payment of damages to the concerned directors.

On the other hand, the procedure for the removal of a director in a SA company will differ depending on whether the management of the company involves a board of directors or a general director. If the management structure of a SA company involves a board of directors, the latter may remove its chairperson at any time without the need to establish a just cause. Under the same management structure, in the event of a temporary or permanent absence of the general manager, the board of directors must immediately designate a replacement until appointing a new general manager. Similarly, the general manager and the deputy general manager may be removed by the board of directors for just cause.

By contrast, where the management structure of a SA company involves a director general, the general assembly of shareholders can remove the general manager or the deputy general manager for just cause at any time.

Any decision to remove a director of a SARL or SA company must be filed with the competent Trade Registry within one month of the relevant decision.

Liabilities of shareholders

The liability of any shareholder cannot exceed their respective contribution to the share capital.

Sometimes courts extend to shareholders the collective proceedings opened against the subsidiary where they consider that there has been a confusion of assets or activities between the two assets and that the subsidiary is a fictitious company. This situation occurs when there is evidence of transfers of assets between the two corporations without consideration. Therefore, care must be taken to ensure the economic and legal independence of the subsidiary.

The liability of shareholders can also apply in the framework of Director/Manager liability. Depending on the form of the company, shareholders can act as the manager of a subsidiary. In that capacity, the shareholders can be jointly and severally liable, as the case may be, to the company or third parties for violations of legal or statutory provisions applicable to the company, or for violations of the articles of association, or for mistakes made during their management.

Besides these two instances, there is no other case where the liability of a shareholder is contemplated under Côte d'Ivoire laws.

The issue of liabilities of directors will be further discussed in Section C (6) below.

B. Foreign Investment

3. Are there any restrictions on foreign investors incorporating or acquiring the shares of a company in your jurisdiction?

There are no general restrictions on foreign investors incorporating or acquiring the shares of a local company. However, there are sector-specific market access limitations applicable to foreign investments in the ride-hailing services, land, and suppliers in the oil and gas sectors.

In sector of the ride-hailing services, Ivorian law requires the operator to establish a local entity with at least 25% share capital held by Ivorian nationals (See Article 8 of the 2021 Decree No. 2021-860 on the Regulation of Private Public Transport of Persons).

In the land sector, foreign nationals or foreign entities are precluded from holding any interest in rural land. (See Article 1 of Law on Rural Land).

In oil and gas sectors, holders of oil and gas companies operating in Côte d'Ivoire are expected, in all sectors of the value chain, from exploration to exploitation, to give preference to Ivorian companies for subcontracting activities, provision of services and supply of goods, and enjoins them to exploit the financial and insurance services available in Côte d'Ivoire.

4. Are there any foreign exchange restrictions or conditions applicable to companies such as restrictions to foreign currency shareholder loans?

Pursuant to the Article 2 of the 2010 WAEMU Regulation N°09 relating to the external financial relations of the Member States of the West African Economic and Monetary Union ("**WAEMU**"), the foreign exchange transactions, capital flows and settlements of any kind between a WAEMU Member State and a foreigner or within the WAEMU between a resident and a non-resident may only be carried out through the Central Bank ("**BCEAO"**), the Administration or the Post Office, an approved intermediary or a manual exchange licensee.

Current payments to foreign countries can be executed by the intermediaries mentioned in Article 2 of the 2010 WAEMU Regulation N°09, under their responsibility, based on the principle of freedom of transfer.

In that regard, payments to foreign countries relating to transactions concerning, among other things, interest and dividends, are authorized on a general basis, subject to the presentation of supporting documents to the relevant intermediary (Article 4 of the 2010 WAEMU Regulation N°9). Furthermore, the transfer of sums required for, among other things, the contractual amortization of debts can be freely executed by the approved intermediary subject to the presentation of supporting documents.

Payments abroad for capital transactions, other than those provided for in the previous paragraph, must be the subject of an application for foreign exchange authorization, submitted to the Minister of Finance. Each application for authorization must be accompanied by supporting documents attesting to the nature and reality of the operation (Article 7 of the 2010 WAEMU Regulation N°9).

Any reimbursement of any foreign borrowing must be reported for statistical purposes to the Directorate of External Finance ("**FINEX**") and the BCEAO, with all reimbursement activity carried out through an authorized intermediary (Article 11 of the 2010 WAEMU Regulation N°9). The term extensions and early repayments of loans must be notified to the authorized intermediaries by borrowers.

With respect to investment operations, any investments in a WAEMU member state and the transfer of investments between non-residents are reported for statistical purposes to the FINEX and to the BCEAO in the case of direct investment.

5. Are there any specific considerations for employment of foreign employees in companies incorporated in your jurisdiction?

In terms of Article 1 of the Cote d'Ivoire Labour Code, any contract of employment concluded to be carried out in Cote d'Ivoire is subjected to the provisions of the said Code. In other words, whenever the principal place of employment is Côte d'Ivoire, there is a legitimate expectation and a legal requirement that the underlying employment contract be governed by Côte d'Ivoire law.

In practice, all processes related to the contemplated employment contract such as visa permits, employee's registration with both the labour inspectorate and the social security body, local tax filings and payments with respect to the concerned employment contract are expected to be conducted in accordance with the Cote d'Ivoire laws and regulations. The same goes for any dispute arising from the contemplated employment contract. The fact that a foreign employee conducts temporary missions outside their usual employment jurisdiction has no bearing on the governing law of their underlying employment contact. Côte d'Ivoire laws will still apply to such an employment relationship. The employer is bound to comply with all Côte d'Ivoire laws and regulations.

In addition, any employment contract or letter of employment shall be written in French and signed by both the employer and the worker (see Article 4 of the Decree No. 96-287 of 3 April 1996 on the Employment Contract).

Employment contracts involving foreign nationals must be registered with the relevant employment regulator (i.e., Agence Emploi Jeune).

In addition, expatriates working in Côte d'Ivoire must hold a residence permit. Residence permits are valid for a period of 5 years, renewable for the same period.

C. Corporate Governance

6. What are the standard management structures (e.g., general assembly, board of directors, etc.) in a corporate entity governed in your jurisdiction and the key liability issues relating to these (e.g., liability of the board members and managers)?

Board / management structure

The management structure of a SA company differs depending on whether the management structure involves a board of directors or a director general.

Where a SA company involves a board of directors, the typical management structure includes:

- a board of directors consisting of between three and 12 members and headed by a chief executive officer chosen between the board members
- a general manager, and if applicable
- a deputy general manager.

Alternatively, a SA company with a board of directors may be structured as follows:

- a board of directors consisting of between three and 12 members and headed by a chairperson and general manager, and if applicable
- a deputy general manager.

Where a SA company involves a director general, the typical management structure includes:

- a director general, and if applicable
- a deputy director general.

By contrast, the typical management structure of a SARL company consists of one manager who may be assisted by one or several co-manager(s).

In both SARL and SA companies, the decisions are made within the limits set forth in the articles of association, subject to any additional requirements under the law.

In both SARL and SA companies, unless otherwise provided for in the articles of association, directors have full powers to commit the company with respect to third parties without having to show proof of a special instrument granting such powers.

The company is bound by acts of its management body, officers and board that are not within the company purpose, unless it can prove that the third party was aware that the act was unrelated to such purpose or could not ignore it given the circumstances. The mere publication of the articles of association is not enough to prove this.

Subject to any contrary provision or specific restriction in the articles of association, legal representatives of a SARL or SA company may delegate certain powers to any person through a delegation of authority. Unless the delegation provides otherwise, the beneficiary may sub-delegate some of the powers they have received under the delegation.

The directors, members of the board and shareholders' liability

Breach of general duties

Directors owe their duties to the company itself. Therefore, the company or the partners can bring a claim for the directors' damage. A director may incur civil and criminal liabilities for breach of duty.

Civil liability

Without prejudice to the company's potential liability, any manager shall be individually liable to third parties for misconduct in the performance of their duties.

One or several shareholders may file an action in the interest of the company after serving a formal notice to the competent bodies if such bodies fail to respond within a time limit of 30 days. The applicants have the ability to sue for damages for injury suffered by the company. In the event of a successful claim, damages shall be awarded to the company.

Criminal liability

SARL directors are liable, individually or jointly, as the case may be, to the company or to third parties, either for violations of legislative or regulatory provisions applicable to private limited companies, or of provisions of the articles of association, or for faults committed in their management.

Aside from a suit for compensation for damages sustained personally, members representing a quarter of the shareholders and a quarter of the equity interests may, either individually or collectively, initiate a lawsuit against the manager. The plaintiffs are entitled to seek compensation for the entire damage suffered by the company, to which any damages are awarded.

SA directors shall be individually or jointly liable to the company or third parties, either for violating the legislative or regulatory provisions applicable to public limited companies, or for violating the provisions of the articles of association, or for faults committed in their management.

Liabilities on insolvency

Liability for the company's debts (action en comblement de passif):

The director of a company facing an asset deficiency (*insuffisance d'actif*), in the context of insolvency proceedings, may be held personally liable for the debts of the company if their actions, in breach of the director's powers, have led to the asset deficiency. The director may only be held liable in such a context if they have committed a management fault (*faute de Gestion*) which led to the asset's shortfall. In this case, there is no potential relief.

Deliberately causing the insolvency of a company (banqueroute):

A director may be held personally liable where he/she has:

- Made purchases with a view of reselling at a lower price, or used destructive means in order to receive funds, with an intention to avoid or delay the opening of receivership of the company.
- Misappropriated or concealed all or part of the assets of the company.
- Fraudulently increased the liabilities of the company.
- Falsified the accounts or removed accounting documents of the company.
- Failed to keep accounts in accordance with legal regulations (including manifestly incomplete accounts).

Other key risks

Personal liability for directors may, in certain circumstances, arise under Côte d'Ivoire legislation including that relating to environmental and health and safety, employment, consumer protection and bribery/anti-corruption. In certain cases, criminal liability may arise.

A director may also be disqualified by the court from acting as a director or from taking part in the promotion, formation or management of a company. A disqualification order can be made for a variety of reasons (e.g., conviction for criminal offences relating to the running of a company, persistent breaches of statutory obligations such as filing documents with the companies register, being found liable for fraudulent or wrongful trading and generally for conduct which makes a director unfit to manage a company).

Failure to comply with company-related obligations, such as the preparation and filing of accounts, can also lead to fines for individual directors

7. **What are the audit requirements in corporate entities?**

The OHADA Uniform Act prescribes a certain level of oversight and audit based on the classification of the company. Not all companies are required to have their financial statements audited. Also, not all companies are required to have an audit committee.

In a SARL company, the appointment of at least one auditor is required when the registered capital exceeds ten million XOF (10,000,000) or the concerned company fulfils either of the following two conditions:

- the annual turnover exceeds two hundred and fifty million XOF (250,000,000) or
- the permanent staff exceeds 50 people.

The appointment of an auditor is optional in SARL companies which do not meet the aforementioned criteria. However, one or more shareholder(s) controlling at least one-tenth (1/10) of the registered capital may apply to the court for the appointment of an auditor (see Article 376 of OHADA Company Law).

By contrast, the appointment of an auditor is mandatory in SA companies. The latter shall be audited by one or more auditors, natural person(s) or juridical person(s) incorporated under one of the forms provided for by the OHADA Company Law.

The provisions relating to the powers, duties, obligations, liability, dismissal and remuneration of the auditor shall be spelt out in a specific instrument governing the profession of auditor.

D. Shareholder Rights

8. What are the privileges that can be granted to shareholders? In particular, is it possible to grant voting privileges to shareholders for appointment of board members?

Shareholders can exercise their rights at the general meeting of the company through their voting rights. The company shall make various documents (relating to the shareholding and control structure and the identity of the major shareholders and partners) available to shareholders and partners at least thirty (30) days before the general meeting.

Shareholders are entitled to access to the company's financial and accounting information.

Each share shall have voting rights proportional to the percentage of share capital it represents and shall give right to at least one vote. This right grant voting privileges to shareholders for appointment of board members.

In addition, in the case of an increase of capital by the incorporation of reserves, profits or issue premiums, double voting rights may be granted to registered shares given free of charge as soon as they are issued to a shareholder in proportion to the old shares for which he/she enjoyed such voting rights.

9. Are there any specific statutory rights available to minority shareholders available in your jurisdiction?

The law protects minority shareholders from the abuse of the majority. By law, there is abuse of majority shareholder power where the majority shareholders passed a decision for their own benefit, contrary to the interests of the minority shareholders, and without such a decision being justified by the company's interests.

Collective decisions resulting from an undue use of the majority powers shall be void.

10. Is it possible to impose restrictions on share transfers under the corporate documents (e.g., articles of association or its equivalent in your jurisdiction) of a company incorporated in your jurisdiction?

Share transfer restrictions are freely determined by the articles of association. This is very commonly used in practice, especially in the context of joint ventures, consortia, minority interests etc. whether in the context of private deals or private equity investments because it allows to tailor the capital of the companies closely to their investment and strategy. In addition, shareholders' exclusion clauses (*clauses d'exclusion*) may be inserted in the articles of association, and may in particular be triggered in the case of breach of the articles of association or a change of control of a shareholder.

11. Are there any specific concerns or other considerations regarding the composition, technical bankruptcy and other insolvency cases in your jurisdiction?

SARL company shall also be dissolved when a court decision to liquidate property, declare bankruptcy, or forbid the exercise of a commercial activity has been passed in respect of a shareholder unless the company's articles of association provide for the continuation or other members unanimously decide in favor of the continuation of the business.

Insolvency law is governed by the 2015 OHADA Uniform Act Organizing Collective Proceedings for Clearing of Debts. Pursuant to the provisions of this law, there are three formal insolvency procedures for a company, namely the precautionary regulation, the judicial redress and the liquidation procedure. The precautionary regulation is a pre-insolvency rescue procedure designed to avoid the cessation of payments or the cessation of the activities of the company and allows for the discharging of the debts of the company by way of a preventive concordat, whereas judicial redress aims to safeguard the company and discharge its debts by way of a concordat of redress. As for the liquidation procedure, its purpose is the realization of the assets of the debtor to discharge its debts.

E. Acquisition

12. Which methods are commonly used to acquire a company, e.g., share transfer, asset transfer, etc.?

There are basically several methods to acquire a company in Cote d'Ivoire: including

- Shares purchase;
- Merger / demerger;
- Partial assets contribution;
- Enforcement of an instrument of transfer/assignment of shares as transferee;
- Consenting to the transfer of shares bequeathed by a deceased shareholder; or
- Acquiescence following a free allotment of shares.

However, the legal and tax framework may differ from one method to another depending on the structure of the transaction or the underlying transfer / assignment document.

13. What are the advantages and disadvantages of a share purchase as opposed to other methods?

The advantages

Share purchases generally have the following advantages for sellers or buyers in comparison to asset purchases:

- Structural simplicity and business continuity
- Clean break for the seller
- Direct receipt of sale proceeds by the shareholders

A key advantage of a share purchase for a buyer and seller is its structural simplicity:

- The only assets that need to be transferred from the seller to the buyer are the shares in the target company.
- Unless the parties agree otherwise (for example, the seller may assume responsibility for certain liabilities through indemnity provisions or retain some assets), there is no change in the underlying ownership of the various assets and rights, or responsibility for the liabilities, that collectively comprise the target business.

This continuity regarding the target business removes many of the transaction complexities that otherwise arise on an asset purchase, often with resulting savings in the transaction timetable and costs. In particular, it is not necessary to identify each asset, right, or liability of the target business that is included in, or excluded from, the transaction. Consequently, there is a much lower risk that the buyer may omit to acquire a key asset or right which is required to continue operating the target business.

The disadvantages

Share purchases generally have the following disadvantages for sellers or buyers in comparison to asset purchases:

- The buyer may acquire unwanted or hidden liabilities;
- The sale must gain shareholder approval;
- Cote d'Ivoire securities transfer taxes may apply;
- Hardly any no debt pushdown options are available.

The principal legal and commercial drawback of an asset purchase is the complexity involved in documenting and implementing the transaction. At the very least, the need to address the matters below is likely to add to the overall transaction costs and timetable. At worst, it could make the acquisition structure unviable in practice. This may be the case when the parties are unable to obtain a third-party consent to the novation of a key business contract or approval from an applicable regulator for the transfer or re-grant of an essential license or permit.

14. What are the approvals and consents typically required (e.g., corporate, regulatory, sector based and third-party approvals) for private acquisitions in your jurisdiction?

In case of private acquisition, the extraordinary general meeting of the acquiring company shall rule on the approval of contributions in-kind. Where, from the time the draft merger instrument is filed with the registry of commerce and securities and until the completion of the transaction, the acquiring company permanently holds the entire capital of the acquired company or companies, there is no need for an approval of the merger by the extraordinary general meeting of the acquired companies, or preparation of the reports referred to in articles 671 and 672 of the 2014 OHADA Uniform Act on Commercial Companies and the Economic Interest Group.

In a company whose shares are not admitted to trading on a stock exchange, the articles of association may stipulate that shares transfer to a third-party outside the company, whether free of charge or against payment, shall be subject to the approval of the board of directors or the ordinary general meeting of shareholders.

In case of merger or demerger, preferred shares may be exchanged for shares of companies benefiting from the assignment of assets with equivalent special rights, or on the basis of a specific exchange parity taking into account abandoned specific rights. In the absence of exchange for shares conferring equivalent special rights, the merger or the demerger shall be submitted to the approval of the special meeting referred to in article 555 of the 2014 OHADA Uniform Act on Commercial Companies and the Economic Interest Group. Any decision taken in contravention of the foregoing shall be void.

15. What are the regulatory competition law requirements applicable to private acquisitions in your jurisdiction?

At a national level, the Competition Ordinance (Ordinance No. 2013-662 of 20

September 2013) regulates competition law in Côte d'Ivoire.

Côte d'Ivoire is a member of WAEMU and is therefore subject to the competition rules and regulations of WAEMU.

WAEMU and the national competition authorities are responsible for monitoring different aspects of competition law in Côte d'Ivoire. Merger in Côte d'Ivoire is dealt with at WAEMU regional level.

Under the WAEMU competition law, a merger is regarded as (i) a merger between two or more previously independent undertakings; or (ii) the acquisition by one or more persons already controlling at least one undertaking, or by one or more undertakings, whether by purchase of securities or assets, by contracts or by any other means of direct or indirect control of the whole or parts of one or more undertakings, or (iii) the creation of a joint venture performing on a lasting basis all the functions of an autonomous economic undertaking.

The WAEMU competition law provides for a voluntary merger notification regime. Merging parties can implement a proposed transaction without prior competition approval at their own risk.

Mergers are analyzed in light of the provisions applicable to abuses of dominance. Merger transactions that create or reinforce a dominant position having as a consequence a significant distortion of competition are assimilated to abuses of a dominant position.

Given that merger notification is voluntary, there is no risk of penalty for failure to notify unless the parties are found to have implemented a merger which amounts to an abuse of dominance. In the latter case, the concerned parties may face financial penalties ranging from XOF 500 000 to XOF 100-million (this amount can be increased to 10% of the annual turnover of each of the parties).

Côte d'Ivoire is also a member of two other regional competition bodies, ECOWAS and OHADA. OHADA does not yet have an operational regulator, its merger control regime is not yet functional. On the other hand, the ECOWAS competition authority ("**ERCA**") has been established, however, there is uncertainty as to whether it has become operational and the current extent of its activities. Merger activities in Côte d'Ivoire should thus be conducted with this regional competition body in mind.

Anti-competitive practices in Côte d'Ivoire are governed and regulated by the WAEMU Commission.

Horizontal and vertical agreements, decisions and concerted practices between undertakings which have as their object or effect the prevention, restriction or distortion of competition are prohibited unless they are exempt. Cartel conduct (such as price fixing and market division) is prohibited. Abuses of dominance are prohibited.

A company which engages in an anticompetitive horizontal or vertical agreement, or which abuses its dominant position commits an offence and may face sanctions, the amount of which ranges between XOF 500 000 and XOF 100-million. This amount can be increased to the equivalent of 10% of the annual turnover or assets of the infringing companies.

The National regulator remains competent to sanction the following unilateral conduct:

a. refusal to sell;
b. abuse of economic dependence;
c. discriminatory practices;
d. resale price maintenance and resale below cost; and
e. tying.

OHADA does not regulate prohibited practices. ECOWAS regulates anticompetitive practices. Activities in Côte d'Ivoire should thus be conducted with this regional competition body in mind. However, there is uncertainty as to whether ERCA has become operational and the current extent of its activities.

16. Are there any specific rules applicable for acquisition of public companies in your jurisdiction?

The control of an Ivorian public company is most frequently obtained through a voluntary or mandatory public tender offer.

Business or (partial) asset contributions in consideration for shares (*apports partiels d'actifs*) are also used, although less frequently in cross-border transactions. Statutory mergers (*fusions*) of public companies are generally used in intra-group transactions but can also be implemented on the back of a public offer to obtain 100% of the shares and voting rights of the target company.

17. Is there a requirement to disclose a deal, for instance to regulatory authorities? Is it possible to keep a deal confidential?

There is no general requirement to disclose a deal. However, depending on the sector and the financial structure some deals may be subject to disclosure to the relevant authorities. In addition, taking into account the tax aspect of a deal its might be difficult to keep a deal confidential for more than a month from its execution unless the parties are willing to face the penalties for late registration.

18. Can sellers be restricted from shopping around during a negotiation process? Is it possible to include break fee or other penalty clauses in acquisition documents to procure deal exclusivity?

Yes, if that is the intent of parties pursuant to a written agreement entered into by the parties.

19. What are the conditions precedent in a typical acquisition document? Is it common to have conditions to closing such as no material adverse change?

A typical acquisition document includes as conditions of precedent disclosure of up-to-date corporate documentation establishing the validity of the incorporation of the target company, its representatives' capacity to enter into the contemplate transaction, the validity of its business permit, if any, and the clearance from any insolvency procedures and, eventually tax.

It is common to have conditions to closing such as no material adverse change. Typically, acquisition agreements contain a condition to closing allowing a party to refuse to complete the deal if the other has suffered a material adverse change between the signing of the agreement and the closing of the acquisition.

20. What are the typical warranties and limitations in acquisition documents? Is it common to obtain warranty insurance?

In large scale transactions, the parties will include warranties in a schedule to the contract and can span over many pages. Five of the most common warranties that parties include in larger transaction contracts are:

Solvency: The purchaser needs to make sure that the vendor warrants that the company they are selling (Sale Company) is not:

- Insolvent;
- Subject to voluntary administration; and
- Has not stopped paying its debts.

Litigation: The warranties will also usually include a provision relating to litigation. It guarantees that the Sale Company is not a party to any:

- Investigations;
- Prosecution;
- Litigation;
- Legal proceedings;
- Any other form of dispute resolution process; or
- Governmental proceedings.

Power and Authority: Merger and acquisition contracts will always include a warranty relating to power and authority. It sets out that each party's execution and performance of the agreement:

- Complies with its constitution (i.e., articles of association);
- Does not constitute a breach of any law or obligation; and
- The parties have obtained all the necessary authorizations to enter into the agreement.

It may also include clauses requiring the parties to acknowledge that they:

- Have the full power and capacity to enter into the agreement; and
- Are validly incorporated in their places of incorporation.

Accuracy of Information: The purchaser will want to include an 'accuracy of information' warranty if the vendor has provided due diligence material. However, it is not uncommon for the vendor to be reluctant about providing this. This warranty typically provides that:

- All of the information the vendor has given to the purchaser is not misleading;
- The vendor is not aware of any information that they have not made available to the purchaser; and
- All forecasts and projections in respect of the business are reasonable, honestly held and prepared with care.

This type of warranty places the burden on the vendor to be able to provide the above assurances. It is why the vendor often refuses to give this warranty. The vendor often requires that the purchaser acknowledges that it is satisfied with its enquiries before entering into the transaction. The parties can negotiate this warranty with some limitations. For instance, the purchaser may agree that the warranty is limited to the vendor's knowledge of these matters.

Accounts: The purchaser may also seek a warranty from the vendor concerning the accounts of the business. The warranty usually sets out that:

- The vendor has prepared the accounts according to the relevant accounting standards and applicable laws;
- The vendor has prepared the accounts on a consistent basis; and
- The reports provided give an accurate and fair view of the financial position of the business.

It will also include that the accounts contain all the liabilities of the business and that since the date the vendor prepared the accounts, the vendor has conducted business in the ordinary and usual way.

The warranty may also include a provision stating that the vendor has not:

- Sold, disposed of or created an encumbrance of its assets over a specific amount; or
- Acquired assets over a certain amount (except in the ordinary course of business).

The amount will depend on the value of the business. It is important if the purchaser wants to make sure they are informed of any unusual transactions that could affect the business after the purchase.

In addition, it is common to obtain warranty insurance.

21. Is there a requirement to set a minimum pricing for shares of a target company in an acquisition?

There is no minimum pricing requirement.

22. What types of acquisition financing are available for potential buyers in your jurisdiction? Can a company provide financial assistance to a potential buyer of shares in the target company?

There is no law regulating financing of an acquisition. The parties are free to have recourse to the financing methods they see fit provided that is not contrary to the public order and any other existing laws.

23. What are the formalities and procedures for share transfers and how is a share transfer perfected?

A transfer by way of a sale of the legal and beneficial interest in shares involves the following stages:

Agreement for the Sale of Shares

The seller and the buyer agree to the sale and purchase of the shares. There is no legal requirement for an agreement to sell and purchase the legal and beneficial title to shares to be made in writing. In some situations, it may be appropriate for the transaction to be affected simply by the delivery to the buyer of a duly executed stock transfer form and the buyer's payment of the purchase price.

However, it is common practice for both parties involved to document the sale and purchase of the shares in a written contract, usually referred to as a share purchase agreement.

Share purchase agreements tend to be particularly lengthy and complex when the transaction involves the sale of the entire issued share capital of the company, or it will otherwise pass control of the target company to the buyer.

Transfer Form

A stock transfer form is a standard document used to transfer existing shares. It contains details of the seller and the buyer, the type and number of shares transferred, and considerations concerning the shares' payment.

Article 71 of Cote d'Ivoire General Tax Code requires some obligations relating to Business Transfer Transaction to be respected. Consequently, the seller should respect them to ensure the compliance of Business Transfer Transaction with Tax law:

- The seller must within a specified period of ten days, send notification to the Tax Administration of the date on which the transfer was or will be effective as well as if applicable, the names, first names and address of the purchaser;
- The Seller is also required to send to the tax administration within the same period the declaration of their actual profit.
- The ten-day period in question will begin from the day on which the purchaser has effectively taken over the management of the Business.

Failing to comply with this disposition, the tax administration can initiate an estimated taxation procedure on taxable profit. This procedure allows the tax administration to rectify the taxpayer on legal grounds without the taxpayer being able to justify himself or give his point of view.

Approving Registration of the Transfer

When a stock transfer form is submitted to a company for registration, the board of directors are subject to a statutory obligation to either approve and register the transfer or give the buyer notice of refusal to register the transfer and the reasons for their refusal.

Issuing a Share Certificate to the Transferee

Following registration, the company issues a new share certificate regarding the transferred shares to the buyer. The share certificate is evidence that the transferee is the legal owner of the transferred shares.

Finally, the company will need to update its register of transfers and persons with significant control or legal entities with significant control (Registre du commerce).

The company will also need to include the updated list of shareholders in Companies House as part of its next Confirmation Statement.

There are no specific requirements for the perfection of a share transfer, however there may be other requirements depending on the complexity of the transfer and the transaction.

24. Are there any incentives (such as tax exemptions) available for acquisitions in your jurisdiction?

Yes, please refer to our comments to the question 23.

F. Enforceability

25. Can acquisition documents be executed in a foreign language?

As far as the SPA is concerned and to the extent that it is limited to contracting parties, the answer is yes. However, a French version is required as far as the relevant regulator and the tax authorities are concerned.

26. Can acquisition documents be governed by a foreign law?

Any acquisition, merger, demerger or (partial) asset contribution is governed by OHADA law. It is possible to subject some of the "acquisition" documents to a foreign law. Such a structuring shall be assessed carefully against the applicable law, on a case-by-case basis to ascertain it does not contravene to any other mandatory requirements.

27. Are arbitration clauses legally permissible or generally included in acquisition documents?

Arbitration clauses are legally permissible.

28. Are there any specific formalities for the execution of acquisition documents? Is it possible to remotely/digitally sign documents?

As a matter of general principle, the acquisition documents must be executed in wet ink signature.

G. Trends and Projections

29. What are the main current trends in M&A in your jurisdiction?

M&A trends slowed during the covid period. However, given the country resilience and thanks to its attractive business environment, M&A deals have started to retrieve its post-covid space. Based on our experience, recent deals activity, as well as insight from our clients, we are optimistic that exciting M&A opportunities lie ahead in 2023.

30. Are any significant development or change expected in the near future in relation to M&A in your jurisdiction?

There is no significant development or change expected in the near future in relation to M&A in Côte d'Ivoire. OHADA generally provides an attractive framework for M&A transactions for foreign investors as it regulates eight areas of business law common to 17 sub-Saharan countries as well as a common Court of justice and arbitration, which is competent for recognition and enforcement of the awards in OHADA member states.

However, the OHADA system still has some weaknesses that may have impact on restructuring or M&A operations. For these reasons, there are plans underway to harmonize other areas including competition law, intellectual property law, banking law, labour law, and evidence and contract law across the region. These projects are not expected to materialize in the near future.

However, with the law as it currently stands, vigilant due diligence enquiries and negotiations will ensure that risks are minimized in the M&A transactions.

JAPAN

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A. General

1. What is the main legal framework applicable to companies in your jurisdiction?

Mergers and acquisitions of Japanese companies are mainly governed by the Companies Act of Japan (Act No. 86 of 2005, as amended) ("**Companies Act**"). Public mergers and acquisitions of Japanese companies are also governed by the Financial Instruments and Exchange Act of Japan (Act No. 25 of 1948, as amended, the "**FIEA**") and the stock exchange rules.

2. What are the most common types of corporate entities (e.g., joint stock companies, limited liability companies, etc.) used in your jurisdiction? What are the main differences between them (including but not limited to with regard to the shareholders' liability)?

The *Kabushiki Kaisha* (a joint-stock company, "**KK**") is traditionally the most common type of corporate entity in Japan. The *Godo Kaisha* (a limited liability company, "**GK**") is the next most commonly used.

The KK is a company that issues shares and whose shareholders elect directors to manage and operate the company. All shareholders have limited liability. The GK is a type of membership company (*Mochibun Kaisha*) with limited liability members only, does not issue shares, and does not separate its members from its management structure. Regulations applicable to the GK are simpler than those that apply to the KK. For example, the GK has no obligation to publicize its financial statements.

A membership company whereby all members have unlimited liability is called a *Gomei Kaisha*, and a membership company that has members having unlimited liability and members having limited liability is called a *Goshi Kaisha*. These corporate entities are not often used.

B. Foreign Investment

3. Are there any restrictions on foreign investors incorporating or acquiring the shares of a company in your jurisdiction?

Under the Foreign Exchange and Foreign Trade Act of Japan (Act No. 228 of 1949, as amended, the "**FEFTA**"), a non-Japanese investor must, in principle, file a prior notification for screening by the Japanese authorities if (i) the Japanese target company (including its Japanese subsidiaries) operates its business in a designated business sector ("**Designated Business Sector**") and (ii) the planned foreign direct investment ("**FDI**") falls within one of the following categories:

- Acquisition of the shares or voting rights of a Japanese company listed on a Japanese stock exchange, if the investment ratio or voting rights ratio amounts to 1% or more following the acquisition; or
- Acquisition of any share or equity of a Japanese non-listed company (no threshold applies).

The Designated Business Sectors include, but are not limited to, weapons, aircraft, nuclear facilities, space-related, semiconductors, dual-use goods, cybersecurity-related, critical infrastructure and important health/life sciences.

Even if a Designated Business Sector is not relevant to your transaction, there are filing obligations that need to be made post-closing if the 10% threshold is met, in principle.

In highly regulated sectors, such as aviation, freight forwarding, radio waves, broadcasting, banking, and insurance, there are sector-specific regulations separate from FEFTA.

4. Are there any foreign exchange restrictions or conditions applicable to companies such as restrictions to foreign currency shareholder loans?

Prior notification for screening may be required for FDI transactions that include the following provided that the Japanese target company (including its Japanese subsidiaries) operates its business in a Designated Business Sector:

- a loan from a non-Japanese investor with a maturity of more than 1 (one) year to a Japanese target company if the balance thereafter exceeds JPY 100,000,000 and exceeds 50% of the amount of debt, unless such loan is made in Japanese currency by a non-Japanese investor residing in Japan; or
- acquisition by a non-Japanese investor of corporate bonds issued by a Japanese company (by solicitation to the specific non-Japanese investor) with maturity of more than 1 (one) year if the balance thereafter exceeds JPY 100,000,000 and exceeds 50% of the amount of debt, unless such corporate bonds are issued in Japanese currency and are acquired by a non-Japanese investor residing in Japan.

5. Are there any specific considerations for employment of foreign employees in companies incorporated in your jurisdiction?

Non-Japanese persons residing in Japan may only engage in activities within the scope of their authorized status of residence and period of stay. In principle, those who are to be appointed as an officer, such as a director, or to work as a manager, such as a general manager, factory manager, or branch manager, are generally required to obtain the "Business Manager" status of residence. In addition, depending on factors such as academic background, work experience, and annual income, it is possible for the appointee to obtain the "Highly Skilled Professionals (Advanced Business Management Activities)" status of residence and corresponding preferential treatment. In addition, measures to obtain so-called "Start-up Visas" as well as to ease the requirements for the "Business Manager" status of residence, are being implemented to promote foreign businesses.

In order for a company to employ a non-Japanese person residing in Japan, such employee needs to obtain the status of residence of "Engineer/Specialist in Humanities/International Services," "Highly Skilled Professional (Advanced Specialized/Technical Activities)," or "Intra-company Transferee". The activities that can be performed in "Technical/Specialist in Humanities/International Services" and "Intra-Company Transferee" are the same, but in the case of transfer within the same company or secondment from a parent company or affiliated company, the "Intra-Company Transferee" status of residence should be obtained. If the work activity is a job that requires skills, it is possible to obtain "Skilled Labor" or "Specified Skilled Worker" status of residence.

When a foreign national intends to work in Japan, he/she generally first applies for a Certificate of Eligibility at Regional Immigration and Residence Administration Office in Japan before entering Japan, and then applies for a visa at the Embassy or Consulate General of Japan abroad, by presenting the Certificate of Eligibility issued. After the visa is issued, the foreigner must apply for landing at the port of entry in Japan within 3 (three) months from the date of issuance of the Certificate of Eligibility, in principle.

If a foreign national who intends to work in Japan does not have a status of residence that allows him/her to engage in the planned work activities, he/she must apply for and receive permission to change his/her status of residence from the Regional Immigration and Residence Administration Office. Employers are required to notify the Public Employment Security Office of the foreign national's name, status of residence, etc. when hiring or separating from employment. Foreign nationals themselves must also notify the Director-General of the Residential Services Agency of any change in the name or address of their work organization or its disappearance, or any withdrawal (including termination of contract) or transfer (including new conclusion of contract) from the work organization, except in cases where the foreign national is residing with a status of residence based on his/her status and position.

C. Corporate Governance

6. What are the standard management structures (e.g., general assembly, board of directors, etc.) in a corporate entity governed in your jurisdiction and the key liability issues relating to these (e.g., liability of the board members and managers)?

All KKs have a shareholders meeting as an organ, which appoints 1 (one) or more directors. In a KK there is no need to have a board but, appointing minimum of 1 (one) director suffices and appointing a statutory auditor is not required. In this structure, prompt decision-making can be made by the director(s). In place of a board of directors meeting, shareholders themselves must monitor the execution of business conducted by director(s).

That being said, the standard management structure in a conventional KK is a shareholders meeting, a board of directors meeting and a statutory auditor. In this standard structure, a shareholders meeting shall appoint 3 (three) or more directors and a statutory auditor in principle. The appointed directors then shall compose a board of directors meeting to appoint a representative director. Supervision of each director by a board of directors meeting is expected and execution of business by directors shall be supervised by a statutory auditor. Since the execution of business by the directors may not be directly supervised by the shareholders, supervision by a statutory auditor is required in principle in this structure; provided, however, that a KK with all stock transfer restrictions is not required to have a statutory auditor by having an accounting advisor (*kaikei sanyo*).

A KK with a board of directors meeting may choose to have 3 (three) committees (a nominating committee, an audit committee, and a compensation committee) or an audit and supervisory committee, under certain conditions. The board of directors meeting of a KK with these three committees delegates a large portion of business execution decisions to executive officers (*shikkoyaku*), although the board must supervise them. A KK with these three committees must ensure that a majority of the members in each committee are outside directors, while it does not have a statutory auditor. A KK with an audit and supervisory committee does not have executive officers (*shikkoyaku*), but has an audit and supervisory committee with a majority of the members being outside directors. Except for KKs with these three committees or an audit and supervisory committee, large public companies are required to esablish a board of statutory auditors that includes a full-time statutory auditor and outside statutory auditors as its members.

Directors are obligated to carry out their responsibilities by exercising the same level of caution as a prudent manager (*zenkan chui gimu*), abiding by all applicable laws, regulations, and the provisions set out in the articles of incorporation and resolutions of shareholders' meetings, and acting in a loyal and faithful manner towards the company (*chujitsu gimu*).

Directors who fail to fulfill their duties may be held accountable to the company for any resulting damages. In cases where directors exhibit gross negligence or willful misconduct in performing their duties, they can also be held liable to third parties or shareholders for any ensuing damages under the Companies Act.

7. What are the audit requirements in corporate entities?

A KK that has a board of directors meeting and a statutory auditor must prepare financial statements and business reports for each business year, as well as their supplementary statements, which shall be audited by a statutory auditor and approved by the board of directors meeting. The business report must be reported in an annual shareholders meeting and the financial statements shall be subject to approval of an annual shareholders meeting.

Large companies (with stated capital of JPY 500,000,000 or more or debts of JPY 20,000,000,000 or more), companies with a nominating committee, etc., and companies with an audit and supervisory committee are required to be audited by an accounting auditor (*kaikei kansanin*).

D. Shareholder Rights

8. What are the privileges that can be granted to shareholders? In particular, is it possible to grant voting privileges to shareholders for appointment of board members?

In principle, resolutions at shareholders' meetings for the appointment or dismissal of directors must be passed by a majority (or higher, if such is provided for in the articles of incorporation) of the votes of the shareholders present at the meeting where the shareholders holding the majority of the votes (or as low as one-third or more if such is provided for in the articles of incorporation) of the shareholders entitled to vote are present.

However, a KK with all stock transfer restrictions may issue class shares by stipulating in its articles of incorporation that directors or statutory auditors may be appointed at a general meeting of class shareholders consisting of the class shareholders of that class of shares.

In practice, the right (if any) to nominate directors and statutory auditors is not often created by issuing class shares but rather by only the shareholders' agreement.

9. Are there any specific statutory rights available to minority shareholders available in your jurisdiction?

Among others, major statutory rights for minority shareholders under the Companies Act include the following with certain other requirements:

For a shareholder having 1% or more of the voting rights of all shareholders

- Petition to the court for appointment of an inspector who investigates the convocation procedures and method of resolution.
- Request for including certain matters in the purposes (agenda) of the shareholders meeting.
- Request for notice of the general nature of proposals.

For shareholder having 3% or more of the voting rights of all shareholders

- Objections to partial exemption from the liability of a director, etc. by a resolution of a board of directors meeting.
- Request for convocation of a shareholders meeting.

For a shareholder having 3% or more of the voting rights of all shareholders, or 3% or more of all issued shares

- Request for inspection or copying of accounting books.
- Petition to the court for election of an inspector who investigates the condition of the business and assets of the company.
- Litigation for dismissal of officers.

For a shareholder having 10% or more of the voting rights of all shareholders, or 10% or more of all issued shares

- Request for dissolution of a company (A shareholder may file a litigation for dissolution of a company, if there are imperative grounds. That is, in cases when: a company faces an extreme difficulty in executing business and the company suffers or is likely to suffer irreparable harm; or the management or disposition of property of a company is extremely unreasonable and puts the existence of the company at risk).

For a shareholder having one-third or more of the voting rights of all the shareholders

- Denial of the matters requiring a special resolution of a shareholders meeting such as an amendment to articles of incorporation and organizational restructuring.

10. Is it possible to impose restrictions on share transfers under the corporate documents (e.g., articles of association or its equivalent in your jurisdiction) of a company incorporated in your jurisdiction?

KKs have the option to impose restrictions on share transfers, requiring approval at either a shareholders meeting or a board of directors meeting (this would be considered a KK with all stock transfer restrictions). These restrictions are valid when they are included in the company's articles of incorporation. Additionally, it is required to register these restrictions in the commercial register.

11. Are there any specific concerns or other considerations regarding the composition, technical bankruptcy and other insolvency cases in your jurisdiction?

Under Japanese law, the 'liquidation type' insolvency procedure is mainly the bankruptcy procedure. There are 2 (two) types of 'rehabilitation type' insolvency procedures: civil rehabilitation procedures and corporate reorganization procedures.

In case of bankruptcy which is regulated by the Bankruptcy Law, the cause for commencement of bankruptcy proceedings for a corporation is being unable to pay debts or insolvency, and the petitioners are the corporation (its directors, etc. can also file a petition) or their creditors. When the court makes a decision to commence bankruptcy proceedings, the right to manage and dispose of the assets belonging to the corporation is vested exclusively in the bankruptcy trustee appointed by the court, who aims to convert the assets into cash and to distribute it to creditors. When an order of commencement of bankruptcy proceedings is made against a debtor who is a corporation, the court may reach an assessment decision on the rights to seek damages based on the liability of the directors.

Civil rehabilitation procedures are often used as restructuring-type legal bankruptcy proceedings and these are regulated by the Civil Rehabilitation Act. The main difference from bankruptcy proceedings is that the cause for commencement of civil rehabilitation proceedings is that the occurrence of the cause for commencement of bankruptcy proceedings is sufficient. After the commencement of civil rehabilitation procedures, a corporation, in principle, carries out its business and has the right to manage and dispose of its assets.

Corporate reorganization procedures are regulated by the Corporate Reorganization Act. The main characteristics of corporate reorganization procedures are that they apply only to KKs, and, in principle, the right to manage and dispose of assets is vested in a trustee appointed by the court. In addition, the procedures in corporate reorganization proceedings are heavier than those in civil rehabilitation.

In insolvency proceedings (bankruptcy, civil rehabilitation, and corporate reorganization), under certain conditions after the commencement of proceedings, the trustee (supervisor or trustee in civil rehabilitation proceedings) may deny the effect of (i) acts that reduce the debtor's assets and (ii) payment or provision of security that harm equality among creditors, conducted by the debtor prior to the commencement of the procedures. Also, the original state of the debtor's property can be restored. This right is called the right of avoidance (*Hininken*), and its purpose is to achieve fair distribution to creditors.

E. Acquisition

12. Which methods are commonly used to acquire a company, e.g., share transfer, asset transfer, etc.?

To acquire a company, both a share transfer (share deal) and a business transfer/corporate split (*kaisha bunkatsu*) (asset deal) are commonly used. However, asset deals are sometimes structured as a combination of a corporate split to transfer subject assets to another company and a transfer of shares of such company.

13. What are the advantages and disadvantages of a share purchase as opposed to other methods?

In the case of a share purchase, under the principle of shareholder limited liability, in principle, the acquirer will not incur a loss exceeding the amount invested in acquiring the stock. Further, in the case of a share purchase, there is only a change in the controlling shareholder of the target company, and in principle there is no change in the legal relationship of the target company due to the transaction. Accordingly, typically the transaction procedures (including those for business permits and licenses) are simpler than for other methods. A share purchase is also simpler in that there is no need to prepare or keep legal disclosure documents or take creditor protection procedures (a public gazette notice, and individual letters or another public notice).

On the other hand, unlike a business transfer, in which the buyer can only succeed to the rights and obligations relating to the target business stipulated in the business transfer agreement in principle, a share purchase agreement cannot eliminate latent liabilities of the target company.

14. What are the approvals and consents typically required (e.g., corporate, regulatory, sector based and third-party approvals) for private acquisitions in your jurisdiction?

As for a share transfer, if the articles of incorporation of the target company stipulates stock transfer restrictions (a KK with all stock transfer restrictions), a resolution to approve the transfer by the approval body of the target company is required. Typically, approval of the board of directors meeting of the seller or the buyer is required for the execution of a share purchase as an important business execution decision; provided, however, that the transfer of subsidiary shares by a parent company requires the approval of the transferor company's shareholders meeting through a special resolution, the same as a business transfer, subject to the following conditions being met: (i) the book value of the subsidiary shares exceeds one-fifth of the total assets of the transferor company; and (ii) on the effective date of the transfer, the transferor company does not hold a majority of the total number of voting rights of the subsidiary. In practice, if contracts prohibit a change in the shareholder or provide it as grounds for termination, it may be necessary to obtain the consent of the counter parties (third parties) to these contracts.

On the other hand, as for a business transfer (asset deal), in principle, a special resolution of a shareholders meeting is required to transfer all or an important part of the business, or to accept the entire business of another company. The business transfer is a collection of transactions in which rights and obligations are individually transferred to the buyer. Accordingly, to transfer the obligations, contracts and employees that constitute the target business, the individual consents of the parties to the contracts, creditors and employees are required. Unlike a share transfer, in the case of a business transfer, as a general rule, business permits and licenses held by the company cannot be transferred to the buyer. If there is a provision that allows succession of the permits and licenses in the laws and regulations governing the permits and licenses, it is necessary to implement the procedures stipulated therein. If there is no provision to allow succession in these laws and regulations, the buyer needs to obtain new permits and licenses.

As for both a share transfer and a business transfer, a merger filing under competition law and a filing for FDI under the FEFTA may be required if certain conditions are met.

In highly regulated sectors such as aviation, freight forwarding, radio waves, broadcasting, banking, and insurance, there are various sector-specific regulations (other than the FEFTA). Depending on the highly regulated sectors involved, M&A transactions may require approval from, or registration or notification to, regulatory authorities, or if the percentage of voting rights held by foreign investors exceeds a certain threshold, the transaction may be disqualified from receiving business permits.

15. What are the regulatory competition law requirements applicable to private acquisitions in your jurisdiction?

Regardless of whether a target company is private or public, if the following applicable thresholds are satisfied, then each of (1) share acquisition, (2) business transfer, and (3) statutory merger/demerger require a prior clearance from the Japan Fair Trade Commission, the Japanese competition authority.

Please note that the following is an outline and that there are more detailed rules set out in the applicable laws.

(1) Share acquisition

(a) The voting rights ratio of an acquirer company (on a consolidated basis) in a target company newly becomes more than 20% or 50%;

(b) The acquirer company (on a consolidated basis) has a Japanese domestic turnover of more than JPY 20,000,000,000; and

(c) The target company group (i.e., the target company and its subsidiaries, not including the companies which remain under control of the seller company) has a Japanese domestic turnover of more than JPY 5,000,000,000.

In cases of collective share transfer, under which more than 2 (two) companies create a common holding company by share transfer, the same thresholds are applicable as those for statutory merger/demerger below.

(2) Business transfer

(a) An acquirer company (on a consolidated basis) of a target business/asset of a seller company has a Japanese domestic turnover of more than JPY 20,000,000,000;

(b) The target business/asset has a Japanese domestic turnover of more than JPY 3,000,000,000 and falls into any of the following (i) to (iii):

(i) the seller company's whole business;

(ii) the seller company's material business; or

(iii) whole or material part of the seller company's business-related fixed assets.

(3) Statutory merger/demerger

(a) One party (on a consolidated basis) has a Japanese domestic turnover of more than JPY 20,000,000,000; and

(b) At least one other party (on a consolidated basis) has a Japanese domestic turnover of more than JPY 5,000,000,000.

16. Are there any specific rules applicable for acquisition of public companies in your jurisdiction?

If an acquirer intends to acquire shares of a listed company such that its voting right ratio would exceed a certain threshold after such transaction, such acquisition requires a tender offer. This type of prior restraint rule is unique to Japan when compared to the tender offer rules of other countries, which require a tender offer only after the completion of an acquisition which has exceeded certain threshold. The most important rule in practice is the one third rule, under which an acquirer must make a tender offer if it intends to (i) acquire shares through off-market trading or on-market off-floor trading and (ii) its voting rights ratio would exceed one-third as a result of such acquisition (the "One-Third Rule").

In principle, Japanese tender offer regulations regulate off-market trading, but do not regulate the acquisition of newly issued shares unless certain exceptions are present. The Companies Act, rather than the FIEA, applies to the acquisition of newly issued shares that results in a shareholder holding a majority of voting rights. Under the Companies Act, although issuance of new shares is generally allowed only with approval of board of directors meeting of the issuing company, if the shareholders owning 10% or more of the voting power of the issuing company dissent from such acquisition, approval at a shareholders meeting of the issuing company is required.

Soft laws including the Fair M&A Guidelines and the Guidelines for Corporate Takeovers, published by METI, may also be applicable to the acquisition of public companies.

The amendment to the FIEA, including revisions to the tender offer regulation, was enacted on May 15, 2024. The amended law will come into effect within two years from the date of promulgation, but the current law will apply to tender offers completed or initiated before the enforcement of the amended law. Currently, discussions are underway to prepare government ordinances for the implementation of the amended law (See our answer to Question 30 below).

17. Is there a requirement to disclose a deal, for instance to regulatory authorities? Is it possible to keep a deal confidential?

In Japan, cases in which transactions must be made public or disclosed to regulatory authorities include the following:

A public offering or a secondary distribution of securities requires securities registration statements to the prime minister.

If a company that is required to submit a securities report (i.e., a company that has a continuous disclosure obligation) issues new shares or disposes of treasury stock, it basically falls under the public offering, and if the issue price is JPY 100,000,000 or more, a securities registration statement must be filed. In the case of a company that does not have a continuous disclosure obligation, it may not qualify as a public offering under certain conditions, such as if the number of persons receiving solicitation is less than 50. The regulations similar to those for a public offering of securities apply to a secondary distribution of securities.

As for a tender offer, public notice of the commencement of a tender offer is required and a tender offer registration statement must be submitted to the prime minister.

Companies that are subject to continuous disclosure obligations must submit an extraordinary report to the Prime Minister when certain events occur that have a significant impact on investment decisions, such as organizational restructuring. Additionally, listed companies must make timely disclosures in accordance with stock exchange rules.

Even if a non-listed company undergoes organizational restructuring such as a merger, it is required under the Companies Act to comply with creditor objection procedures (public notice and individual notice) and to prepare and maintain certain disclosure documents at its head office.

If a transaction requires a merger control filing, an FDI filing or other sector-specific proceedings, the transaction needs to be disclosed to the regulatory authorities.

On the other hand, there is no need to disclose the names of shareholders in the commercial register of a K.K.

Under the current system, the issuing company and other shareholders can identify nominee shareholders through shareholder registers and annual reports. However, unless the large-volume shareholding reporting system applies (i.e., more than 5% shareholding in a listed company), there is no mechanism for the issuing company or other shareholders to ascertain the individuals or entities with the authority to direct voting rights or invest in the relevant shares. Recognizing the significance of fostering constructive dialogue between companies and investors, discussions are underway at the the Financial Services Agency (the "FSA") and other authorities to revise the system concerning beneficial owners. The aim is to enable issuing companies and other shareholders to more efficiently discern beneficial owners and the extent of their shareholdings.

18. Can sellers be restricted from shopping around during a negotiation process? Is it possible to include break fee or other penalty clauses in acquisition documents to procure deal exclusivity?

Shopping around during a negotiation process may be desirable in public deals for directors to fulfill the duty of care as a prudent manager, but is not mandatory. Therefore, it is not prohibited to restrict sellers from shopping around during a negotiation process. A break fee clause is a possible way to restrict the sellers from shopping, but if the amount of a break fee is too high, there is a risk that it will be viewed as problematic from the perspective of duty of care as a prudent manager.

19. What are the conditions precedent in a typical acquisition document? Is it common to have conditions to closing such as no material adverse change?

It is customary to incorporate conditions precedent, particularly when there's a time gap between signing and closing. While the parties often negotiate specific conditions that reflect the outcome of the buyer's due diligence on the target, we have seen many acquisition contracts that include certain conditions precedent including the following:

- The accuracy of representations and warranties at both the signing and closing dates;
- The absence of covenant breaches by the parties;
- The third-party consents
- The regulatory approvals; and
- The approvals for the share transfer by the target company's board of directors meeting.

As mentioned above, in Japanese law governed transactions, the conditions precedent are often not limited to third-party consents and regulatory approvals. We have seen certain transactions in which "no material adverse change" ("**MAC**") is included as a condition precedent. However, we have also seen cases where negotiations are made to remove the MAC clause, or transactions where the definition of the MAC is limited to certain objective criteria.

20. What are the typical warranties and limitations in acquisition documents? Is it common to obtain warranty insurance?

The typical warranties are (i) fundamental warranties (e.g., organization, power, capitalization, authority and no conflicts),

(ii) tax warranties and (iii) general warranties (e.g., financial statements, absence of material changes, compliance with laws, permits, property, intellectual property, contracts, litigation, and labor).

It is common practice to impose certain limitations on an indemnification liability for breaches of the warranties, such as survival period, cap, deductible and de-minimis.

Traditionally, warranty insurance was uncommon in Japan, but opportunities to use it have started to increase in recent years.

In particular, such opportunities include the following transactions:

- Bidding project where the seller is a PE fund and aims for a clean exit.
- Cases where the seller is an individual and it is necessary to supplement the seller's creditworthiness.
- Cases where the seller is management and the buyer wants to avoid disputes with the seller after closing, especially when management is being retained for a certain period of time.
- Bidding project where the bidder wants to differentiate itself from other bidders by using warranty insurance.

The number of warranty insurance deals is increasing as Japanese insurance companies have started providing the service and procedures can now be completed in only the Japanese language with no English translation required.

21. Is there a requirement to set a minimum pricing for shares of a target company in an acquisition?

There is no such requirement in general. However, the consideration in a share purchase agreement should be at least JPY 1 (one) (not zero).

22. What types of acquisition financing are available for potential buyers in your jurisdiction? Can a company provide financial assistance to a potential buyer of shares in the target company?

In typical Japanese acquisition financing, (i) the acquirer (sponsor) establishes an Special Purpose Company ("**SPC**") in Japan and the SPC receives equity capital from the acquirer in the form of common stock, (ii) the SPC receives a senior loan from the senior lender (financial institution), (iii) the SPC uses these funds raised to purchase the shares of the target company and repay the target company's existing loans. In certain deals, the SPC may receive mezzanine loans from mezzanine lenders (financial institutions or mezzanine funds).

In Japan, it is not possible to comprehensively set security interests on multiple types of assets or attain perfection against third parties in 1 (one) procedure. Therefore, it is necessary to establish security interests for each type of asset. In acquisition financing, security interests (pledges) are usually set on the shares of the borrower (SPC) and other target company group. Security interests would also be created in other important types of assets.

In Japan, no law prohibits a target company group from providing guarantees or collateral (financial assistance) with respect to acquisition funds raised by the acquirer for the benefit of the acquirer's creditors; provided, however, that in cases where the target company has remaining shareholders other than the acquirer, such financial assistance may result in a breach by directors of the target company group of the duty of care of a prudent manager under the Companies Act.

23. What are the formalities and procedures for share transfers and how is a share transfer perfected?

In order to transfer the shares of a KK issuing share certificates, it is necessary to deliver the share certificates to the transferee, and the delivery of share certificates is a requirement for the transfer of share ownership. Therefore, the seller needs to physically deliver share certificates at the closing.

A transfer of shares of a KK which does not issue share certificates is completed with the agreement of the parties, and the share transfer is perfected by entry of a change of holders in the shareholder register. Therefore, at the closing, the seller is usually required to deliver "request for entry of a change of holders in shareholders ledger" (*kabunushi meibo meigi kakikae seikyu sho*) in connection with its shares duly executed by the seller to enable buyer to reflect the completion of the acquisition in the shareholders ledger of the target company without involvement of seller.

As discussed in our answer to Question 14 above, if stock transfer restrictions are stipulated in the articles of incorporation, the transfer must also be approved by the target company's board of directors meeting, etc.

24. Are there any incentives (such as tax exemptions) available for acquisitions in your jurisdiction?

In principle, non-Japanese residents and overseas corporations are not subject to taxation in Japan with respect to the capital gains or losses arising from the transfer of shares of Japanese corporations unless such capital gains or losses are attributable to their permanent establishment.

However, in cases where such transfer of shares falls under the "25-5 per cent Rule" or the "transfer of the shares of the real estate-related corporation", capital gains or losses arising from such transfer of shares are subject to taxation unless this taxation is exempted under applicable tax treaty.

For example, under the tax treaty between Japan and the United States, capital gains or losses arising from transfer of shares which falls under the "25-5 per cent Rule" are exempt from taxation in Japan.

F. Enforceability

25. Can acquisition documents be executed in a foreign language?

Yes. There are no specific language requirements for the execution of share purchase agreements under Japanese law.

If the acquisition documents (e.g., those for organizational restructuring) are required for commercial registration, Japanese originals or Japanese translations may be required.

26. Can acquisition documents be governed by a foreign law?

Yes. Acquisition documents can be governed by a foreign law with respect to obligatory effect of the contracts.

It should be noted, however, that even when a share purchase agreement stipulates that the governing law shall be a non-Japanese law, it is likely that certain aspects of a Japanese target company (including share transfer procedures, establishment and perfection of collateral, and mandatory regulations) will still be governed by the Japanese law.

27. Are arbitration clauses legally permissible or generally included in acquisition documents?

Yes, arbitration clauses are legally permissible, and are sometimes included in acquisition documents for cross-border transactions.

28. Are there any specific formalities for the execution of acquisition documents? Is it possible to remotely/digitally sign documents?

There are no specific formalities (e.g., notary) for the execution of a share purchase agreement. In general, it is possible to remotely/digitally sign a share purchase agreement. In that case, it is desirable for the parties to stipulate the rules on this in the "Counterparts" clause.

If documents required for commercial registration are electronically executed, an electronic signature in a certain format is required.

G. Trends and Projections

29. What are the main current trends in M&A in your jurisdiction?

Traditionally, many listed shares in Japan were cross-held by their business partners (mainly by other listed companies) who acted as loyal and management-friendly shareholders. Also, domestic institutional investors (particularly banks, pension funds, insurance companies and other financial institutions) were historically passive with their votes in Japanese listed companies, rarely voting against the company's proposals. Cross-shareholdings and loyal shareholders, coupled with a lack of qualified outside directors in the listed companies, result in less stock market discipline and ineffective dialogue with minority shareholders, and cross-shareholdings were criticized as having lower capital efficiency.

Recent corporate governance reforms on Japan's Stewardship Code, Japan's Corporate Governance Code, rules for interested party transactions such as the Fair M&A Guidelines, and the Guidelines for Corporate Takeovers published by METI, were taken to address these criticisms and improve the creditworthiness of the Japanese stock market. In March 2023, the Tokyo Stock Exchange (the "**TSE**") issued a directive, encouraging listed companies to adopt management strategies that consider the cost of capital and stock prices. In January 2024, the TSE commenced the publication of a roster featuring companies that have undertaken such measures. These corporate governance reforms and other recent developments have required greater stock market discipline of listed companies, such as using reasonable efforts to achieve sustainable growth and enhancing capital efficiency.

In fact, we have recently seen more transactions involving listed subsidiaries and affiliates (including acquisitions of listed subsidiaries and affiliates by their parent companies, management buyouts and sales of shares of listed subsidiaries or affiliates to third parties), a growing trend of shareholder activism and unsolicited transactions entered into not only by financial investors but also by strategic companies. In 2024, the number of delisting cases due to M&A transactions and intra-group reorganizations exceeded the number of initial public offerings.

30. Are any significant development or change expected in the near future in relation to M&A in your jurisdiction?

With Japan's amended Corporate Governance Codes as a backdrop, governance discipline especially for companies listed in the Prime Market will be required more than ever, and it is likely that there will be more transactions involving listed subsidiaries or affiliates, including acquisitions of listed subsidiaries or affiliates by their parent companies, management buyouts and sales of shares of listed subsidiaries or affiliates to third parties. In addition, shareholder activism will continue to be operational and the burgeoning trend in unsolicited deals by strategic investors may continue.

With the formulation of soft laws that encourage the formation of fair rules regarding M&A transactions, corporate awareness of ensuring fairness has increased, and the rate of opposition from institutional investors to the introduction of takeover defense measures has increased. According to METI, it is expected that M&A transactions will be used more than ever as a corporate strategy to address today's increasingly complex management issues, and on August 31, 2023, METI published the "Guidelines for Corporate Takeovers" focusing on how the parties involved should behave in cases where the evaluation of an acquisition proposal is divided between the acquirer and the target company.

In fact, since the release of these guidelines, we have seen several unsolicited acqusition proposals or competing bids targeting Japanese companies from well-known corporations and private equity funds, and similar proposals may increase in the future.

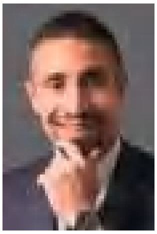
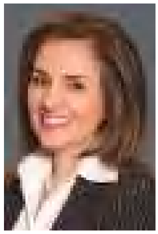
Additionally, the number of cases in which activist proposals receive support from institutional investors is increasing. In the future, it is possible that there will be an increase in transactions based on the influence of activists (e.g., sale of the target company itself or sale of non-core businesses).

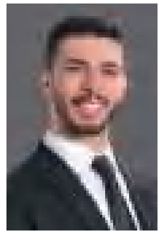
In December 2023, the FSA unveiled new policies aiming to revise the tender offer regulation and the large-volume shareholding reporting system. These changes are geared towards enhancing transparency and fairness in securities transactions that significantly impact corporate control. To achieve this goal, (i) the One-Third Rule is proposed to extend to on-market on-floor trading and (ii) the threshold for the One-Third Rule is set to be lowered from one-third to 30%. Additionally, the regulatory authorities are set to strengthen their response to violations of the large-volume shareholding reporting system. A legal framework will be developed to facilitate regulatory authorities in issuing corrective action orders against such violations. The amendment to the FIEA, including revisions to the tender offer regulation and the large-volume shareholding reporting system, was enacted on May 15, 2024. The amended law will come into effect within two years from the date of promulgation. Currently, discussions are underway to prepare government ordinances for the implementation of the amended law. It is advisable to stay vigilant for upcoming amendments to these governtment ordinances, as these policy changes signal a commitment to adapt and refine the regulatory landscape in the realm of securities transactions.

In the context of delisting following an MBO or the full acquisition of a listed subsidiary by its parent company, ensuring that general shareholders receive fair consideration is of paramount importance. The Fair M&A Guidelines issued by METI in June 2019 merely set forth best practices and do not impose any legal obligations. As of March 2025 (the date of this article), the TSE is reviewing the Code of Corporate Conduct under the listing rules to ensure a more effective framework for maintaining fairness in delisting transactions. Specifically, the review includes: (i) revising the requirements regarding the opinion from the special committee affirming that the transaction is not detrimental to minority shareholders by explicitly incorporating the considerations outlined in the Fair M&A Guidelines; and (ii) enhancing disclosure requirements concerning the assumptions and conditions underlying stock valuation.

JORDAN

HAMMOURI & PARTNERS



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A. General

1. What is the main legal framework applicable to companies in your jurisdiction?

The main legal framework applicable to companies in the Hashemite Kingdom of Jordan (hereinafter referred to as "**Jordan**") includes the following legislations:

- The Jordanian Companies Law No. 22 of 1997 and its amendments (hereinafter referred to as the "**Companies Law**");
- The Companies Regulation No 77 of 2008;
- The Companies Liquidation Regulation No.6 of 2021;
- The Insolvency Law No. 21 of 2018;
- The Insolvency Regulation No. 8 of 2019;
- The Regulating Insurance Activities Law No. 12 of 2021, and
- The Banking Law No. 28 of 2000 and its amendment.

2. What are the most common types of corporate entities (e.g., joint stock companies, limited liability companies, etc.) used in your jurisdiction? What are the main differences between them (including but not limited to with regard to the shareholders' liability)?

The most common types of corporate entities used in Jordan are:

- **A Joint Partnership Company**: This type of company consists of 2 (two) types of shareholders; The first type is the general shareholders, who manage the company and are also jointly and severally liable for all the company's debts and liabilities with their private assets. The second type of shareholders in joint partnerships is the limited shareholders, who contribute to the capital of the company without having the right to manage the company or to realize its operations and the liability of each one of them towards the company's debts and liabilities is limited to their share in the capital of the company.

- **A Limited Liability Company**: This type of company has only 1 (one) type of shareholder. The company's liability shall be considered independent from the liability of every shareholder in it. The company's assets and property shall be liable for its debts and obligations. The liability of any shareholder therein for these debts, obligations and losses is limited to their shares in the company.
- **A Public Shareholding Company**: This type of company has only 1 (one) type of shareholder. The financial liability of the public shareholding company is deemed independent from the financial liability of each shareholder in the company. The company shall, with its assets and properties, be liable for its debts and obligations and the shareholders shall not be liable before the company for any such debts and obligations, except in proportion of the shares they own in the company.
- **A Private Shareholding Company**: This type of company has only 1 (one) type of shareholder. The financial liability of the public shareholding company is deemed independent from the financial liability of each shareholder in the company. The company shall, with its assets and properties, be liable for its debts and obligations and the shareholders shall not be liable before the company for such debts and obligations, except in proportion of the shares they own in the company.
- **A Foreign Operating Company**: This type of company is a company or an entity which is registered outside Jordan, the headquarters of which are in another country and the nationality of which is considered non-Jordanian. In terms of its nature, it shall be divided into 2 (two) types:
  - Companies operating for a limited period, which are awarded tenders in order for them to realize their work in Jordan for a limited period of time. The registration thereof shall cease upon the completion of such work, unless the said company obtains new contracts, in which case its registration shall extend to cover the execution of such work. Its registration shall be terminated after completion of all its work in Jordan and after its rights and obligations are settled.
  - Companies operating permanently in Jordan under license by the competent official authorities in Jordan.
- **A Foreign Non – Operating Company:** This type of company is a company or an entity which has its regional or representative office in Jordan for operations that it conducts outside Jordan for the purpose of using such a regional or representative office for managing its operations and for coordinating them with its headquarters. The company is prohibited from carrying out any business or commercial activity inside Jordan, including the operations of commercial agents and middlemen/intermediaries. Otherwise, the company shall be subject to cancellation of its registration, and it will be responsible for compensation of any loss or damage it may have caused to others.

- **An Exempt Company**: This type of company is a company that is either a public shareholding company, a limited liability company or a private shareholding company, which is registered in Jordan and carries out its operations outside of Jordan. The company is prohibited from offering its shares for public subscription in Jordan.
- **A Holding Company**: This type of company is a public shareholding company, which has financial and administrative control over 1 (one) or more companies, called subsidiary companies, in one of the following methods:
  - o To acquire more than one half of the company's share capital and/or
  - o To have control over the formation of its Board of Directors.

    The company is prohibited from acquiring any stocks or shares in joint partnerships and the subsidiary company shall be prohibited from acquiring any stocks or shares in the holding company. The holding company shall appoint its representatives in the Boards of Directors of the subsidiary company in proportion to its shareholding therein. It may not participate in the election of the remaining members of the board of directors or the management committee, as the case may be**.**
- **Venture Capital Company:** This type of company is a company that is established with the intention of direct investment or establishing funds to contribute and invest in the capital of companies with high growth potential, the shares of which are not listed in the financial/stock market in return for obtaining returns when selling their contributions or shares in the capital of the invested company.

In conclusion:

Out of the various corporate entities that can be registered in Jordan, the most common types used in Jordan are:

- The limited liability company (where shareholders are only liable in the amount of their shares),
- The public shareholding company (where shareholders are only liable in the amount of their shares),
- The private shareholding Company (where shareholders are only liable in the amount of their shares),
- The foreign operating company (where the company does operate within Jordan, but is a foreign entity registered outside of Jordan, with headquarters outside of Jordan), and
- The foreign non-operating company (where the company does not operate within Jordan).

B. Foreign Investment

3. Are there any restrictions on foreign investors incorporating or acquiring the shares of a company in your jurisdiction?

Restrictions on Foreign Investments in Jordan: Pursuant to the legislations that govern foreign investments, restrictions are imposed on foreign investment by means of "closed" sectors in which it is not allowed for a foreign investor to own fully or contribute in whole or in part to it[1]. Examples of those "closed" sectors in Jordan include, but are not limited to, bakeries of all kinds, trade in weapons

1 Article 13 of the Investment Environmental Governance Regulations No. 7 for the year 2023

and investigation and security services. In addition, there are some sectors in which the percentage of the foreign investor contribution shall not exceed 50% of the total capital of the company, such as engineering consulting and services, construction and related services and food and beverages services, except for tourist restaurants and what is provided in hotels and motels.

4. Are there any foreign exchange restrictions or conditions applicable to companies such as restrictions to foreign currency shareholder loans?

In relation to merger and acquisition and shareholders loan, the parties have the right to agree on the currency they would like to pay in. For share capital of companies, shares must be valued and divided in JOD (Jordanian Dinars) currency. However, there is nothing to prevent any person from repaying their loans in domestic currency or in foreign currency (it depends on the agreement between the borrower and the lender). On a different vein, and in relation to non-operating entities and persons who do not carry on business in Jordan wishing to obtain loans from banks in Jordan, under Article 3 of Direct Facilitation of Foreign Currency and Limitation on Granting Credit Facilitation to Non-Operating Businesses in Jordan and/or Obtaining Funds to carry on Businesses outside Jordan Regulations No. 2 for the year 2021 issued by the Central Bank of Jordan, banks in Jordan are not allowed to grant, whether directly or indirectly, any credit facilities in Jordanian Dinar or in any other foreign currency to persons (including Exempted Companies, Companies, Non-Operating Foreign Entities) who do not carry on businesses in Jordan and/or to businesses who are operating outside of Jordan. However, the same Article, 3/B, has provided exceptions to those restrictions, most notably to mention; allowing credit facilities in Jordanian Dinar or any other foreign currency to such persons and entities provided that, the entity must be registered in the free zone, or development or special areas in Jordan in accordance with the applicable laws in force, allowing credit facilities for the purposes of exporting goods outside of Jordan, without such goods passing through Jordanian territories, provided all necessary actions must be taken to ensure cash flow to the customer bank and to agent bank in syndicated loans is undisturbed, allowing indirect credit facilities among banks, allowing indirect credit facilitation that contains "Performance Related Contingencies", as set out in capital governance regulations pursuant to Basel Framework III No (67/2016), and other exceptions.

5. Are there any specific considerations for employment of foreign employees in companies incorporated in your jurisdiction?

Conditions for hiring foreign labour: In the Jordanian Labor Law No. 8 of 1996 and its amendments, foreign labour is regulated by Article 12, that states that no non-Jordanian worker is authorized to work except those who have received the approval of the Minister of Labour. It is also conditional that the work the foreign employee will perform in Jordan entails an experience and qualification that are not available in Jordanian workers or that the amount of qualified Jordanian workers with a specific expertise does not meet the demand in the market for that expertise. However, should there be a supply of Jordanian experts, technicians, and workers who met the criteria, they will be given the priority for the employment.

- **Required Permit for Hiring Foreign Labor**: Any non-Jordanian worker (with the exception of the children of Jordanian women married to non-

Jordanian men) is required to obtain an employment permit from the Minister of Labour before his/her employment in Jordan. The duration of this permit is limited to 1 (one) year only, but is subject to renewal. Should the permit be renewed, then its new duration will be calculated from the expiry date of the last employment permit of the foreign worker. The employment permit (and any renewal) for each non-Jordanian worker is also subject to a monetary fee to be paid by the employer to the Ministry of Labour. The amount of this monetary fee is determined in accordance with the Instructions for The Conditions and Terms of Use and Employment of Non-Jordanian Workers of 2012 and its amendments issued for this purpose. In addition to the aforementioned monetary fee, an additional amount will also need to be paid by the employer to the Ministry of Labour for each employment permit issued or renewed by the Ministry (and in accordance with the Instructions for The Conditions and Terms Of Use And Employment Of Non-Jordanian Workers of 2012 and its amendments issued for this purpose), which shall be allocated to the technical and vocational education, training and learning fund.

- **Exemption For Hiring Foreign Domestic Helpers:** An employer with severe disabilities (or his/her guardian) can be exempt from paying the fees for hiring foreign labour for assistance and from additional amounts for 1 (one) foreign worker via the Minister of Labour's decision by way of a recommendation from the Ministry of Social Development. This is conditional on the disabled individual being in dire need for assistance from others to meet his/her daily life requirements, and that the level of his/her (or his/her guardian's) income necessitates an exemption. It is also provisional on the duties of the foreign worker being limited to aiding the disabled individual.
- **Restrictions Specific to Foreign Non-Operating Companies:** Pursuant to Article 249 of the Companies Law, the number of Jordanian employees in a foreign non-operating company in Jordan should not be less than half of the overall number of the company's employees.

C. Corporate Governance

6. What are the standard management structures (e.g., general assembly, board of directors, etc.) in a corporate entity governed in your jurisdiction and the key liability issues relating to these (e.g., liability of the board members and managers)?

The standard management structures for corporate entities in Jordan are the general assembly (both the ordinary general assembly and the extraordinary general assembly) and the board of directors.

The key lability issues relating to the management structure are as follows:

- On the matter of the violation of company by-laws by the chairman and the members of the board of directors:
    - o Pursuant to Article 157 of the Companies Law, the chairman and the members of the board of directors shall be held accountable towards the company, its shareholders and other parties for every violation of the laws and regulations in force and/or of the company's memorandum of association and/or for any error in the management of the company that was committed by any or all of them. Should the general assembly

consent to absolving the board of directors from its responsibility, this shall not prevent legal recourse being taken against the chairman and the board of directors.

- o The liability stipulated above shall be either personal (borne by 1 (one) or more members of the board of directors) or collective (borne by the chairman and the members of the board of directors) and in the case of the latter, they shall be equally and jointly liable for compensating the damage/s that resulted from the aforementioned violation or error in the management of the company. Should a member of the board of directors prove that they objected to the decision relating to the violation or error in the management of the company in the minutes of meeting for the meeting, that board member shall not be liable for the above-mentioned compensation. However, in all cases, no claim relating to this responsibility can be raised after the lapse of 5 (five) years from the date that of the general assembly meeting during which the company's annual balance sheet and its final accounts were approved.

- On the matter of the liability of the company's chairman, board of directors' members, general manager and its employees in relation to disclosing the company's secrets: Pursuant to Article 158 of the Companies Law, the company's chairman, members of the board of directors, its general manager or any of its employees shall be prohibited from disclosing to any shareholder in the company or to another party any information or data related to the company and considered of a confidential nature; if that information was acquired in their official capacity in the company, or as a result of performing any business for or with the company. Should any of them be in breach of this obligation, then they are at the risk for dismissal and being claimed for compensation for the damage/s that has been incurred on the company. Information permitted to be published in accordance with laws and regulations in effect shall be excluded from the said obligation. Noting that should the general assembly consent to releasing the chairman and members of the board of directors from their responsibility, this shall not absolve them from liability.

- On the matter of the responsibility of the company's chairman, board of directors' members, for imprudence and negligence in the management of the company: Pursuant to Article 159 of the Companies Law, the company's chairman and board of directors' members shall be equally and jointly responsible towards shareholders for any imprudence or negligence in the management of the company. In the event of the liquidation of the company and the appearance of a deficit in its assets in a manner that renders the company unable to meet its obligations and should the reason for such a deficit be the imprudence or negligence of the chairman and members of the board of directors or its general manager or auditors, the court shall have the right to hold any of the previously mentioned individuals liable for the debts of the company, in full or in part, as the case may be. The court shall determine the amounts that those individuals are liable for and whether they are jointly liable in the loss or not.

- On the matter of the right to file for court action: Pursuant to Article 160 of the of the Companies Law, the

Companies Controller at the Ministry of Industry, Trade & Supply (hereinafter referred to as the "**CCD**"), the company and any shareholder shall have the right to file a case with the court pursuant to the provisions of the abovementioned Articles 157, 158 and 159.

- On the matter of the objection of the board of directors' chairman and members to the discharge of responsibility issued by the company's general assembly: Pursuant to Article 161, the decision issued by the general assembly on the discharge of responsibility shall not be considered as evidence except after the presentation of the company's annual accounts and auditors' report to the general assembly. This discharge of responsibility shall only include issues which the general assembly was made aware of/was informed of.

It should be noted that public shareholding companies in Jordan are subject to corporate governance regulations that have been issued, however; while limited liability companies and private shareholding companies are also subject to corporate governance guidelines and regulations, those have not been issued/implemented as of yet. It should also be noted that, pursuant to Article 89 bis of the Companies Law, any private shareholding company with an issued share capital that exceeds 500,000 Jordanian Dinars is also subject to the provisions of Article 151 of the Companies Law that states that they are subject to the corporate governance regulations of public shareholding companies.

7. What are the audit requirements in corporate entities?

In accordance with Articles 192 – 203 of the Companies Law, a very brief and general overview of the most important audit requirements, is as follows:

- Pursuant to Article 192 of the Companies Law, companies registered in Jordan must appoint an auditor taking into consideration the following:
  - o The general assembly of a public shareholding company, a limited liability company and a private shareholding company shall elect 1 (one) or more licensed auditors from amongst the licensed auditors in Jordan for 1 (one) year, renewable and shall determine their remuneration or authorize the board of directors to determine such remuneration. The company shall inform the elected auditor by writing thereof within 14 days from the date of his/her election.
  - o If the company's general assembly fails to elect an auditor, or if the auditor who has been elected apologized or declined to carry out the work for any reason whatsoever, or in case of death, the board of directors should recommend to the CCD at least 3 (three) auditors to choose from within 14 days from the date of the vacancy of such post.
- Pursuant to Article 193 of the Companies Law, the auditor's duties are as follows:
  - o To monitor the company's operations.
  - o To audit its accounts in accordance with recognized auditing rules, auditing profession principles and scientific and technical standards.
  - o To revise the financial and administrative by-laws of the company and its internal financial controls and to ensure their suitability for the company's

business and safeguarding of its assets.

- o To perform verification of the company's assets and its ownership thereof and to ascertain the legality and correctness of the company's obligations.
- o To review the board of directors' decisions and instructions issued by the company, and any statements which their work requires their acquirement and verification.
- o To carry out any other duties the auditor must perform in accordance with the Jordanian Companies Law, the Auditing Profession Law No. 73 of 2003 and other regulations related thereto.
- o To present a written report addressed to the general assembly. The auditors or the person delegated by them shall recite the report before the General Assembly. In accordance with Article 195 of the Companies Law, the content of this report includes the following:

i- That the auditor has obtained the information, statements and clarifications he/she deemed necessary to perform his work.

ii- That the company maintains organized accounts, registers and documents. The company's financial statements must be prepared in accordance with internationally recognized accounting and auditing principles which can justly show the financial position of the company, its cash flow, and that its balance sheet and profit and loss account confirm with the records and books.

iii- That the auditing procedures carried out by him/her for the company's accounts form, in his/her opinion, a sufficient reasonable basis to express his/her opinion regarding the company's financial position, results of its operations and cash flow in accordance with internationally recognized auditing rules.

iv- That the financial statements included in the board of director's report addressed to the general assembly comply with the company's records and registers.

v- Any violations of the provisions of the Companies Law or the company's memorandum of association that have taken place during the year in question and which have had a material effect on the results of the company's operations and its financial position and whether any of these violations still exist to the extent of the limits of the information available to him/her, or that he/she should know by virtue of his/her professional duties.

- o Pursuant to Article 198, the auditor's attendance of a general assembly meeting shall be via an invitation sent to the auditor alongside a copy of the reports and statements sent by the board of directors and the auditor or his/her representative shall attend that meeting.
- o Pursuant to Article 200, should the auditor become aware of any violation by the company of the provisions of the law and/or the company's memorandum of association and/or any significant financial issues, which may negatively impact the company's financial or administrative position, they should immediately notify the chairman of the board of directors, the CCD, the Financial Instruments Commission and the Market for Financial Instruments in writing as soon as they discover (or become aware of) those matter/s.

D. Shareholder Rights

8. What are the privileges that can be granted to shareholders? In particular, is it possible to grant voting privileges to shareholders for appointment of board members?

Under Jordanian law, there are certain privileges that could be granted to shareholders in a company depending on the type of company. For example, shareholders could have pre-emptive rights (first refusal), which will give the right to shareholders to buy another shareholder's share in a company if such shareholder is offering their shares for sale. In private shareholding companies, another example of shareholders' rights is higher value of dividends, by creating more than 1 (one) share classes and each class would have a different value of dividend distributed to its holder. Also, the right for first buyers of new allotted shares of the company, and others. A filed Articles of Association ("**AoA**") of a company in Jordan is the document that will apply and take precedence over any other agreement or document signed between shareholders. AoA must not contradict the Companies Law. Agreeing on certain shareholders to appoint board of directors' members is not an action that is in conformity with the Companies Law since this is considered one of the company's powers and authorities, to be implemented through its general assembly. If one shareholder in a company holds a share of 75% or more, then said shareholder will be able to pass a special resolution alone, which consequently means that such shareholder can alone appoint the board of directors. One way to ensure all shareholders are involved in passing special resolutions is by increasing the percentage of passing special resolutions from 75% to 100%. However, lowering the percentage of passing special resolution to become below 75% is not allowed.

In a private shareholding company, it is allowed to have in the AoA privileges allocated to a certain class of shareholders; For example, a certain class of shareholders will have the privilege to appoint directors in the company, but also among such class of shareholders, still the percentage of passing special resolution by at least 75% of the shareholders' holding shares in a company must be also observed.

9. Are there any specific statutory rights available to minority shareholders available in your jurisdiction?

In Jordan, there are many rights for minority shareholders. For specific minority rights, we could mention the following:

- Under Article 65/B and 67 of the Companies Law for limited liability companies, Article 77 bis, Article 79/B bis for Private Shareholding Companies, Article 175/A, B for public shareholding companies, all special resolutions must be passed by at least 75% of the extraordinary general assembly, including resolutions on amending Memorandum and AoA, appointment and dismissal of directors (unless in private shareholding companies if the director was appointed by a specific class then this class would dismiss said director), selling the company's assets, merging and acquiring 50% or over of another company's shares, capital appreciation and depreciation, resolution to dissolve the company, and anything else that relates to the general assembly of the company.
- 25% of the shareholders of the company may request the company to convene a general assembly meeting, and 15% of the shareholders may request to the company controller to compel the company to convene general assembly meeting.

- In public shareholding companies, and in limited liability companies, under Article 107 of the Companies Law, shareholders who hold at least 20% of the company's shares have the right to object in the first general assembly meeting on the establishment expenses of the company. Such objection should be submitted to the company controller who will try to settle such objection. If such was not settled, the shareholders representing 20% of the shares may bring this objection to the court and wait for a court decision on this matter. During this time, the objection being heard at court will not affect the company's business and dealings.
- Under Article 274 and 275 of Companies Law, the right for every shareholder to review the public and private documents of the company is stipulated, and every shareholder has the right to request a certified copy of such documents. In addition, shareholders holding at least 10% of the company's shares or four directors of the company, in a public shareholding company, a private shareholding company, a limited liability company can request the company controller to inspect the company's books, deals and documents. If the Company Controller accepts that there is something that needs to be inspected, the Company Controller will appoint an expert to review the company's documents and eventually request for the company to re-comply with certain failures or otherwise the company would be referred to the court for the court to decide on the appropriate remedy for the company's failures in its conducting business, after inspection as explained above.
- Under Article 98/D of Companies Law and reference to public shareholding companies, it is stated that all shareholders have the right to review the company books and documents related to their shares for whatever reason, and have the right to review all company's books and documents generally for a reasonable reason. Shareholders also have the right to request a copy of such books and documents archived at the company in exchange of reasonable fees. It is important to note that this also applies to other types of companies as the general rule is if there is no special provision provided under the Companies Law for a certain company, then the provisions of the Public Shareholding Companies will fill the gaps and apply. This is also applicable on limited liability companies pursuant to Article 76, which states if there is no special provision for limited liability companies in the Companies Law, then the provisions of the Public Shareholding Companies will apply. Accordingly, and pursuant to Article 144 of the Companies Law, each shareholder is entitled to receive by the company board of directors an invitation to attend a general meeting of the company. Further, attached with the invitation would be the company financial accounts, balance sheets, auditor report and additional data about the company.
- All in-kind contribution shareholders have the right in the extraordinary general assembly meeting of their company to object to the resolution which values their in-kind capital contribution before the competent authority in Jordan within 15 days from the date of said extraordinary meeting, provided however, such shareholders have noted their objections on the meeting minutes of said meeting. Noting that such objections may not affect the operation of the company.

10. Is it possible to impose restrictions on share transfers under the corporate documents (e.g., Articles of Association or its equivalent in your jurisdiction) of a company incorporated in your jurisdiction?

Yes, it is possible to include restrictions on share transfers under the duly filed AoA of the company as the AoA always take precedent over any other document in the event of disparities among such documents. Shareholders could include pre-emptive rights (right of first refusal) and also, they could include right to first subscribers, each in accordance with the shareholding percentage, in the event of the company allotting new shares.

11. Are there any specific concerns or other considerations regarding the composition, technical bankruptcy and other insolvency cases in your jurisdiction?

Liquidation occurs when the company is dissolved either voluntary or involuntary. usually because it is unable to carry on its business. There are certain considerations that should be noted in this regard, especially with the new amendments of the Companies Law No. 20 of 2023 that came into force in November 2023. According to the amendments on the Companies Law, liquidation generally will be more connected to the Insolvency Law No. 21 of 2018. Certain considerations to note regarding insolvency is that although the Insolvency Law requires detailed documents and the relevant authority to inspect the company situation, the company might file a fraudulent insolvency application to evade its liability. Insolvency is an application submitted to the competent court by the relevant authority or by an individual or a company to declare that they are unable to pay their debts anymore. The court will look at the submitted evidence and take a decision on the matter and appoint a qualified insolvency practitioner to liquidate the company. Creditors should register their debts with the qualified insolvency practitioner. Liquidation under the Companies Law, could be by the company itself as a voluntary liquidation by passing a special resolution, or could be involuntary liquidation in certain instances such as if the company has made losses exceeding three quarters of its share capital Article 75/B of Companies Law. Another concern to note is that if the company is subject to insolvency or liquidation proceedings, creditors might wait for lengthy period of time before their debt can be paid off, especially if they are not secured creditors.

In the context of a merger and acquisition, companies must have in some cases a minimum share capital, and if such company failed for example to meet this minimum share capital requirement, this might be considered by the relevant authority as a material violation of the Companies Law, and therefore pursuant to Article 59/B and Article 266, the relevant authority could have the right to strike off the company's registration.

The process of bankruptcy might be quite lengthy, especially if the company has been conducting business and has wide scope of dealings. For example, in the process of winding up a company, the liquidator would be required to obtain clearance letters from different governmental entities in Jordan such as the tax department, the customs department, the social security corporation, the companies control department and the tradenames department at the Ministry of Industry, Trade & Supply, and others, which such process of obtaining clearance letters might be time and effort consuming.

E. Acquisition

12. Which methods are commonly used to acquire a company, e.g., share transfer, asset transfer, etc.?

- The methods used in Jordan for the full acquisition of a company are as follows:
    - o A share transfer by way of a share transfer deed (with the number of shares being the total amount of shares in the company), using a template/pre-set text which is provided by the CCD.
    - o A merger of 2 (two) or more companies in a manner where the legal personality of the first company remains while the legal personality of the other company/ies is merged into that of the first company pursuant to Article 222/A of the Companies Law.
- The method used in Jordan for a partial acquisition of a company is as follows:
    - o A share transfer by way of a share transfer deed (with the number of shares not being the total amount of shares in the company), using a template/pre-set text which is provided by the CCD.
- There are also methods of ownership of companies in Jordan that are not conditional on the ownership of all shares, but rather on the acquisition of control within the company via the acquisition of shares. These methods are as follows:
    - o Issuing shares of a special nature (in private shareholding companies) that provide its owner with the right to attend general assembly meetings, run for and appoint the board of directors as well as other features such as the right to take action and make decisions related to the company. The remaining shares in the company would be silent shares and not those of a special nature.
    - o Converting debts into shares by issuing loan stocks that are capable of being converted into shares in the company in the event that the debt has not been paid on its specified period. This is conditional on meeting the criteria relevant to such a procedure such as the approval of the owner of the loan stock/s to having the loan stock/s being converted into shares in the company

13. What are the advantages and disadvantages of a share purchase as opposed to other methods?

There are certain ways in which ownership of shares could be changed. The most important method is by means of a shares purchase, which is filed at the CCD. The main advantage of share purchase is that there no additional formalities to execute the transfer deeds, and the agreement between both the purchaser and the seller of shares, as it is relatively easy way to sell shares. In addition, in the buyer and seller agreement for the sale of shares, the parties can include the sale of the goodwill of the acquired company. However, the disadvantage of this is the goodwill of the acquired company value might not be reflected in the share's sale value.

14. What are the approvals and consents typically required (e.g., corporate, regulatory, sector based and third-party approvals) for private acquisitions in your jurisdiction?

The approvals and consents typically required for a private acquisition in Jordan can be summarized as follows:

- In the event of a full acquisition, there is no requirement to obtain the approval of any partners or shareholders, as there are none.
- In the event of a partial acquisition of a public shareholding company or of a private shareholding company, there is no requirement to obtain the approval of any shareholders, unless it is stated otherwise in the AoA and memorandum of association.
- In the event of a partial acquisition of a limited liability company, there is a requirement to obtain the approvals of partners or shareholders.

Steps for Acquiring a Company in Jordan: A company may acquire another company (regardless of its type) in Jordan by following these procedures:

- a decision is issued by the extraordinary general assembly of the buyer company approving the ownership of another company's shareholder shares, if the ownership of shares is over 50% or in the case of 100% ownership of shares;
- a decision is issued by the extraordinary general assembly of the seller company approving the selling of its shareholders' shares to another company;
- completion of the stipulated approval, registration and publication procedures to transfer the shares of the shareholders of the company that decided to sell to the acquirer company. That ownership shall not be considered to have reached closure until its registration and authentication are completed, in accordance with the provisions of the Companies Law;
- the buyer company shall pay the value of the shares that has been agreed upon to the seller company; the amount will be deposited in a special account in order to be distributed among shareholders registered with it on the date of the general assembly issuing the decision to sell their shares;
- the company of which the shares have become acquired by new shareholders shall invite the general assembly to realize the necessary amendments to its Articles and memorandum of association and to elect a new board of directors.

15. What are the regulatory competition law requirements applicable to private acquisitions in your jurisdiction?

The regulatory competition law requirements in Jordan applicable to private acquisitions/business combinations are primarily related to antitrust acts through relevant laws and legislative instruments. In the event that a transaction is considered to fall under the scope of the competition law, then a complaint can be referred to the public prosecutor who will then file a claim at the court of first instance with the Ministry of Industry, Trade & Supply as the claimant (pursuant to Articles 16 & 17 of the Jordanian Competition Law No. 33 of 2004 and its amendments),

Such relevant laws are:

- the Competition Law No. 33 of 2004 and its amendments that is read with the Amending Law to the Competition Law No. 12 of 2023;
- the Companies Law;
- the Medicines and Pharmacy Law No 12 of 2013 and its amendments;
- the Instructions for Rules to Encourage Competition Among Investors in The Civil Aviation Sector No. 2 of 2007.

16. Are there any specific rules applicable for acquisition of public companies in your jurisdiction?

As it is also stated in the answer to Question 17 below, in the case of a takeover of a public company listed on the Amman Stock Exchange, a bid is made public in 2 (two) scenarios, namely a public offer and a public takeover offer. A public offer is "an offer for the sale of any security to more than 30 persons of the public, including public issuance and public subscription", whereas the public takeover offer is when a bid to purchase exceeds the 40% threshold. Both scenarios require a prospectus, as previously elaborated, to be filed before the competent authority, and must be addressed to all owners of such securities.

With regard to the merger of companies, an application must be submitted to the companies' general controller however, it will only be referred to the Minister of Industry, Trade, and Supply if the merger pertains to a public shareholding company or if it will result in one, as stated in Article 227 of the Companies Law. Furthermore, Article 226 of the Companies Law states that the board of directors must notify the Controller, the Commission, the Market, and the Depository Centre within 10 (ten) days of the date of issuance of the merger decision.

In accordance with the Regulating Insurance Activities Law No.12 of 2021 ("**Regulating Insurance Activities Law**"), there are certain conditions for the acquisition of public companies, such as but not limited to:

- Obtaining the prior written consent of the Central Bank of Jordan should the change of ownership of the company result in changes in privileges, as elaborated in article 26/A of the Regulating Insurance Activities Law.
- It is prohibited for shareholders or for shareholders whose shares are affected to dispose of those shares or of their ownership (whether partially or fully) without the prior written consent of the Central Bank of Jordan as elaborated in article 26/D/2 of the Regulating Insurance Activities Law.

17. Is there a requirement to disclose a deal, for instance to regulatory authorities? Is it possible to keep a deal confidential?

- **Requirement to Disclose a Deal/Time of Disclosing a Deal:** In our experience a deal is required to be disclosed when definitive agreements are signed, whereby the disclosure of the deal shall affect many rights and obligations, such as the employment contracts and the lease contracts.
- **Market Practice on Timing/The Right Time of Disclosure:** As per market practice, the disclosure of the legal requirements will take place prior to any other disclosure in order to proceed with a due diligence. That will enable the buyer to conduct a study on the company's contracts, agreements and financial matters of the company to be merged, for the purposes of evaluating the acquisition process of the company and determining whether or not to proceed with the transaction.
- **Making a Bid Public:** In the case of a takeover of a company listed on the Amman Stock Exchange, a bid is made public in 2 (two) scenarios, namely a Public Offer and a Public Takeover Offer. A Public offer is "an offer for the sale of any security to more than thirty persons of the public, including public issuance

and public subscription", whereas the public takeover offer is when a bid to purchase exceeds the 40% threshold. Both scenarios require a prospectus, as previously mentioned, to be filed before the competent authority, and must be addressed to all owners of such securities.

- **Disclosure of Mergers:** With regard to the merger of companies, an application must be submitted to the companies' general controller; however, it will only be referred to the Minister of Industry, Trade, and Supply if the merger pertains to a public shareholding company or will result in one, as stated in Article 227 of the Companies Law. Furthermore, Article 226 of the Companies Law states that the board of directors must notify the controller, the Commission, the Market, and the Depository Centre within 10 (ten) days of the date of issuing the merger decision.
- **Type of Disclosure Required:** When 2 (two) companies have decided to combine their businesses, also known as a merger under the Companies Law, the requirements of the application are set out in Article 225 of the Companies Law. Those requirements shall include the decision of the general assembly of each company approving the merger and the terms set out in the merger agreement.
- **Producing Financial Statements:** The Corporate Governance Code for Shareholding Companies states that produced financial statements must be prepared in accordance with the International Financial Reporting Standards (**IFRS**). Each company wishing to merge must submit audited financial statements of the last 2 (two) fiscal years, in addition to an audited financial position statement, and, finally, a preliminary evaluation of the assets and liabilities at market value, as per Article 225 of the Companies Law.
- **Transaction Documents:** Parties must produce their audited financial statements in full, in accordance with Article 225 of the Companies Law.

18. Can sellers be restricted from shopping around during a negotiation process? Is it possible to include break fee or other penalty clauses in acquisition documents to procure deal exclusivity?

Standstills or Exclusivity: The Jordanian law and legal framework do not negate the existence of standstills or exclusivity agreements; hence, they are permissible. Furthermore, as seen in various deals, exclusivity agreements are used in practice. Break fees and penalty provisions are not accepted in practice as an acquisition is only considered to have value when it is registered at the CCD and the CCD does not register the intent/promise of an acquisition, it registers only the acquisition itself.

19. What are the conditions precedent in a typical acquisition document? Is it common to have conditions to closing such as no material adverse change?

Common Conditions for a Takeover Offer in Jordan: The Jordanian regulator did not restrict the use of offer conditions, which is subject to the mutual agreement of the parties. However, based on our experience, there are some common conditions for a takeover offer, as follows:

- the offered price;
- the type of consideration (cash or shares);
- the number of target shares;

- the minimum quota for shareholder approval;
- the condition that no event has occurred or will occur between the announcement of the offer or the signing of a merger agreement and the time at which the bidder is to purchase the shares or complete the transaction that might have a negative impact on the purchased shares;
- the condition that the company must comply with its representations, guarantees, warranties, or conditions in the merger agreement;
- the condition that all required regulatory approvals must be obtained for the merger to be completed.

20. What are the typical warranties and limitations in acquisition documents? Is it common to obtain warranty insurance?

There are many warranties and limitations usually included in the acquisition documents, such as a warranty from the buyer of shares that they are the true beneficiary of the transaction (and not someone else), warranties that the parties entered into the transaction with their legal representative and have the power to oblige, warranty to complete the transaction on the specific dates agreed upon, warranty to obtain all approvals or waivers for any rights such as pre-emption right or any other right to ensure the completion of the transaction, warranty to the marketability of the shares and that they are free from any encumbrances. Usually, limitation would be in the indemnity provisions, in that the amount payable for any breach of warranties would be limited to cover actual loss, warranty to duly execute and file documents before any filing of the merger or acquisition at the relevant authority.

For warranty insurance, usually the documents for the process of merger and acquisition is held by an escrow who would be a law firm in Jordan, and the law firm will not release any documents to the other party unless if it is in accordance with the steps agreed between the parties, and until the completion of the transaction and the deliveries of certain documents. In practice, to the best of our knowledge, there is nothing in a merger or acquisition deal that requires to obtain a warranty insurance, although there is nothing under the Jordanian laws that prohibits that.

21. Is there a requirement to set a minimum pricing for shares of a target company in an acquisition?

Minimum Acceptance Conditions: There are no minimum acceptance conditions (i.e., the relevant control thresholds) for tender offers under Jordanian law. That leaves the minimum requirements open to the interpretation of the will of both parties, which allows for flexibility of offer conditions, as well as the enforcement of the will of both parties to its utmost extent.

22. What types of acquisition financing are available for potential buyers in your jurisdiction? Can a company provide financial assistance to a potential buyer of shares in the target company?

Requirement to Obtain Financing: The legal framework governing this area of law does not impose an obligation on the bidder to obtain proof of financing prior to the merger agreement; however, the law does not prohibit including such an arrangement. Therefore, parties can opt to add an obligation to obtain financing.

23. What are the formalities and procedures for share transfers and how is a share transfer perfected?

In accordance with Article 222/B of the

Companies Law, and in the context of acquisition, share transfer in the case of acquisition is usually executed by means of a form of transfer deed issued by the relevant authority in Jordan (“**Company Control Department”),** or the specific form prescribed in the company’s AoA , if there was one prescribed. This form of transfer deed contains the name of the acquirer (buyer) and of the acquired company (seller), the value paid for each share and the signature of both of the parties to it, with a qualified lawyer in Jordan to verify that signature was made before them and in their presence. Further, 2 (two) extraordinary general assembly resolutions are required to be passed by both the acquirer and the acquired company resolving to approve the acquisition. That a special resolution is passed by the acquirer to acquire the acquired company, and a special resolution passed by the acquired company to approve the acquisition. In the case of any pre-emption rights for shareholders, either a waiver document from such shareholders is required to be made available or to follow the process prescribed under the Companies Law, or AoA usually being notifying the shareholders of the deal. If the shareholders of the company within a period of time stated in the offer for the sale of shares did make an offer to buy the proposed shares for the same price offered, then each shareholder could acquire the proposed sale shares in proportionate percentage to their share amount, which they hold in the company. If no shareholder made an offer to buy the proposed shares, then the seller shareholder may proceed to sell their shares to third parties. The buyer will transfer or pay the amount of purchased shares to the seller on the date that the seller extraordinary general assembly resolution of selling shares was passed, and then the new shares purchase would be published on a daily newspaper in accordance with the Companies Law.

Thereafter documents must be filed preferably by the lawyers who verified the parties’ signature on the transfer deeds at the Company Control Department, and stamp duty and fees would be paid to the Company Control Department. At the end, and following filing of such documents, the parties usually request from the Company Control Department to issue a certificate of “To Whom it May Concern” to reflect the new shareholders and their shares. After completion of the transaction, the seller company must convene an extraordinary general assembly to amend its Memorandum and AoA to reflect the new change, and to appoint new board of directors.

24. Are there any incentives (such as tax exemptions) available for acquisitions in your jurisdiction?

Article 224 of the Companies Law has provided an exemption for the merged company, and their shareholders from all tax and fees including shares ownership transfer fees related to the merger. It states that, the merger company, along with its shareholders or partners therein, and the merging company (the company resulting from the merger) along with its shareholders or partners therein, shall be exempt from all taxes and fees, including the title transfer fees caused by the merger or any fees that arose as a result of it”. However, for acquisition, upon buying shares of another company and filing the shares ownership transfer deeds at the Company Control Department, fees and stamp duty for such transaction will be payable. In addition, there are some tax benefits for companies which hold certain percentage of shares in other companies[2].

2 Please note that Hammouri & Partners Attorneys at-Law only provides generic comments on taxation regime in Jordan.

F. Enforceability

25. Can acquisition documents be executed in a foreign language?

No, in order to submit the acquisition documents at the CCD, they must be submitted at the CCD in Arabic or be in a foreign language, but accompanied by an official translation in Arabic.

26. Can acquisition documents be governed by a foreign law?

No, the acquisition documents must be subject to Jordanian law.

27. Are arbitration clauses legally permissible or generally included in acquisition documents?

There is nothing under the laws of Jordan to prohibit or invalidate any arbitration agreement in the course of merger and acquisition. The parties are free to agree on the method of resolving any dispute related to their transaction including agreeing on arbitration, therefore it is permissible and generally included, provided it is drafted in clear way and in accordance with the applicable law and acceptable practice in Jordan.

28. Are there any specific formalities for the execution of acquisition documents? Is it possible to remotely/digitally sign documents?

Remotely/digitally signing documents is permitted under Jordanian legislation, but is not widely used in practice in Jordan.

G. Trends and Projections

29. What are the main current trends in M&A in your jurisdiction?

Some current (2024) top trends in Jordan can be summarised as follows:

- the commencement of digitization of the services offered by the CCD, at the Ministry of Industry, Trade and Supply;
- the 2023 amendments made to the Companies Law No. 20 of 2023
- the 2019 amendments made to the insolvency framework accompanied by the licensing of insolvency practitioners in Jordan;
- the commencement of digitization of the judicial services in Jordan;
- the new Personal Data Protection Law No. 24 of 2023;
- mergers of banks and/or financial institutions consolidations;
- changes in the investment framework and relevant regulations in the year 2023;
- increase in the set-up of small- and medium-sized enterprises ("**SME**"), and projected consolidation of SMEs;
- increase of e-commerce and technology services;
- energy related projects and acquisitions;
- updated labour law rules to take in consideration remote and/or hybrid work arrangements.

30. Are any significant development or change expected in the near future in relation to M&A in your jurisdiction?

The aforementioned trends may be considered as driving factors that are expected to assist in moving forward with M&A deals in Jordan; as distressed business will have a clearer legal framework to come out of an adverse financial situation, investors will be more motivated to consider deal-making in Jordan due to the digitalization of the relevant company services and the court proceedings.

At the domestic level, undoubtedly the surge of e-commerce transactions in Jordan which became more evident following the pandemic is anticipated that it will create more employment opportunities, more corporate set-ups and possibly mergers in the domestic market.

On the factors that will contribute and encourage more M&A deals in Jordan, it is considered that:

- the changes towards digitization of key sectors in Jordan will hopefully ease formalities and thus attract more foreign investment and merger interest from foreign companies in Jordan; such examples include the digitization of the CCD, the digitization of the court system, the digitization of the healthcare sector in Jordan and other.

KAZAKHSTAN

GRATA

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A. General

1. What is the main legal framework applicable to companies in your jurisdiction?

The main legal framework applicable to companies in Kazakhstan includes the following legal acts:

- Civil Code;
- Law on Limited and Additional Liability Partnerships; and
- Law on Joint Stock Companies.

2. What are the most common types of corporate entities (e.g., joint stock companies, limited liability companies, etc.) used in your jurisdiction? What are the main differences between them (including but not limited to with regard to the shareholders' liability)?

Under Kazakhstan law, the most common forms of corporate entities are the joint-stock company ("**JSC**") and the limited liability partnership ("**LLP**"). In both cases, the basic legal features are similar. In particular, each corporate form has a separate legal personality and shareholders enjoy limited liability.

The main difference between the JSC and LLP is that the JSC is a complex and strictly regulated corporate form. For example, the minimum authorized capital of the JSC must be approx. USD 400,000. Also, there are rigorous legal requirements to incorporation, governance, accounting, audit and public disclosure in the JSC. On the contrary, the LLP is a fairly simple and flexible corporate form. In general, the LLP is the most popular corporate form of doing business in Kazakhstan. Noteworthy that curtain business can only be organised as JSCs (e.g., banks, insurance, and regular passenger air travel).

B. Foreign Investment

3. Are there any restrictions on foreign investors incorporating or acquiring the shares of a company in your jurisdiction?

In general, there are no restrictions on foreign investors incorporating or acquiring the shares of a company in Kazakhstan. However, there are a few exceptions. For instance, a foreign person cannot own, directly or indirectly, more than 20% of shares in a local company that owns mass media.

4. Are there any foreign exchange restrictions or conditions applicable to companies such as restrictions to foreign currency shareholder loans?

In general, any transaction between a foreign shareholder and a local company in excess of USD 500,000 (an equivalent in any other currency) is subject to a currency control regime which implies a prior registration with the National Bank of Kazakhstan. Noteworthy that the dividend distribution is exempted from the currency control requirements.

5. Are there any specific considerations for employment of foreign employees in companies incorporated in your jurisdiction?

Normally, a foreign employee would need a work permit in order to be employed by a local company. In addition, the visa and local content requirements shall apply. Certain categories of employees are exempted from the obligation to obtain a work permit (e.g., General Directors of companies wholly owned by foreign shareholders).

C. Corporate Governance

6. What are the standard management structures (e.g., general assembly, board of directors, etc.) in a corporate entity governed in your jurisdiction and the key liability issues relating to these (e.g., liability of the board members and managers)?

The standard management structure in LLPs is the General Assembly (or the Sole Shareholder) and the General Director. Instead of the General Director, the Management Board can be appointed. In addition, the shareholders may decide to create a Supervisory Board and/or Audit Committee.

The standard management structure in JSCs is the General Assembly (or the Sole Shareholder), the Board of Directors, and the General Director. Instead of the General Director, the Management Board can be appointed (in some cases, e.g., banks, the Management Board is a must). In addition, the shareholders may decide to create an Audit Committee.

As a general rule, board members and managers shall be liable for the company’s losses that occurred as a result of their improper actions/omissions and can be obliged to compensate such losses. Board members and managers of JSCs enjoy the business judgment rule (which is not available for board members and managers of LLPs).

7. What are the audit requirements in corporate entities?

In general, the LLPs are not required to obtain an external auditor’s report in relation to their financial statements. Only certain types of LLPs (subsoil users, airlines, developers, etc.) are obliged to conduct an external audit of their annual financial statements.

All JSCs must conduct an external audit of their annual financial statements.

D. Shareholder Rights

8. What are the privileges that can be granted to shareholders? In particular, is it possible to grant voting privileges to shareholders for appointment of board members?

In general, no specific privileges can be granted to shareholders. However, a shareholder of the LLP may be granted an increased number of votes in relation to certain matters discussed at the General Assembly resulting in the ability of such shareholder to cause the General Assembly to take a decision on such matter even if other shareholders vote against it. Also, a shareholder of the JSC can be granted a "golden share" that gives the right to veto decisions of the General Assembly, Board of Directors, or General Director (Management Board).

9. Are there any specific statutory rights available to minority shareholders available in your jurisdiction?

Yes, there are specific statutory rights available to minority shareholders in Kazakhstan. For instance, a shareholder that owns (or shareholders that in aggregate own) at least 5% of the votes are entitled to include items to the agenda of the General Assembly. In addition, any shareholder of the LLP, notwithstanding the votes owned, or a shareholder of the JSC that owns at least 10% of votes, may appoint (at their own expense) an external audit of the company. Also, any shareholder has the right to challenge the decisions of the governing bodies in court.

10. Is it possible to impose restrictions on share transfers under the corporate documents (e.g., articles of association or its equivalent in your jurisdiction) of a company incorporated in your jurisdiction?

It is possible to impose restrictions on share transfers under the corporate documents of the LLP. The restrictions on share transfers in JSCs are controversial as such concept is not expressly recognized by the law.

11. Are there any specific concerns or other considerations regarding the composition, technical bankruptcy and other insolvency cases in your jurisdiction?

There are no specific concerns or other considerations regarding the composition, technical bankruptcy and other insolvency cases in Kazakhstan.

E. Acquisition

12. Which methods are commonly used to acquire a company, e.g., share transfer, asset transfer, etc.?

In Kazakhstan, share transfer and asset transfer are commonly used to acquire a company.

13. What are the advantages and disadvantages of a share purchase as opposed to other methods?

The main advantage of a share purchase is that the company is acquired as a whole (including the team, contracts, assets, reputation and licenses). The key potential disadvantage is that certain historical legal risks may be attached to the company.

14. What are the approvals and consents typically required (e.g., corporate, regulatory, sector based and third-party approvals) for private acquisitions in your jurisdiction?

Corporate approvals of the parties to the transaction are typically required. If the certain thresholds are exceeded a merger clearance requirement may be triggered. Also, there are a few sector-based approvals for example permits for acquisition of shares in subsoil users or banks.

15. What are the regulatory competition law requirements applicable to private acquisitions in your jurisdiction?

If more than 50% of voting shares are being acquired, the prior merger clearance is required if any of the following exceeds approx. USD 80,000,000:

- global assets of the acquirer's group and the target;

- global turnover (for the previous year) of the acquirer's group and the target.

16. Are there any specific rules applicable for acquisition of public companies in your jurisdiction?

There are no specific rules applicable for acquisition of public companies in Kazakhstan.

17. Is there a requirement to disclose a deal, for instance to regulatory authorities? Is it possible to keep a deal confidential?

There is no requirement to disclose deals in relation to shares of LLPs, save for the disclosure for the purposes of obtaining regulatory permits, if applicable.

As for JSCs, details of any "major" transactions must be disclosed on the website of the Financial Reporting Depository.

18. Can sellers be restricted from shopping around during a negotiation process? Is it possible to include break fee or other penalty clauses in acquisition documents to procure deal exclusivity?

In general, it is not prohibited to restrict a seller from shopping around during a negotiation process and include break fee or other penalty clauses in acquisition documents to procure deal exclusivity. However, such concept is not expressly recognized by the law and its enforcement may be problematic.

19. What are the conditions precedent in a typical acquisition document? Is it common to have conditions to closing such as no material adverse change?

The most common condition precedent is obtaining all applicable approvals, consents and waivers. No material adverse change is also quite common condition precedent. Another widely met condition precedent is the completion of the due diligence exercise to the satisfaction of the acquirer.

20. What are the typical warranties and limitations in acquisition documents? Is it common to obtain warranty insurance?

In Kazakhstan, warranties and limitations used in acquisition documents are quite standard (i.e., those normally used in English law governed acquisitions). It is not common to obtain warranty insurance.

21. Is there a requirement to set a minimum pricing for shares of a target company in an acquisition?

There is no such requirement.

22. What types of acquisition financing are available for potential buyers in your jurisdiction? Can a company provide financial assistance to a potential buyer of shares in the target company?

This matter is not regulated by the law. As a result, a wide range of acquisition financing are available for potential buyers in Kazakhstan. In particular, a company can provide financial assistance to a potential buyer of the shares.

23. What are the formalities and procedures for share transfers and how is a share transfer perfected?

The transfer of shares in an LLP is subject to registration with the State Corporation "Government for Citizens" NJSC or with Central Securities Depository if the registers of shares of the LLP are maintained by Central Securities Depository.

The transfer of shares in a JSC is subject to registration with Central Securities Depository.

24. Are there any incentives (such as tax exemptions) available for acquisitions in your jurisdiction?

There are no incentives available for acquisitions *per se*. However, certain taxes, customs and other incentives apply to investment projects related to the creation of new or renovation of existing production facilities as well as the implementation of projects in special economic zones.

F. Enforceability

25. Can acquisition documents be executed in a foreign language?

Yes, acquisition documents can be executed in a foreign language.

26. Can acquisition documents be governed by a foreign law?

The acquisition documents must be governed by Kazakhstan law.

27. Are arbitration clauses legally permissible or generally included in acquisition documents?

Yes, arbitration clauses are legally permissible and are often included in acquisition documents.

28. Are there any specific formalities for the execution of acquisition documents? Is it possible to remotely/digitally sign documents?

Yes, it is possible to remotely/digitally sign acquisition documents.

G. Trends and Projections

29. What are the main current trends in M&A in your jurisdiction?

The main current trend in M&A in Kazakhstan is the acquisition of local startups by major local and foreign market players.

30. Are any significant development or change expected in the near future in relation to M&A in your jurisdiction?

To the best of our knowledge, no significant developments or changes are expected in the near future in relation to M&A in Kazakhstan.

KYRGYZSTAN

GRATA

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A. General

1. What is the main legal framework applicable to companies in your jurisdiction?

The legal framework applicable to companies in the Kyrgyz Republic is based on the Constitution of the Kyrgyz Republic that enables and consists of the following normative legal acts:

- Civil Code of the Kyrgyz Republic (Part 1) dated 8 May 1996, No. 15;
- Civil Code of the Kyrgyz Republic (Part 2) dated 5 January 1998, No. 1;
- Tax Code of the Kyrgyz Republic dated 18 January 2022, No. 3;
- The Law of the Kyrgyz Republic "On business partnerships and companies" dated 15 November 1996, No. 60;
- The Law of the Kyrgyz Republic "On Joint Stock Companies" dated 27 March 2003, No. 64;
- Regulation on the procedure for state registration of legal entities, branches (representative offices) (approved by the Resolution of the Cabinet of Ministers of the Kyrgyz Republic dated 31 March 2023 No. 178);
- The Law of the Kyrgyz Republic "On Licensing and Permit System in the Kyrgyz Republic" dated 19 October 2013, No. 195.

Aside from the above, there are many other legal acts that differ in scope and their application depending on the specific types of activity a company carries out in the Kyrgyz Republic.

2. What are the most common types of corporate entities (e.g., joint stock companies, limited liability companies, etc.) used in your jurisdiction? What are the main differences between them (including but not limited to with regard to the shareholders' liability)?

The current legislation of the Kyrgyz Republic provides for different legal forms of legal entities. The most common types of legal entities in the Kyrgyz Republic include a limited liability company and a joint stock company (open or closed types). While not considered a legal entity, some foreign companies tend to carry out their business activities via branch or representative offices.

	Limited liability company ("LLC")	**Joint Stock Company ("JSC")**	**Branch Office**
Definition	LLC is a legal entity founded by one or more individuals or legal entities, the authorized capital of which is divided into shares of the sizes determined by the constituent documents.	JSC is a legal entity that carries out its activities for the purpose of making a profit and raising funds by issuing and placing shares. JSCs are divided into two types: Open JSC (OJSC) and Closed JSC (CJSC).	Branch Office is a separate subdivision of a foreign or local legal entity, performing all or part of its functions, including the function of a representative office.
Liability of shareholders	Participants in a limited liability company are not liable for its obligations and bear the risk of losses associated with the activities of the company to the extent of the value of their contributions.	Shareholders are not liable for the obligations of the company and bear the risk of losses associated with its activities, within the value of their shares.	Branches are not considered legal entities. The founding legal entity bears responsibility for the activities of the branch office.
Main features	The number of participants in the LLC should not be more than thirty. Otherwise, such an LLC is subject to transformation into a joint-stock company within a year, and after the expiration of this period of liquidation in a judicial proceeding, if the number of its participants does not decrease to the established limit. The general rule applicable to all LLCs is that a company cannot have as its sole participant another legal entity consisting of one person.	OJSC has the right to conduct a public offering of shares issued by OJSC, to carry out their free sale, taking into account the requirements of the law. The charter cannot provide for provisions restricting the free sale of shares. The number of shareholders is not limited. CJSC is not entitled to conduct a public offering of issued shares, otherwise offer them for purchase to an unlimited number of persons. The number of shareholders must not exceed 50.	Branches are endowed with property by the legal entity that created them and act on the basis of approved regulations, while directors of a branch are appointed by a legal entity and act on the basis of its power of attorney.

B. Foreign Investment

3. Are there any restrictions on foreign investors incorporating or acquiring the shares of a company in your jurisdiction?

As a general rule, foreign investors enjoy the same national treatment applied to individuals and legal entities of the Kyrgyz Republic. That said, there might be certain restrictions applied to foreign investors in terms of the types of activity they plan to carry out in the Kyrgyz Republic. For instance, banking legislation requires obtaining a permit for the acquisition of shares in microfinance organizations and commercial banks of the Kyrgyz Republic. While not exclusive to foreign investors, a foreign or local investor has to obtain consent from the merger authorities in order to proceed with the merger or accession of a legal entity. Other restrictions might be applied but in order to determine specific restrictions, each case should be reviewed separately.

4. Are there any foreign exchange restrictions or conditions applicable to companies such as restrictions to foreign currency shareholder loans?

There are presently no significant foreign exchange restrictions. If a company borrows a loan in a foreign currency and such loan agreement is governed by foreign law, no restrictions shall apply as there is no requirement to register the loan agreement and/or notify the authorities. That said, if the loan agreement is made in accordance with and governed by Kyrgyz laws, it shall be notarized in case the principal amount exceeds KGS 50,000 (fifty thousand soms) (approximately USD 580).

As a general rule, Kyrgyz laws provide that a monetary obligation must be expressed and paid in the national currency – Kyrgyz soms (“**KGS**”). Normally, however, parties may provide that payment is made in national currency in an amount equivalent to the amount in foreign currency. The amount of payment of a monetary obligation in KGS is determined at the official exchange rate of the relevant currency on the payment date unless a different rate or another date of its determination is established by law or by the agreement of the parties.

5. Are there any specific considerations for the employment of foreign employees in companies incorporated in your jurisdiction?

Foreign citizens have the right to carry out labor activities in the territory of the Kyrgyz Republic only on the basis of a work permit. Accordingly, employers in the Kyrgyz Republic have the right to employ foreign citizens on the basis of the received quota for attracting foreign labor. In addition, there are separate requirements for the work visa, registration at the place of residence, etc.

The Kyrgyz Republic is a full member of the Eurasian Economic Union (“**EAEU**”) which consists of the following states: Kyrgyzstan, Kazakhstan, Russia, Belarus, and Armenia. By virtue of the Treaty on Accession to the EAEU ratified by the Kyrgyz Republic, citizens of the EAEU member states are exempted from obtaining a permit to work in the Kyrgyz Republic, while employers can employ foreign citizens of the EAEU member states without obtaining a quota for attracting foreign labor.

C. Corporate Governance

6. What are the standard management structures (e.g., general assembly, board of directors, etc.) in a corporate entity governed in your jurisdiction and the key liability issues relating to these (e.g., liability of the board members and managers)?

LLCs normally have the following governing bodies: general meeting of shareholders, and collective (management board) or sole (director) executive body. The supreme governing body of an LLC is the general meeting of shareholders.

The executive body (collective or sole) is created to carry out the current management of its activities and is accountable to the general meeting of its shareholders. Their liability is regulated by the internal by-laws or charter of a company.

The establishment of the board of directors is optional in LLCs and may be established upon a decision of the general meeting of shareholders. Only an individual may be a member of the board of directors. A member of the board of directors cannot simultaneously be a member of the executive body (collective or sole).

Shareholders bear a limited liability proportional to their shares in the authorized capital and a general meeting of shareholders has exclusive competence over certain matters (e.g., reorganization or liquidation of a legal entity, increase or decrease of charter capital, etc.). While there is normally no special liability of other governing bodies (as it is often determined in line with the internal by-laws, charter, or other internal documents), the board of directors and executive body do have their own competence over certain matters and they bear liability according to the general provisions of the law and internal documents of a legal entity.

As the position of a director on the board of directors or executive body entails employment, individuals representing the governing bodies bear material and disciplinary liability in accordance with the concluded employment contract.

7. What are the audit requirements in corporate entities?

The procedure for conducting an audit of the activities and reporting of the company is determined by the charter of the company.

At the request of any shareholder, an audit of the company's annual financial statements may be carried out with the involvement of a professional auditor who is not related to the company or its participants (external audit).

The general meeting of shareholders has the right to form an audit committee in order to control the activities of the executive body of the company. Audits of the financial and economic activities of the executive body are carried out in the manner prescribed by the general meeting of shareholders.

As stated previously, there are separate requirements for audits in certain types of companies. For instance, in the banking sector, banks and microfinance organizations are required to undergo audits periodically and there are official positions within such companies that are in charge of compliance with the audit requirements of the National Bank of the Kyrgyz Republic.

D. Shareholder Rights

8. What are the privileges that can be granted to shareholders? In particular, is it possible to grant voting privileges to shareholders for appointment of board members?

The general meeting of shareholders is the supreme governing body of a LLC. The appointment of the board of directors falls under the exclusive competence of the general meeting of shareholders. In addition to the statutory rights of the general meeting of shareholders, their competence might be extended over other matters in accordance with the internal documents (charter, by-laws, foundation agreement, etc.).

9. Are there any specific statutory rights available to minority shareholders available in your jurisdiction?

While the majority of foreign states have provided special statutory rights to minority shareholders, there are currently no special statutory rights available to minorities in the Kyrgyz Republic.

10. Is it possible to impose restrictions on share transfers under the corporate documents (e.g., articles of association or its equivalent in your jurisdiction) of a company incorporated in your jurisdiction?

According to the general rule, the shareholder of the LLC has the statutory right to withdraw from the company at any time, regardless of the consent of other shareholders. The withdrawal must be declared by the participant at least one month before the actual withdrawal from the LLC unless other terms are provided by the constituent documents.

In the event of the alienation of their shares by one of the shareholders, the remaining shareholders have the pre-emptive right to purchase the share of the participant in full or in part in proportion to the size of their shares in the authorized capital of the LLC, unless the charter of the LLC or agreement of its participants provides for a different procedure for exercising this right. Other restrictions in relation to the share transfer are generally prohibited.

11. Are there any specific concerns or other considerations regarding the composition, technical bankruptcy, and other insolvency cases in your jurisdiction?

The current legal framework does not define technical bankruptcy as normally it happens in cases where either the general meeting of creditors' claims the formal bankruptcy of the debtor or the bankruptcy (insolvency) is made in the courts. Aside from that, there are no significant concerns or other considerations on the above, however, each case should be considered separately due to various factors and conditions pertaining thereto.

E. Acquisition

12. Which methods are commonly used to acquire a company, e.g., share transfer, asset transfer, etc.?

The most common method of acquiring a company in the Kyrgyz Republic is the acquisition through the share purchase agreement in the authorized capital of a company ("**SPA**"). By acquiring a share in the authorized capital of an LLC, buyers (individuals or legal entities) become the new shareholders of the company.

The acquisition is also possible via the reorganization of a legal entity (merger, accession, division). Under this procedure, one of the legal entities in this process ceases to exist and transfers all the rights and obligations to another (surviving) legal entity.

While not common, it is possible to foreclose on the pledged shares of a legal entity thus becoming a shareholder.

Asset transfer is not considered "acquisition" under the current Kyrgyz laws as it does not entail subsequent registration of changes to the shareholding structure of a company. Therefore, it is not a common method to acquire a company but can be a good method to obtain an acting business.

13. What are the advantages and disadvantages of a share purchase as opposed to other methods?

The main advantage of a share purchase is to gain control over the company and benefit from participation, namely from the potential for dividends, ease of share transfer, and statutory ownership rights. Other methods involve the acquisition of assets that do not grant direct control over the company, thus limiting potential options and benefits from being a shareholder.

The disadvantage of a share purchase includes certain restrictions and/or mandatory requirements. For instance, a change in shareholding structure requires the company to undergo the so-called "re-registration" procedure that might take up to one month and requires communication with the state authorities. As mentioned before, in specific sectors, like the banking sector, a share purchase entails obtaining consent from authorized state bodies (e.g., the National Bank, State Antimonopoly Service, etc.).

14. What are the approvals and consents typically required (e.g., corporate, regulatory, sector based and third-party approvals) for private acquisitions in your jurisdiction?

Normally external approvals and/or consents are not required in typical corporate acquisitions unless the acquisition is made in relation to the specific sector. Internal corporate authorizations are often required and made (in accordance with internal documents) to proceed with the execution of share purchase.

As mentioned before, the acquisition of shares in credit and financial institutions requires consent from the National Bank. Reorganization of legal entities requires consent from the State Antimonopoly Service. Changes in the shareholding structures of mining companies might require notifications to the relevant authorized state body.

15. What are the regulatory competition law requirements applicable to private acquisitions in your jurisdiction?

The legislation of the Kyrgyz Republic on competition in relation to private acquisitions indicates that the purchase by any legal entity or citizen of a controlling stake (shares in the authorized capital) of an economic entity occupying a dominant position is carried out with the prior consent of the antimonopoly body.

The dominant position is the position of one or several legal entities in the market of a certain product, which provides them with the opportunity to exert a decisive influence on the general conditions for the circulation of goods in the relevant market and (or) eliminate other legal entities from this market, and (or) impede access to this market for other legal entities.

16. Are there any specific rules applicable for acquisition of public companies in your jurisdiction?

Public companies (if open joint stock companies that are listed) have specific rules applicable to them in terms of listing shares and their subsequent sale and/or purchase via the stock exchange. Public companies are typically listed at the Kyrgyz Stock Exchange and this stock exchange has its own rules and regulations pertaining to how it operates and how the listed companies proceed with the trading of shares.

As commercial banks can only be joint stock companies (either open or closed ones), any individual or legal entity intending to acquire shares in the authorized capital of a bank (including the acquisition of the threshold participation in the authorized capital of the bank, including significant participation and control; inheritance or restoration of ownership of them; additional acquisition of shares) must obtain written permission from the National Bank.

In general, joint stock companies are also obliged to register their emissions, be it a founding emission or a new emission of shares, with the State Financial Service.

There are separate regulations on the securities market and open joint stock companies have to comply therewith especially since most of the financial services require a relevant license.

17. Is there a requirement to disclose a deal, for instance to regulatory authorities? Is it possible to keep a deal confidential?

Traditional acquisition via share transfer that results in a change of the shareholding structure requires the previously mentioned re-registration procedure (registration of changes on the shareholding). One of the required documents that has to be submitted to the authorities is a SPA. This constitutes a general requirement to disclose a deal.

For example, if a share transfer concerns the banking sector, the deal has to be disclosed to the National Bank. If the acquisition concerns the competition market, the deal has to be accordingly disclosed to the competition authorities. There are some other specific cases where the deal has to be disclosed, however, unless there are direct sanctions for the failure to disclose the deal, some companies tend to not disclose the deal in order to keep it confidential.

18. Can sellers be restricted from shopping around during a negotiation process? Is it possible to include break fee or other penalty clauses in acquisition documents to procure deal exclusivity?

Unless there is an agreement in place between the parties, sellers cannot be restricted from offering their shares to third parties. That said, the current laws allow for a mechanism of preliminary agreement whereby the subject matter is that the parties will execute the primary agreement sometime in the future. During that period, certain terms and conditions of the preliminary agreement can be established that would allow controlling the parties in one way or another. It is important to note that complete restriction is not possible as it would constitute a breach of constitutional and other statutory rights granted by the Kyrgyz laws.

Notwithstanding the above, Kyrgyz laws do provide the concept of "contractual freedom" that implies that parties are free to enter into any agreement allowed by the laws and agree upon any conditions of the agreement that are explicitly allowed or otherwise not restricted by the relevant regulations. Under this concept, parties are generally allowed to express their intentions, including the imposition of sanctions on the party in default.

19. What are the conditions precedent in a typical acquisition document? Is it common to have conditions to closing such as no material adverse change?

Due to various factors and conditions, it is not entirely possible to come up with an exhaustive list of conditions precedent ("**CP**") used in a typical acquisition document. Normally, it depends on the sector, on the scope of activities of the target company, its assets, and other circumstances. A company willing to proceed with the acquisition of a target company is most likely to include the CPs concerning the following:

(1) Regulatory approvals (where necessary);

(2) Third-party consents (e.g., current creditors of the target company);

(3) Due diligence of the target company (including legal, financial, and/or tax DD);

(4) Representation, warranties, and covenants (common negative

covenants might not be enforceable in the Kyrgyz Republic due to contradiction with the statutory provisions of the law);

(5) Other miscellaneous CPs at the discretion of a potential purchaser.

It is common to have conditions to closing such as above and others, including no material adverse change. However, such CPs are commonly used in transactions with local parties governed by foreign law, and local transactions do not always have the majority of the above CPs as not all of them can be enforced under the Kyrgyz laws.

20. What are the typical warranties and limitations in acquisition documents? Is it common to obtain warranty insurance?

It is common to include warranties and limitations pertaining to the change of control, the absence of any encumbrances over the target company's assets, and the absence of ongoing or potential disputes and/or litigations. There can be other warranties and limitations, but not all of them can be used and enforced under the Kyrgyz laws. Common negative covenants that would restrict shareholders from making decisions on alienating shares to third parties, cannot be enforced as some of the shareholders' rights are statutory in nature and cannot be overthrown by any contractual limitations.

The insurance market has been steadily developing in recent decades, however, not many insurance instruments are available in the Kyrgyz Republic due to the size of the market and market practices. With that in mind, warranty insurances are not common and only a handful of insurance agencies can consider rendering such services.

21. Is there a requirement to set a minimum pricing for shares of a target company in an acquisition?

There are no requirements to set minimum pricing for shares of a target company in acquisition as this is decided by parties to an acquisition at their own discretion. It is common to set the minimum price as the nominal value of shares that are purchased in the charter capital of a target company.

22. What types of acquisition financing are available for potential buyers in your jurisdiction? Can a company provide financial assistance to a potential buyer of shares in the target company?

There are no specific acquisition financing instruments in the Kyrgyz Republic aside from general financing instruments, such as loan facilities. There are no restrictions pertaining to the designation of loan facilities and those can be used to finance the acquisition. That said, please refer to the above answers on the notarization of loan agreements and the general currency restrictions.

23. What are the formalities and procedures for share transfers and how is a share transfer perfected?

To proceed with the acquisition of a company through SPA, it is necessary to conclude a share purchase agreement in writing between the withdrawing participant and the buyer of the shares. The signature of the individual alienating the share must be certified by a notary. The representative of the legal entity alienating the share must seal the agreement or certify their signature in a notarial form.

Representatives acting on the basis of power of attorney (from alienating and/or receiving party) can carry out the perfection of SPA and sign it on behalf of parties in the Kyrgyz Republic. This is commonly used to abstain from notarization and legalization (apostille) procedures outside of Kyrgyzstan.

After the deal's closure, the new shareholder is required to adopt a corporate decision to re-register the acquired company. For the purpose of re-registration, the following documents must be submitted to the authorized state body:

(1) registration application;

(2) the original decision on the state re-registration of a legal entity;

(3) original certificate of state registration; (no longer issued after March 2023)

(4) for shareholders – legal entities: legalized extract from the state register or other document confirming that the legal entity is valid and acting under the laws of its state of incorporation (the term for an extract should not exceed 6 months from the date of its issuance);

(5) power of attorney for representatives;

(6) original counterparts of a share transfer agreement.

(7) permission of an owner of premises that serve as a legal address (if changed);

(8) confirmation on the payment of state fees.

24. Are there any incentives (such as tax exemptions) available for acquisitions in your jurisdiction?

There are no specific incentives provided by the current legislation of the Kyrgyz Republic pertaining to acquisitions.

F. Enforceability

25. Can acquisition documents be executed in a foreign language?

Yes, acquisition documents can be executed in a foreign language. If the target company is a Kyrgyz legal entity, acquisition documents have to be translated with subsequent notarization as the language of submitted documents must be either state (Kyrgyz) or official (Russian) languages.

26. Can acquisition documents be governed by a foreign law?

Yes, acquisition documents can be made in accordance with and governed by foreign laws. It should be noted, however, that court judgments of most other foreign jurisdictions are not directly enforceable in the Kyrgyz Republic. A judgment of a foreign court obtained against a Kyrgyz company may be enforced in the Kyrgyz Republic only if there is a treaty between the Kyrgyz Republic and the relevant foreign jurisdiction on the mutual recognition and enforcement of court judgments or, in the absence of such treaty, on the basis of reciprocity.

27. Are arbitration clauses legally permissible or generally included in acquisition documents?

The Kyrgyz Republic is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) and an arbitration award rendered in accordance with the procedure specified in acquisition documents would be recognized and enforced by Kyrgyz courts without re-examination or re-litigation of the matters thereby adjudicated.

28. Are there any specific formalities for the execution of acquisition documents? Is it possible to remotely/digitally sign documents?

Signatories of the parties should be duly authorized to execute acquisition documents, for that purpose, relevant decisions of the governing bodies should be provided along with the proper power of attorney. It is not common to execute documents in the presence of witnesses, but there are no explicit restrictions too. This suggests that witnessing can be done at the discretion of the parties.

If the SPA is governed by the Kyrgyz laws and executed in the Kyrgyz Republic, the signatures of individuals should be notarized. Other than that, there are no other specific formalities for the execution of acquisition documents.

Remote/digital signing is possible in theory and under the SPA governed by foreign laws. Kyrgyz laws require local SPAs to be executed in writing and in the number of counterparts for each of the parties. There have been some developments in remote execution of documents, but it has not become common yet.

G. Trends and Projections

29. What are the main current trends in M&A in your jurisdiction?

Ever since the fall of the Soviet Union, the government has made significant progress in the privatization of state-owned assets. This trend is still relevant as the Kyrgyz Republic seeks to sell some of its assets in order to gain investments and foreign expertise. As a result of this trend, the government is trying to sell one of the major telecommunication operators in the Kyrgyz Republic.

There has been significant progress in the field of mining with many of the mining companies being purchased by foreign investors due to the abundance of certain natural resources in the Kyrgyz Republic. That said, mining legislation is constantly changing and not always for the better as the current government is trying to gain more control over the mining sector undermining investors' rights over their mining assets.

Having been mentioned a number of times throughout this questionnaire, the banking sector of the Kyrgyz Republic has seen some significant developments in recent years under the control of the National Bank of the Kyrgyz Republic. So far, there have been a number of M&A transactions in this sector and seemingly, the banking sector is moving towards consolidation with many foreign investors investing capital into the Kyrgyz Republic.

30. Are any significant development or change expected in the near future in relation to M&A in your jurisdiction?

It is not presently possible to predict any significant developments or changes in relation to M&A in Kyrgyzstan. There are already a number of reforms that are aiming at improving the legal framework in Kyrgyzstan, however, not many of these reforms will be completed due to many factors, one of those being political instability. There have been many undertakings so far but with the change of regime, some of these undertakings are compromised and cannot be completed. Hopefully, the current regime will be able to finalize some of the legal and regulatory reforms that would result in facilitation of M&A activities and attraction of foreign investments in the Kyrgyz Republic.

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A. General

1. What is the main legal framework applicable to companies in your jurisdiction?

The Commercial Law ("**CL**") (*Komerclikums*) of April 13, 2000, effective from January 1, 2002, governs companies in Latvia. The Financial Instrument Market Law of November 20, 2023, effective from January 1, 2004, provides additional rules applicable to the listed companies. Other laws regulating companies in Latvia are:

- the Group of Companies Law of March 23, 2000;
- the Law on the Prevention of Money Laundering and Terrorism and Proliferation Financing of July 27, 2008;
- the Trade Secret Protection Law of February 28, 2019;
- Law on the Enterprise Register of the Republic of Latvia of November 20, 1990;
- the Civil Law of January 28, 1937.

2. What are the most common types of corporate entities (e.g., joint stock companies, limited liability companies, etc.) used in your jurisdiction? What are the main differences between them (including but not limited to regarding the shareholders' liability)?

The most common types of companies are:

- Limited Liability Company ("**LLC**") (*sabiedrība ar ierobežotu atbildību*);
- Joint Stock Company ("**JSC**") (*akciju sabiedrība*).

The mandatory share capital contribution for the LLC is EUR 2,800, while for the JSC - EUR 25,000.

It is mandatory for JSC to have a supervisory board consisting of at least 3 (three) members, whereas for LLC, having a supervisory board is optional.

The shareholders of the LLC may decide

on any issue in the competence of the management and supervisory board by assuming liability for the decision, while the shareholders of JSC may only decide on the issues provided by law (approval of annual reports, distribution of dividend, change of articles, change of the share capital, the election of the supervisory board, etc.). All other issues are decided by the management board by obtaining approval of the supervisory board if provided by law and the articles of association.

It is also possible to set up an LLC with a share capital of less than EUR 2,800 (*mazkapitāla sabiedrība ar ierobežotu atbildību*), which is mainly aimed at start-ups. Such LLCs must comply with specific criteria (e.g., the founders may only be natural persons, and there are not more than 5 (five) of them, the management board members may only be the shareholders, etc.).

B. Foreign Investment

3. Are there any restrictions on foreign investors incorporating or acquiring the shares of a company in your jurisdiction?

In Latvia, according to the National Security Law ("**NSL**"), a prior permit of the Cabinet of Ministers must be obtained for the following transactions concerning an entity important to national security or one with critical infrastructure:

- direct or indirect acquisition of control,
- shareholding above 10%,
- retaining influence or shareholding in case of change of an Ultimate Beneficial Owner ("**UBO**"),
- takeover, or
- granting a loan.

The NSL applies to energy, telecom, and media companies, companies owning forests and agricultural land, companies in strategic partnership with the Ministry of Defence for strategic goods or military production, companies that produce, develop, or trade-in dual-use goods, have access to voter data and/or process critical infrastructure data. Commonly, such companies should be registered as "important to national security" in the Register of Enterprises.

The national security regime restricts citizens and legal entities incorporated in the Russian Federation and the Republic of Belarus from acquiring control, shareholding above 10%, or UBO status in an entity important to national security or owning or holding critical infrastructure.

4. Are there any foreign exchange restrictions or conditions applicable to companies such as restrictions to foreign currency shareholder loans?

There are no foreign exchange restrictions or conditions applicable to companies in Latvia.

5. Are there any specific considerations for the employment of foreign employees in companies incorporated in your jurisdiction?

There are almost no restrictions for EU/EEA citizens to work in Latvia, and they may start working as soon as an employment contract is signed. Those EU/EEA citizens who wish to stay in the Republic of Latvia for more than 3 (three) months must be registered with the Office of Citizenship and Migration Affairs and obtain a certificate of registration.

As to the employment of third-country nationals (non-EU/EEA employees), there are several restrictions concerning entering (visa), staying (residence permit), and employment (right to employment), while the employer is fully responsible both for the foreigner's employment (including restrictions related to wages and salary), staying (including the place of residence and health care), and removal costs, if any.

C. Corporate Governance

6. What are the standard management structures (e.g., general assembly, board of directors, etc.) in a corporate entity governed in your jurisdiction and the key liability issues relating to these (e.g., liability of the board members and managers)?

The governing institutions of the company are the shareholders meeting and the management board, as well as the supervisory board, if mandatory or former.

For JSC, it is mandatory to have a supervisory board, whereas it is optional for LLC.

The management board is the executive institution of the company, which manages and represents the company.

The supervisory board is the supervisory institution of the company, which represents the interests of shareholders during the time periods between the meeting of shareholders and supervises the activities of the management board. In the cases provided for in the articles of association, the management board must obtain the supervisory board's approval for certain company transactions.

The management and supervisory board members must act with due care of a prudent manager and are jointly and severally liable for losses they have caused to the company. An LLC's management board or supervisory board member is not liable for losses caused to a company if he or she acted in good faith within the framework of a lawful decision of the shareholder's meeting.

7. What are the audit requirements in corporate entities?

In general, entities are required to have an audit of their (if relevant, consolidated) financial statements conducted by a sworn auditor if they satisfy certain conditions (e.g., balance sheet above EUR 1,000,000; net turnover above EUR 2,000,000; a staff of at least 50 people per year). The content of the financial statements depends on the size of the company.

Annual financial statements of corporate entities in specific sectors (e.g., financial institutions and insurance companies) must be audited in Latvia, regardless of size.

D. Shareholder Rights

8. What are the privileges that can be granted to shareholders? In particular, is it possible to grant voting privileges to shareholders for appointment of board members?

A company can have different categories of shares, each of which may have various rights fixed in the articles of association.

The rights provided by shares may include a voting right at the shareholder's meeting, a right to receive dividends, and a right to receive a liquidation quota.

9. Are there any specific statutory rights available to minority shareholders available in your jurisdiction?

The general approach is that the majority shareholders hold decision-making power. The rights of minority shareholder depend on the proportion of the share capital they hold. Usually, to exercise certain minority rights, a shareholder must possess at least one-tenth of the share capital.

Shareholders representing at least one-tenth of the share capital may request the convocation of the shareholders meeting, object to the approval of annual accounts due to deficiencies therein, and request secret voting (instead of open voting) at the shareholders' meeting, etc.

The company must take an action against the founders, the management board, supervisory board, or the auditor if a minority of shareholders who jointly representing no less than one-twentieth of the share capital requests it.

10. Is it possible to impose restrictions on share transfers under the corporate documents (e.g., articles of association or its equivalent in your jurisdiction) of a company incorporated in your jurisdiction?

Concerning LLC, in case of a sale, according to law, the right of first refusal or, in case of any other transaction than a sale, prior consent from the shareholder's meeting must be obtained.

Regarding JSC, share transfer restrictions can be included in the company's articles of association.

11. Are there any specific concerns or other considerations regarding the composition, technical bankruptcy and other insolvency cases in your jurisdiction?

If the losses of the company reach at least a half of the share capital of the company or the company has limited solvency, the signs of insolvency, or they are likely to occur, the management board shall notify the supervisory board, if established, thereof and convene shareholders meeting in which the management board shall provide explanations.

It is upon a shareholders' meeting to decide on an application for legal protection proceedings or insolvency proceedings, the termination and liquidation of the company, reorganization, changes in the share capital, or another decision on improving the company's economic condition.

The Insolvency Law provides the legal framework for insolvency matters.

E. Acquisition

12. Which methods are commonly used to acquire a company, e.g., share transfer, asset transfer, etc.?

The most common way to acquire a business is the purchase of shares. Other ways of business transfer include acquiring a business as a going concern and assets. Business and asset deals are more frequently used to take over certain parts of a business or assets. Transfer of business entails transferring specific assets, contracts (including suppliers, clients, and employees), and liabilities related to a particular business type or business unit. The acquirer remains jointly and severally liable with the seller in business transfer concerning third parties.

13. What are the advantages and disadvantages of a share purchase as opposed to other methods?

The share purchase deal is comparatively more straightforward because there is no need to transfer assets and suppliers, clients, and employees by notifying or renovating their contracts by three-party novation agreements. As a result, the acquirer takes over the shares of a company and its management, and the seller is liable for the title to shares and the business according to the share purchase agreement negotiated by the parties.

The advantages of the share acquisition include the absence of VAT, which applies to asset transfer but not to business transfer, and the absence of joint and several liability with the seller for the obligations before the transfer as opposed to a business transfer deal.

Asset and business deals have their taxation specifics; hence, these deals must be structured carefully and thoughtfully to comply with tax requirements properly.

14. What are the approvals and consents typically required (e.g., corporate, regulatory, sector based and third-party approvals) for private acquisitions in your jurisdiction?

In each case, the required approvals for M&A deals vary depending on the parties and the target company.

The most common are third-party approval requirements arising from change of control clauses in the agreements concluded by the target company. Typically, consents are required from financial institutions by loan or lease agreements and from the main customers or providers of international size. Encumbered shares may only be transferred upon consent from the respective third party.

Corporate approvals include waiver of the statutory pre-emption rights if less than 100% of shares of the target are sold. The articles of association of the target company or the seller may specify other corporate approvals required (for example, approval from the supervisory board or shareholder of the seller).

The spouse's consent will usually be required if the seller is an individual in a marital relationship with joint property rights.

Regulatory approvals are applicable in specific sectors; for example, the acquisition of shares in a financial market participant is subject to the approval of the Bank of Latvia (in Latvian – *Latvijas Banka*). Acquisitions of shares in national security objects (such as certain companies in the electricity or heating sector, owners of forest or agricultural land, among others) entail foreign direct investment ("**FDI**") clearance by the Cabinet of Ministers.

Please see the answer to Question15 regarding competition clearance.

15. What are the regulatory competition law requirements applicable to private acquisitions in your jurisdiction?

Depending on the turnover and the market share in Latvia of the parties involved in the transaction, clearance from the Competition Council may be required. Subject to certain thresholds, the parties may submit full or short-form notifications to the competition authority. Review of the application takes from 45 days up to 4 (four) months (3 (three) months in case of short-form notification) after complete notification is submitted.

The deal is considered void if a transaction qualifying for the mandatory competition clearance is carried out without it. However, the competition authority will usually allow the parties to rectify the deficiency by submitting the notification after the closing of the transaction and applying penalties.

16. Are there any specific rules applicable for acquisition of public companies in your jurisdiction?

The shareholders of a public limited company do not have pre-emption rights. For the acquisition of more than 30% of shares of a publicly listed company, the share buy-back procedure must be carried out before the transaction.

17. Is there a requirement to disclose a deal, for instance to regulatory authorities? Is it possible to keep a deal confidential?

Obtaining title to shares and becoming an UBO must be registered in the Commercial Register based on a shareholders register and the UBO disclosure documents. However, the share purchase agreement and other transaction documents must not be disclosed.

Disclosure of a deal to regulatory authorities may be required when purchasing a regulated entity, for example, a financial institution or an insurer, or when regulatory approval is required for other reasons, such as competition or FDA clearance. In such cases, transaction documents must be disclosed to authorities but unavailable to the public.

18. Can sellers be restricted from shopping around during a negotiation process? Is it possible to include break fee or other penalty clauses in acquisition documents to procure deal exclusivity?

Documents governing the due diligence and negotiation phase, such as a letter of intent or preliminary agreement, may provide for the exclusivity of the deal. The exclusivity period is at the discretion of the parties.

Acquisition documents may include contractual penalties to safeguard the exclusivity provisions. It may be agreed that losses due to non-performance of the contract shall be compensated additionally or insofar as they exceed the contractual penalty.

19. What are the conditions precedent in a typical acquisition document? Is it common to have conditions to closing such as no material adverse change?

Typical conditions precedent includes affirmative due diligence (including Anti-Money Laundering ("**AML**") and sanctions compliance), receipt of third-party consents (for example, from banks, key clients, or suppliers), regulatory approvals (including competition clearance and FDI clearance), and pre-transaction restructurings where required by the parties. The transaction's closing is commonly subject to the accuracy of the warranties and the absence of material adverse effects.

Depending on the due diligence findings, the parties may agree on various business-related conditions precedent, such as entering into or prolonging business agreements, correcting legal deficiencies, registering any status or property rights, etc.

20. What are the typical warranties and limitations in acquisition documents? Is it common to obtain warranty insurance?

Usually, a wide range of seller warranties are required, which commonly include the title to shares, authority to enter a transaction, legal compliance, financial condition, title to assets and property, business agreements and operations, employment issues, litigation, and tax compliance of the target. Specific warranties may be included or emphasized depending on the target company's business type, such as intellectual property, environmental matters, data protection, governmental authorizations, etc. Warranties are usually qualified by the information disclosed by the seller before the transaction's closing, whether during due diligence or by disclosure letter.

Confirmation of AML compliance, absence of sanctions, and the clean origin of funds have become a typical buyer warranty lately.

It is common to restrict the seller's liability by de minimis, basket, and overall cap limitations. Time limitations also usually apply, providing time periods for different warranties. Tax and title warranties tend to have longer liability terms than other warranties.

Apart from general warranties, the buyers often request the sellers to provide specific indemnities regarding specific risks discovered during the due diligence.

Deferred payment or guarantee by the

seller's parent company or ultimate beneficial owner is typical. In some specific transactions - security. Occasionally, in some more significant transactions (approx. 5-7% of all Baltic transactions), warranty insurance is used.

21. Is there a requirement to set a minimum pricing for shares of a target company in an acquisition?

There are no minimum pricing requirements in Latvia. Only transactions between related companies must correspond to fair market value.

22. What types of acquisition financing are available for potential buyers in your jurisdiction? Can a company provide financial assistance to a potential buyer of shares in the target company?

Bank loans, venture capital fund financing, funds obtained via bonds and IPOs, shareholders' loans from parent companies, or ultimate beneficial owners.

Although only public limited companies are expressly prohibited from financing the acquisition of their shares, Latvian courts, in their decisions, occasionally have attributed this prohibition also to private limited companies.

23. What are the formalities and procedures for share transfers and how is a share transfer perfected?

The shares and the underlying shareholders' rights are transferred to the new shareholder upon inscription of the new shareholder in the company's shareholders register. The respective new division of the shareholder's register of the company must be signed by the seller of the shares, the acquirer of the shares, and the chairman of the management board of the target company (or in the absence of such, all management board members or a management board member expressly authorized by the other members). The document must be signed with a qualified electronic signature containing a qualified time stamp. If the document is signed with a wet-ink signature, the signatures of all parties must be notarized.

24. Are there any incentives (such as tax exemptions) available for acquisitions in your jurisdiction?

A Latvian company shall not pay corporate income tax (CIT) from the capital gains earned from the sale of direct participation shares if the company has held the shares for at least 36 months. This exemption does not apply in case of sale of real estate company shares.

If the shares are held less than 36 months a gain arising on the disposal of a shares is treated as ordinary income, however, 20% CIT shall be applied only if the profit is distributed.

F. Enforceability

25. Can acquisition documents be executed in a foreign language?

Yes, acquisition documents can be executed in a foreign language.

26. Can acquisition documents be governed by a foreign law?

Yes, foreign law can govern acquisition documents, although mandatory provisions of Latvian law apply.

27. Are arbitration clauses legally permissible or generally included in acquisition documents?

Courts are a more popular venue for dispute resolution. In larger or cross-border transactions, parties agree on neutral arbitration in jurisdictions seperate from their own or the target's.

28. Are there any specific formalities for the execution of acquisition documents? Is it possible to remotely/digitally sign documents?

According to the CL, the acquisition transaction shall be in writing.

It is possible to sign documents remotely/digitally. For documents subject to submission to the commercial register, requirements regarding using qualified electronic signatures containing qualified time stamps apply.

G. Trends and Projections

29. What are the main current trends in M&A in your jurisdiction?

In 2024, Latvia's M&A market demonstrated increased deal activity, with a notable rise in transaction volume compared to previous years. However, overall deal values declined, reflecting a market trend where numerous smaller-scale transactions, including start-up acquisitions, complemented several high-value deals. The most active sectors driving M&A activity included energy, retail, technology, media, and telecommunications (TMT), wood processing, and packaging, waste, recycling.

Despite ongoing geopolitical challenges, the outlook for 2025 remains positive, with continued investor interest across key industries. Significant transactions are anticipated in the energy, TMT, retail, forestry, environment, and infrastructure sectors, driven by both domestic and cross-border investments.

30. Are any significant development or change expected in the near future in relation to M&A in your jurisdiction?

Amendments are expected to the Commercial Pledge Law to simplify the administrative procedures and documentary requirements. Changes to the Law on Control of Aid for Commercial Activity will simplify the financial reporting of large enterprises facilitating large-scale investment projects and improving legal certainty for investors. Amendments to the Commercial law will facilitate early repayment and refinancing of loan and leasing agreements. As a member of the European Union, Latvia will continue integrating key EU regulatory acts, particularly in the areas of corporate sustainability, competition law, and investment control, ensuring alignment with broader EU policy goals.

LIBYA

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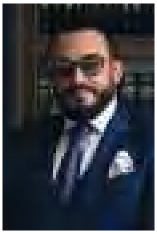

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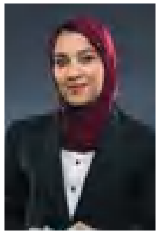

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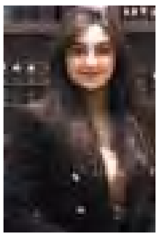

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A. General

1. What is the main legal framework applicable to companies in your jurisdiction?

- Civil Code of Libya
- Law No. 23 of 2010 on Commercial Activities (**Commercial Code**)
- Law No. 10 of 2023 concerning Libyan Commercial Arbitration
- Law No. 12 of 2010 concerning Labor Relations (Primary Labor Legislation)
- Law No. 6 of 2022 concerning Electronic Transactions
- Decision No. 590 of 2013 of the Ministry of Labor
- Decision No. 107 of 2009 on Establishing the Libyan Investment and Development Fund
- Decision No. 207 of 2012 Regarding Foreigner's Participation in Foreign Companies
- Law No. 9 of 2010 on Investment Promotion (Investment Law)

2. What are the most common types of corporate entities (e.g., joint stock companies, limited liability companies, etc.) used in your jurisdiction? What are the main differences between them (including but not limited to with regard to the shareholders' liability)?

For foreign companies, the most common corporate entities in Libya are joint stock companies and limited liability companies. Local companies often choose to register as limited liability companies.

The main difference is in respect to the minimum capital set by Libyan law to establish each entity. Namely, a minimum capital of 1,000,000 LYD (one million Libyan Dinars) is collectively required for joint stock companies during the process of registration. As for the registration of branches for foreign companies, the required minimum seed capital is 250,000 LYD (two hundred and fifty thousand Libyan Dinars) whereas a minimum capital of 3,000 LYD (three thousand Libyan Dinars) is required for local limited liability companies.

It is also important to note, that branches of foreign companies have the unique additional requirement of supplying three experience certificates from previous clients in which the company intending to register the branch has provided work to within the same field it is registering for in the State of Libya. Branches of foreign companies, uniquely are only permitted to register in Libya within one field. The permitted fields are listed within Decision No. 207 of the year 2012 and are as follows:

- Contracting and Civil works
- Field of electrical energy
- Oil & gas sector
- Communication sector
- Industrial sector
- Surveying and planning
- Environmental protection sector
- Computing and information technology sector
- Technical consulting, studies, training and supervising

B. Foreign Investment

3. Are there any restrictions on foreign investors incorporating or acquiring the shares of a company in your jurisdiction?

Under Commercial Law foreigners are not permitted to fully own a company. For instance, as per Article 3 of Decree 207 of the year 2012, foreigners are limited to a maximum of 49% of shares of the company.

However, if foreigners choose to establish a company under Libyan Investment Law, they are permitted to own up to 100% of the shares of the company.

The conditions to qualify for an investment law registration are quite strict and limited. There are also a number of procedures that are necessary to be repeatedly completed during the operation of work in Libya. This is not an option for oil & gas operators as well as most service companies within the sector as most companies within the sector are not legally permitted to register under investment law. If foreign companies can qualify and have the ability to consistently meet legal requirements as well as procedures, the foreign companies can enjoy some tax and legal incentives.

4. Are there any foreign exchange restrictions or conditions applicable to companies such as restrictions to foreign currency shareholder loans?

This is not regulated.

5. Are there any specific considerations for employment of foreign employees in companies incorporated in your jurisdiction?

Article 3 of the Decision of the Ministry of Labor No. 590 of the year 2013 ("**Decision**") lists 23 professions that foreigners are prohibited from performing, such as legal, tourist guide, administrative, etc. and article 4 of the the employers are allowed to employ foreigners for 11 professions listed in the Decision, with the condition that there are no available national employees for such professions.

Companies registered under commercial law have the local employment content requirement of 75% as required by Article 51 of Law No. 12 of 2010 concerning Labor Relations with some exceptions and permissions available in certain circumstances. As for companies registered under investment law, the local employment content requirement is 30% as per Article 7(7) of Law No. 9 of 2010 on Investment Promotion.

C. Corporate Governance

6. What are the standard management structures (e.g., general assembly, board of directors, etc.) in a corporate entity governed in your jurisdiction and the key liability issues relating to these (e.g., liability of the board members and managers)?

The standard management structure is a hierarchy of the following:

- General assembly: Company's general assembly is composed of all its shareholders, and is held as an ordinary general assembly and an extraordinary general assembly. The general assembly meetings will be in the place of the company's headquarter if the basic system does not stipulate otherwise. The key liability of the general assembly is, to discuss reports of the board of directors, control authority and account's external auditor and to approve the financial documents (general budget, profit and loss account) and profits' distribution.
- Board of directors: The key liabilities of the board of directors is to take all decisions and sign all deals to achieve company's purpose and activity. Chairman and members of the board of directors should perform satisfactorily the legally imposed duties according to the articles of association and in accordance with the legal requirements and they will be interdependently responsible towards the company of any harm due to nonperformance of the duties. They are also responsible towards company's creditors for non-performance of their duties for preserving company's properties.
- Auditors committee: External auditor should submit a written report including his/her idea on company's accountancy and financial issues.

7. What are the audit requirements in corporate entities?

The external accounts auditor should be a licensed person to exercise this profession. The issued report by the licensed auditor, as well as the budget and audited final accounts, is considered correct unless the contrary is proved.

Financial statements are to be provided to certain authorities on an annual basis with strictly enforced deadlines. Fines are imposed for late submissions. All submissions, for auditing purposes or otherwise are required to be in the Arabic language.

D. Shareholder Rights

8. What are the privileges that can be granted to shareholders? In particular, is it possible to grant voting privileges to shareholders for appointment of board members?

Under Libyan commercial code the privileges that can be granted to shareholders include the following:

1- Economic Rights such as Preemptive Rights and Profits

2- Corporate Affairs Rights (Political Rights) such as election of directors, right to call a meeting, right to information, voting on corporate matters (each share is entitled to one vote in any circumstances and multiple voting Shares are not allowed under Libyan law), in addition to the appraisal rights and derivative action (to bring a Law Suit)

Further, in accordance to the Libyan commercial law there is no voting privileges to shareholders for appointment of board members. However, in all cases, any group of shareholders holding at least one -fifth of the voting shares that form the capital stock of a company has the right to remove one director from office in case this group decide to bring a law suit against this member of board of director."

9. Are there any specific statutory rights available to minority shareholders available in your jurisdiction?

Yes, for instance, the minority shareholders can request a General Assembly invitation.

10. Is it possible to impose restrictions on share transfers under the corporate documents (e.g., articles of association or its equivalent in your jurisdiction) of a company incorporated in your jurisdiction?

Yes, it is possible to place restrictions on shares under the Articles of Association of the company. Further, Article 137 of the Commercial Law states, transfer of shares to others is allowed subject to the agreement of the board of directors, except in inheritance where the contract or basic system stipulates that the application for obtaining approval should include name or names of those to whom the shares are transferred, the number of shares to be transferred, and the agreed price."

11. Are there any specific concerns or other considerations regarding the composition, technical bankruptcy and other insolvency cases in your jurisdiction?

None.

E. Acquisition

12. Which methods are commonly used to acquire a company, e.g., share transfer, asset transfer, etc.?

The most common methods are share transfer and asset transfer.

13. What are the advantages and disadvantages of a share purchase as opposed to other methods?

The principal benefit of a share acquisition is that it is relatively straightforward and requires less legal documentation to complete the transaction. The main disadvantage is that the target company's liabilities follow it after the purchase completes.

14. What are the approvals and consents typically required (e.g., corporate, regulatory, sector based and third-party approvals) for private acquisitions in your jurisdiction?

Article 301 of the Commercial Law outlines the required procedures as follows:

- Issuance of acquisition decision from the extraordinary general assembly of each company from the amalgamated and acquisition companies
- Evaluation of assets and liabilities of each company of the acquired companies according to the report of committee of experts including a legal accountant to be appointed by the competent court of first instance in order to specify the net rights of shareholders or partners
- Acquisition contract to be signed by the authorized officials on behalf of the amalgamated and amalgamating companies.

15. What are the regulatory competition law requirements applicable to private acquisitions in your jurisdiction?

A shareholder, without agreement of the other shareholders, should not practice any activity contradicting company's activity or will be an interdependent partner in other competitive company, if practicing the activity or subscription in a competitive company, it is assumed that approval to be obtained is prior to the company's contract and that the partners have knowledge about this issue. If the partner contradicts this, the company has right to dismiss the partner and claim compensation for harm caused.

A shareholder, without agreement of the other shareholders, shall not practice any activity in contradiction with the company's scope of activity or get involved in as an interdependent partner in another competitor company. If a shareholder is practicing an activity in contradiction with the company's scope of activity or is subscribing as a shareholder in a competitor company, then it is assumed that the other shareholders have agreed on such circumstances and have knowledge about such involvement. If a shareholder contradicts that, the company has a right to dismiss the shareholder and claim compensation for damages.

16. Are there any specific rules applicable for acquisition of public companies in your jurisdiction?

No, the rules are applicable only to private companies.

17. Is there a requirement to disclose a deal, for instance to regulatory authorities? Is it possible to keep a deal confidential?

There is no such requirement.

18. Can sellers be restricted from shopping around during a negotiation process? Is it possible to include break fee or other penalty clauses in acquisition documents to procure deal exclusivity?

This is dependent on the terms and conditions of applicable contracts.

19. What are the conditions precedent in a typical acquisition document? Is it common to have conditions to closing such as no material adverse change?

Article 301 of the Commercial Law outlines the required procedures as follows:

- Issuance of acquisition decision from the extraordinary general assembly of each company from the acquisition companies is the typical acquisition document.

Further, Article 306 states, "Amalgamation decision, establishment contract and new basic system or any amendments will be registered in the competent trade register and will be published according the decided procedures in this law. Registration of the companies whose corporate characteristic is expired will be cancelled according to the decided procedures of this law."

20. What are the typical warranties and limitations in acquisition documents? Is it common to obtain warranty insurance?

This is up to the party's discretion as the law does not regulate this.

21. Is there a requirement to set a minimum pricing for shares of a target company in an acquisition?

No.

22. What types of acquisition financing are available for potential buyers in your jurisdiction? Can a company provide financial assistance to a potential buyer of shares in the target company?

Not regulated.

23. What are the formalities and procedures for share transfers and how is a share transfer perfected?

The company's basic system may stipulate entry or substitution of any kind of its issued shares to any other kind by shareholder's request and company's agreement according to the percentages and method of the basic system.

24. Are there any incentives (such as tax exemptions) available for acquisitions in your jurisdiction?

No. Although, if a company, particularly foreign companies as fewer registration options are available to them, can be provided with tax exemptions for certain activities if registered under investment law and can maintain the conditions set out under investment law.

F. Enforceability

25. Can acquisition documents be executed in a foreign language?

No, the acquisition documents must be in Arabic as they must be submitted to the relevant Libyan Public Authorities.

26. Can acquisition documents be governed by a foreign law?

No.

27. Are arbitration clauses legally permissible or generally included in acquisition documents?

It is permissible to include arbitration clauses. However, it must be noted that if the clause relates to the acquisition of a locally established company (incorporated in Libya), then Libyan Law is the applicable law.

When selecting a location for arbitration outside of Libya, it is best to select a location which can provide an arbitral award enforceable in the State of Libya as Libya is not a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Libyan law on the recognition and enforcement of foreign arbitral awards operates on a reciprocity principle as per Article 62 of Law No. 10 of 2023 concerning Libyan Commercial Arbitration. The State of Libya is a party to the Riyadh Convention allowing for the enforcement of arbitral awards originating from a State within the Arab League.

28. Are there any specific formalities for the execution of acquisition documents? Is it possible to remotely/digitally sign documents?

In addition to the above-mentioned formalities under question No. 14, Article 302 required the companies to inform the creditors. Namely, Article 302 states, "The legal representatives of the companies concerned with amalgamation should inform the creditors of the amalgamated and amalgamating companies about the amalgamation decision during 10 days from date of registering the amalgamation in the trade register as well as its publication and announcement in two national daily newspapers."

Moreover, it is possible to use an electronic signature either Rometty/ digitally according to Law No. 6 of the year 2022.

G. Trends and Projections

29. What are the main current trends in M&A in your jurisdiction?

Acquisition is not a heavily regulated area of law. The Commercial Law only has certain and limited provisions that govern mergers and acquisitions. Thus, it is not a regular practice in Libya.

30. Are any significant development or change expected in the near future in relation to M&A in your jurisdiction?

No.

LUXEMBOURG

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A. General

1. What is the main legal framework applicable to companies in your jurisdiction?

The commercial companies in Luxembourg are governed by the law dated 10 August 1915 on commercial companies as amended from time to time.

The main companies are commercial companies however the Luxembourg civil code contains some regulations applicable to civil companies and also applicable to the commercial companies.

2. What are the most common types of corporate entities (e.g., joint stock companies, limited liability companies, etc.) used in your jurisdiction? What are the main differences between them (including but not limited to with regard to the shareholders' liability)?

Generally speaking, two types of companies are used in Luxembourg, the private limited company (*société à responsabilité limitée*) and the public limited company (*société anonyme*).

Both companies have to be incorporated in front of a public notary. The shares of a private limited company are not freely transferable (the approval of the other existing shareholders is required prior to any transfer). The shareholders are limited to 100 shareholders.

The shares of a public limited company are freely transferable and may be listed. There is no limit with respect to the number of shareholders.

In both cases, the liability of the shareholders are limited to their contribution.

The public limited company is managed by a board of directors or a sole administrator in case of a sole shareholder. The private limited company is managed by a sole manager or a board of managers (*collège de gérance*).

B. Foreign Investment

3. Are there any restrictions on foreign investors incorporating or acquiring the shares of a company in your jurisdiction?

Under Luxembourg law, there are no applicable restrictions apart from KYC and AML requirements.

However, the Luxembourg government presented bill no. 7885 in front of the Luxembourg parliament. Such bill establishes a national screening mechanism for foreign direct investment that may be detrimental to security or public order and to establish the mechanism for cooperation between the Member States of the European Union. The said bill intends to implement the regulation (UE) 2019/452 of the European Parliament and of the European Council dated 19 mars 2019.

The bill implements the European provisions by providing for a three-step screening mechanism. The first step is for the foreign investor to notify his foreign direct investment when it concerns critical activities. The Minister of Economy and the Minister of Finance decide whether the foreign direct investment should be subject to a screening procedure. If such a screening procedure has been initiated, the foreign direct investment is subject to authorisation in view of its potential impact on security or public order.

4. Are there any foreign exchange restrictions or conditions applicable to companies such as restrictions to foreign currency shareholder loans?

Regarding foreign investments, the company and its investors have to comply with the KYC & AML requirements but also with any applicable sanction list (e.g., Russian sanction list).

5. Are there any specific considerations for employment of foreign employees in companies incorporated in your jurisdiction?

A third-country national who wishes to come to Luxembourg to carry out a salaried activity for a period of more than 3 months, must follow a procedure in two consecutive steps:

Before entering the country, (i) he must submit an application for a temporary authorisation to stay to the Immigration Directorate of the Ministry of Foreign and European Affairs (*Ministère des Affaires étrangères et européennes*), (ii) be in possession of a valid passport and (iii) for persons subject to visa requirements in order to enter Luxembourg: request a type D visa after having obtained the temporary authorisation to stay;

After entering the country, he/she has to make (i) a declaration of arrival in the new commune of residence in Luxembourg, (ii) undergo a medical check and (iii) then submit an application for a residence permit for third-country national salaried workers.

An employer who has not been presented with a suitable candidate from the National Employment Agency (*Agence pour le développement de l'emploi)* ("**ADEM**") within 3 weeks following his declaration of a vacant position can request a certificate from the director of the ADEM which will allow him to recruit a third-country national.

C. Corporate Governance

6. What are the standard management structures (e.g., general assembly, board of directors, etc.) in a corporate entity governed in your jurisdiction and the key liability issues relating to these (e.g., liability of the board members and managers)?

In principle, companies are managed by a board of managers/directors. Managers/directors have the broadest powers to realize the corporate object of the company and to represent it towards third parties.

The directors, the members of the management committee and the *directeur général* (managing executive officer) are liable to the company in accordance with the general law for the execution of the mandate given to them and for any misconduct in the management of the company's affairs.

The directors and members of the management committee can be held jointly and severally liable towards either the company or any third parties for damages resulting from the violation of this law of articles.

The directors and members of the management committee shall be discharged from such liability in the case of a violation to which they were not a party provided no misconduct is attributable to them and they have reported such violation, as regards members of the board of directors, to the first general meeting and, as regards members of the management committee, during the first meeting of the board of directors after they had acquired knowledge thereof.

The annual accounts of the company must be approved every year by the shareholders during its ordinary general meeting. During such general meeting, the shareholders can also appoint and/or remove the management of the company.

An extraordinary general meeting of shareholder(s) must be convened to amend the articles of association.

Under the law dated 10 August 1915 on commercial companies as amended from time to time and the Luxembourg criminal code, managers/directors may notably be held criminally liable for the following specific offences (but not limited to):

a. failure to submit the annual accounts to the general meeting of the shareholder(s),
b. failure to convene the general meeting of the shareholder(s),
c. manipulation of the market price of shares, bonds and other securities,
d. forgery of the annual accounts with fraudulent intent or intention to harm, and
e. misuse of company assets.

7. What are the audit requirements in corporate entities?

Both public and private limited companies must be supervised by one or more internal auditors (commissaires). For private limited companies, this will be the case if they have more than 60 shareholders.

A partnership limited by shares (*société en commandite par actions*) is supervised by a board of three internal auditors (except where an approved statutory auditor (*réviseur d'entreprises*) is appointed).

However, an approved statutory auditor must audit the accounts of a public limited company, a private limited company, a simplified joint stock company and a partnership limited by shares if two of the following conditions are met during two consecutive financial years:

- the total balance sheet exceeds EUR 4.4 million.
- the net profits exceed EUR 8.8 million.
- the company has at least 50 employees.

D. Shareholder Rights

8. What are the privileges that can be granted to shareholders? In particular, is it possible to grant voting privileges to shareholders for appointment of board members?

Each shareholder can take part in collective decisions irrespective of the number of shares they own. They have a right to attend the general meetings of the concerned companies.

Unless shares are issued without voting rights, each shareholder has voting rights commensurate with its shareholding. However, a shareholders' agreement can specify that directors will be appointed by the shareholders from a list proposed by one shareholder and the other directors can be appointed by the shareholders from a list proposed by the second shareholder.

It is also possible to impose to the board of managers/directors the prior approval of the shareholder(s) prior to the adoption of a specific decision.

9. Are there any specific statutory rights available to minority shareholders available in your jurisdiction?

The main actions that minority shareholders can bring include:

- the Shareholders representing at least 5% of the share capital of a public limited company (a *société anonyme*) can, in the context of an increase of the share capital of the company by way of a contribution in kind, require a valuation of the contributed assets by an approved statutory auditor.
- the shareholders of a public limited company (a *société anonyme*) representing at least 10% of the share capital can:
  - ask for an explanation or information in writing from the management body about a specific transaction and, in the absence of an answer, request a judge to appoint an assessor. Such article may also be applicated to a private limited company;
  - bring a liability claim on behalf of the company against the management or supervisory board; and
  - convene a general or extraordinary general meeting of the shareholders of the company.

10. Is it possible to impose restrictions on share transfers under the corporate documents (e.g., articles of association or its equivalent in your jurisdiction) of a company incorporated in your jurisdiction?

Yes.

11. Are there any specific concerns or other considerations regarding the composition, technical bankruptcy and other insolvency cases in your jurisdiction?

No.

E. Acquisition

12. Which methods are commonly used to acquire a company, e.g., share transfer, asset transfer, etc.?

In Luxembourg, the company are mainly acquired via share deals.

13. What are the advantages and disadvantages of a share purchase as opposed to other methods?

In a share purchase, the buyer acquires the target company with all its assets, liabilities, and obligations (including those that the buyer does not know about). The seller's liability is limited to the extent of the warranties and indemnities given to the buyer.

Parties to an asset purchase can opt for the purchase to be governed by the all *assets and liabilities transfer regime*. Under this specific regime, all the assets and liabilities are transferred to the buyer by law (including personal service agreements (*intuitu personae*), unless expressly prohibited in the agreement itself. The seller or preferably a third party (since the seller will have no assets following the transfer) may grant specific warranties and indemnities in favour of the buyer.

In a share purchase, shares are transferred to the buyer through the share purchase agreement. All the assets, liabilities, and obligations of the target company are acquired without any specification.

In a share purchase, in principle, no third-party consents or notifications are required, unless provided for in specific agreements through, for example, change of control provisions, or due to specific regulations. However, in a private limited company (a *société a responsabilité limitée*) a new shareholder must be approved if he does not acquire the entire share capital of the concerned company.

In an asset purchase, the asset purchase agreement must detail the assets, liabilities, and obligations to be transferred and third-party consents or notifications are usually required to achieve the transfer of specific assets/agreements.

14. What are the approvals and consents typically required (e.g., corporate, regulatory, sector based and third-party approvals) for private acquisitions in your jurisdiction?

An acquisition will usually require corporate approvals from the buyer and the seller (typically, board resolutions) authorising the entering into the transaction and the signing and execution of the transaction agreement. The articles of association may require the approval of the shareholders of the buyer and/or the seller.

Sometimes, the provision of these decisions is a condition for closing. Alternatively, the parties declare and guarantee to each other that all necessary authorisations have been obtained.

15. What are the regulatory competition law requirements applicable to private acquisitions in your jurisdiction?

The Law of 30 November 2022 on competition as amended ("**Competition Law**") provides the competition law framework.

The Competition Law provides the substantive rules:

- Article 4 covers the prohibition of cartels.
- Article 5 covers the prohibition of abuse of a dominant position.

The competition council can intervene, after the completion of a transaction, to remedy anti-competitive agreements or abuse of a dominant position resulting from the acquisition.

The competition council can intervene on its own initiative or following a complaint.

16. Are there any specific rules applicable for acquisition of public companies in your jurisdiction?

Some rules for specific companies exist. For example, in case of a target whose registered office is in Luxembourg and securities are admitted to trading on a regulated market in Luxembourg, the offer will be supervised by the *Commission de Surveillance du Secteur Financier* ("**CSSF**").

Furthermore, if a target company carries a license from the CSSF, the change in shareholding must be approved by the CSSF. Finally, it might be possible for the Luxembourg government to intervene in a contemplated acquisition, which aims at certain Luxembourg entities that are doing business in highly sensitive governmental areas.

17. Is there a requirement to disclose a deal, for instance to regulatory authorities? Is it possible to keep a deal confidential?

Non-disclosure agreements are not subject to any specific formalities to ensure their enforceability.

However, the following rules reduce the "*confidentiality*" of a deal:

- all affected Luxembourg entities must disclose their (new) beneficial owner(s) to the Register of Beneficial Owners. This includes commercial companies, special limited partnerships, investment funds including common funds, non-profit associations, and foundations.
- on 9 August 2019, the Luxembourg government published a legislative proposal to implement the EU Mandatory Disclosure directive (the Directive, also known as "**DAC 6**"). Under the mandatory disclosure rules, qualifying intermediaries (such as financial and tax advisers, lawyers, banks, accountants and domiciliation service providers) and – under certain circumstances – taxpayers need to report certain arrangements to the relevant tax authorities. The reporting obligations will apply as from 1 July 2020, but will also retroactively cover arrangements that started being implemented after 24 June 2018.

In addition, the Luxembourg government laid bill no. 8029 (the "**Bill**") before Parliament. It would implement into domestic law Council Directive (EU) 2021/514 of 22 March 2021 amending Directive 2011/16/EU on administrative cooperation in the field of taxation ("**DAC 7**"). The Bill contains several sections that introduce a reporting obligation for digital platforms whether located inside or outside the EU and an automatic exchange of information between EU Member States' tax administrations on revenues generated by sellers on these platforms as of 1 January 2023. In addition to this new reporting obligation for digital platforms, DAC7 introduces a number of generic changes to the DAC not limited to digital platforms, including a delineation of the internationally agreed standard of foreseeable relevance and a legal framework for the conduct of joint audits between two or more Member States.

18. Can sellers be restricted from shopping around during a negotiation process? Is it possible to include break fee or other penalty clauses in acquisition documents to procure deal exclusivity?

Yes, in both case.

19. What are the conditions precedent in a typical acquisition document? Is it common to have conditions to closing such as no material adverse change?

Examples of such conditions are:

- the delivery of certain financing facilities to the purchaser;
- the prior approval of, or absence of express objection to, the contemplated transaction by a regulatory or public authority;
- the passing of resolutions of the target's shareholders to approve the contemplated transfer of the shares under the contemplated transaction;
- no material adverse change during the negotiations,
- commitment to solve some specific issues before completion.

20. What are the typical warranties and limitations in acquisition documents? Is it common to obtain warranty insurance?

The warranties and indemnification provisions usually cover all aspects of the target company and its business (including its subsidiaries), with a particular focus on the financial accounts used for the transaction and the company's main assets.

In a share transfer, guarantees are broader and cover more extensive issues (taxation, target's annual accounts, and so on).

In an asset transfer, guarantees focus on the assets transferred.

The main limitations on the warranties and indemnification provisions relate to the:

- scope of the warranties or indemnification provisions. The warranties may be qualified or purposefully not cover certain assets or characteristics of the target company. The agreement can even expressly exclude certain types of liability;
- enforcement process for the indemnification provisions. These provisions generally include time limitations on claims, minimum thresholds for claims, maximum liability provisions, and exclusion of contingent liabilities.

The appetite for utilizing warranty insurance has increased markedly in recent years.

21. Is there a requirement to set a minimum pricing for shares of a target company in an acquisition?

No, but the price must be fixed or must be determinable according to objective criteria.

22. What types of acquisition financing are available for potential buyers in your jurisdiction? Can a company provide financial assistance to a potential buyer of shares in the target company?

Bank loans, lines of credit, and loans from private lenders are all common choices for acquisition financing.

Financial assistance may be possible, however it is heavily restricted and not commonly used.

23. What are the formalities and procedures for share transfers and how is a share transfer perfected?

It depends on the legal form of the company. The key points are the execution of the share purchase agreement, the notification to the company of the transfer of its shares, registration of the transfer in the share register, and in some cases the publication of the transfer of the shares.

24. Are there any incentives (such as tax exemptions) available for acquisitions in your jurisdiction?

Generally, asset sales are fully taxable while share sales are generally tax exempt.

However, if the securities sold are in a Luxembourg tax transparent entity (*société civile*) holding at least one Luxembourg real estate asset, registration duties apply.

Capital gains realized by fully taxable Luxembourg companies on a disposal of shares are subject to corporate income tax ("**CIT**") and municipal business tax ("**MBT**").

Capital gains realised by a qualifying seller on a disposal of shares in a qualifying subsidiary are exempt from CIT and MBT in Luxembourg, provided that:

- At the date of the disposal, the qualifying seller has held or commits itself to hold a participation for an uninterrupted period of at least 12 months;
- During this 12-month period, the participation represents at least 10% in the qualifying subsidiary or the acquisition price of the participation is at least EUR 6 million.

F. Enforceability

25. Can acquisition documents be executed in a foreign language?

Yes.

26. Can acquisition documents be governed by a foreign law?

Yes.

27. Are arbitration clauses legally permissible or generally included in acquisition documents?

Yes, this may be contractually foreseen.

28. Are there any specific formalities for the execution of acquisition documents? Is it possible to remotely/digitally sign documents?

Regarding the share deal, no specific formalities are needed. Under Luxembourg and European law, an electronic signature is recognized.

G. Trends and Projections

29. What are the main current trends in M&A in your jurisdiction?

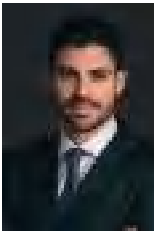
The most common type of deal remains a share deal.

30. Are any significant development or change expected in the near future in relation to M&A in your jurisdiction?

There are no significant developments or changes expected in the near future in relation to M&A in Luxembourg.

MALTA

FENECH & FENECH ADVOCATES



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A. General

1. What is the main legal framework applicable to companies in your jurisdiction?

The main legal framework applicable to companies in Malta is the Companies Act (Chapter 386, Laws of Malta) (the "**CA**") together with all subsidiary legislation enacted thereunder. The CA sets out the general legal framework on the regulation of commercial partnerships and limited liability companies, while the subsidiary legislation regulates more specific topics, such as the offering to the public of securities and the regulation of cell companies.

A parallel legal framework that is relevant to a certain category of Maltese companies is the Merchant Shipping (Shipping Organizations – Private Companies) Regulations (S.L. 234.42). These regulations largely mirror the CA and regulate shipping organizations, i.e., companies formed as private limited liability companies and qualifying as shipping organizations in terms of the Merchant Shipping Act (Chater 234, Laws of Malta).

2. What are the most common types of corporate entities (e.g., joint stock companies, limited liability companies, etc.) used in your jurisdiction? What are the main differences between them (including but not limited to with regard to the shareholders' liability)?

The most common types of corporate entities in Malta are private Limited Liability Companies ("**LTDs**") and Public Limited Liability Companies ("**PLCs**"). Both are limited liability companies and largely share many characteristics. The most notable differences between the two are:

- Share capital – LTDs must have a minimum share capital of EUR 1,165 (at least 20% paid up) while PLCs must have a minimum share capital of EUR 46,588 (at least 25% paid up);

- Number of shareholders – LTDs can have a minimum of 1 (one) shareholder (subject to qualifications for single-member companies) and a maximum of 50. PLCs must have a minimum of 2 (two) shareholders and there is no maximum number of shareholders;
- Number of directors – LTDs can have a minimum of 1 (one) director and a maximum of 50. PLCs must have a minimum of 2 (two) shareholders and there is no maximum number of directors;
- Corporate approvals – LTDs allow for resolutions in writing signed by all shareholders in lieu of holding general meetings, while PLCs require resolutions to be taken at general meetings duly convened and held;
- Restriction on right to transfer shares – LTDs must restrict the right to transfer shares in the memorandum & articles of association, while PLCs have no such requirement;
- Invitations to the public for subscription of shares or debentures – LTDs are required to prohibit any invitation to the public to subscribe for any shares or debentures of the company, while PLCs may offer shares or debentures to the public but may not issue any form of application for their shares or debentures unless the company is registered and the issue is accompanied by a prospectus.

Since both LTDs and PLCs are limited liability companies, the shareholders' liability in each case is limited to the amount, if any, unpaid on the shares respectively held by each of them.

Other types of corporate entities, which however fall under the general categories of LTD and PLC listed above, include:

- Private companies being investment companies with variable share capital (SICAVs);
- Public companies being investment companies with variable share capital (SICAVs);
- Public companies being investment companies with fixed share capital (INVCOs)
- Private companies registered as shipping organisations as discussed further above;
- Cell companies operating within the business of insurance and registered in terms of the IBA.

Finally, Maltese law also allows the formation of partnerships *en nom collectif* (general partnership) and partnerships *en commandite* (limited partnership). The former will have 1 (one) or more general partners who assume unlimited liability for the partnership's debts and obligations with all their personal assets. The latter will have general and limited partners, with the general partners being in charge of the management of the partnership and liable with all their personal assets to the partnership's liabilities, while limited partners are liable only to the extent of their contributions to the company.

B. Foreign Investment

3. Are there any restrictions on foreign investors incorporating or acquiring the shares of a company in your jurisdiction?

There are no restrictions on investors directly or indirectly originating from a European Union ("**EU**") member state, naturally provided that such investors duly comply with Anti-Money Laundering ("**AML**") requirements and are not caught by sanctions applicable in Malta and the EU.

With regard to non-EU investors, the

National Foreign Direct Investment Office Screening Act (Chapter 620, Laws of Malta) (the "**NFDIOSA**") provides restrictions on the incorporation or acquisition of shares in certain Maltese companies. Briefly, the NFDISOA outlines several key activity areas (in turn derived from Article 4 of the EU Foreign Direct Investment ("**FDI**") Regulation) whereby, if an investment (via incorporation or acquisition) resulting in more than 10% of shares being directly or indirectly held by a non-EU investor is intended in companies operating in such key activity areas, the Maltese FDI Office will need to be notified. Depending on the nature of the transaction, and particularly if such transaction could affect the public order and security of Malta, the Maltese FDI Office may then subject the investment to screening and trigger the EU cooperation mechanism in terms of the EU FDI Regulation. The notification needs to be made prior to the investment being effected. Otherwise, the Maltese FDI Office reserves the right to unwind the investment and apply administrative penalties.

4. **Are there any foreign exchange restrictions or conditions applicable to companies such as restrictions to foreign currency shareholder loans?**

There is no restriction on foreign currency shareholder loans or similar. Moreover, the share capital of a Maltese company may be denominated in any currency which is a convertible currency, euro being the default.

However, it should be noted that, for the purposes of preparation of the company's annual accounts, the reporting currency should be the same as the share capital currency. Where the annual accounts of a company are presented in a currency other than euro, there shall be stated on the balance sheet of the company the exchange rate between the currency used and euro on the balance sheet date and such rate shall be the official euro reference middle exchange rate published by the European Central Bank, or the indicative middle exchange rate published by the Central Bank of Malta, as the case may be, for that date.

5. **Are there any specific considerations for employment of foreign employees in companies incorporated in your jurisdiction?**

Foreign employees that originate from EU member states can freely work for Maltese companies without any restrictions.

Third country (non-EU) nationals are also free to work for Maltese companies. However, if they are to reside in Malta, then they will require a work/residence Permit. Moreover, if they reside outside of Malta, then there may be situations where, notwithstanding that the governing law of the employment contract is stipulated as Maltese law, the contract would still be deemed regulated by the place of residence of the employee.

C. Corporate Governance

6. **What are the standard management structures (e.g., general assembly, board of directors, etc.) in a corporate entity governed in your jurisdiction and the key liability issues relating to these (e.g., liability of the board members and managers)?**

As a preliminary note, the constitutive documents of all Maltese companies are the memorandum and articles of association of the company (the "**M&As**"). These documents set out the constitutional affairs of the company including the composition of the board of directors, the legal and judicial representation of the company, the authorised and issued share capital and the various rights and obligations of shareholders. They also regulate, within the parameters of the law, the right to transfer shares, increases in authorised and issued share capital, granting of encumbrances over shares etc.

By law, the management of the company (and any attached liability) is entrusted to the board of directors. The board is in turn appointed by the shareholders. The first director(s) are nominated in the first M&As of the company on incorporation and are thus appointed unanimously by the initial shareholders. Further appointments to the board may be made by ordinary resolution, unless the M&As provide otherwise.

The CA defines an ordinary resolution as a resolution passed by a shareholder or shareholders having the right to attend and vote, holding in the aggregate shares entitling the holder or holders thereof to more than 50% of the voting rights attached to shares represented and entitled to vote at a meeting. An extraordinary resolution is in turn defined as a resolution taken at an extraordinary general meeting which has been passed by a shareholder or shareholders having the right to attend and vote at such meeting, holding in the aggregate not less than 51% in nominal value of the shares conferring that right. While these are the default thresholds set out at law, the CA allows such thresholds to be higher (but not lower) by prescribing such in the M&As.

As the body entrusted with the management of the company, the board of directors has several general and statutory/administrative duties. The general duties are wide and include the duty to act honestly, in good faith and in the best interests of the company, to promote the well-being of the company, to exercise the due degree of care, diligence and skill, and to ensure that personal interests do not conflict with the interests of the company. The statutory duties cover more specific company obligations, such as filing and fiscal duties.

Maltese jurisprudence has determined that directors' duties are owed to the company itself, rather than to shareholders. Moreover, directors may be found personally liable if they are found to have breached Maltese law provisions on wrongful and/or fraudulent trading. Otherwise, to the extent that they have not breached their duties at law, they will not be found personally liable for debts of the company on the principle of the separate juridical personality of the company.

Shareholders, on their part, are not involved in the management of the company. Consequently, and in line with the principle of limited liability and the corporate veil, as a general rule they are not liable for the wrongdoings of the company. Their liability is thus capped to the amount, if any, unpaid on the shares respectively held by each of them. While this is the general position at law, there are some exceptions in which the so-called corporate veil will be lifted and creditors will be given recourse against the shareholders. Thus, for example, in the context of the insolvent liquidation of companies, findings of fraudulent trading on the part of the shareholders will expose them to personal liability for all or any debts of the company. More generally, if a court finds that the business of a company has been carried on with the intent to defraud creditors and the shareholders were knowingly a party to that fraud, the directors and shareholders may assume personal liability for the debts incurred by the company.

7. What are the audit requirements in corporate entities?

All companies in Malta are required to keep proper accounting records, which are determined by reference to the company's accounting reference date. A company may specify a particular date by filing the appropriate forms with the Malta Business Registry, failing which the reference date will be deemed to be December 31 of every year.

The accounts shall comprise the balance sheet as at the last day of the accounting period to which they refer, the profit and loss account for that period, the notes to the accounts and any other financial statements and other information which may be required by generally accepted accounting principles and practice. To this end, small and medium sized companies may adopt the General Accounting Principles for Small and Medium-Sized Entities ("**GAPSME**") standards outlined in the Accountancy Profession Regulations (S.L. 281.05) or the International Financial Reporting Standards as adopted by the European Union ("**IFRS**") whereas public interest entities and large entities must necessarily adopt IFRS. Moreover, holding companies must, in addition to individual accounts, also prepare consolidated group accounts, although there are certain exemptions to this rule.

All Maltese companies must appoint auditors at each annual general meeting, who will hold office until the next Annual General Meeting ("**AGM**"). The first auditors of the company are usually appointed by the directors, but thereafter the auditors are appointed by the shareholders at the annual general meeting. During the AGM, the directors shall present:

- the annual financial statements, including a balance sheet and income statement, together with any other statement and accompanying notes as required in terms of GAPSME or IFRS;
- a directors' report, generally outlining the company's affairs and what amounts, if any, the directors propose to distribute as dividends;
- the auditors' report, which shall state whether, in the auditors' opinion, the accounts have been properly prepared in accordance with the CA and whether they give a true and fair view of the financial position, financial performance and cash flows of the company in accordance with GAPSME or IFRS, as applicable. The opinion shall be either unqualified, qualified or an adverse opinion.

Once approved, the annual financial statements, directors' report and auditors' report must be submitted to the Malta Business Registry within 42 days from the end of the period for submitting annual financial statements to the general meeting.

While the audit requirement is applicable to all companies registered in Malta, it should be noted that small private exempt companies are allowed to exclude the income statement from the published financial statements.

In addition to the above, certain Maltese companies are also bound by the auditing and reporting requirements emanating from the Corporate Sustainability Reporting Directive (Directive (EU) 2022/2464) (the "**CSRD**") which entered into force on January 5, 2023. Consequently, companies falling within the thresholds stipulated in the CSRD will now be required to also report on their sustainability metrics in line with the European Sustainability Reporting Standards (ESRS) developed by EFRAG.

D. Shareholder Rights

8. What are the privileges that can be granted to shareholders? In particular, is it possible to grant voting privileges to shareholders for appointment of board members?

The powers reserved for the shareholders of a Maltese company are residual powers in the sense that all matters relating to the general administration and management of the company and its affairs are entrusted to the board of directors. The CA then reserves a number of rights and powers which are constitutional in nature to the shareholders holding voting shares in the company. These rights and powers are generally entrenched in the CA subject to modification in the M&As and are exercisable in virtue of ordinary or extraordinary resolutions of the shareholders. Generally, these include the right and power to:

- amend the M&As;
- increase or decrease the share capital of the company and any rights attaching to shares;
- change the currency of the share capital;
- appoint and remove directors;
- dissolve and wind up the company.

It is also possible for certain operational decisions typically exercised by the board of directors to be designated as shareholder reserved matters, whereby such actions would need to be referred by the board to the shareholders for final ratification. However, the extensive delegation of such powers to the shareholders is not advisable since in such instances shareholders may be deemed to be 'shadow directors' or 'de facto' directors of the company thereby exposing them to the responsibilities, duties and liabilities that would typically fall on directors (for example liability for wrongful trading in the event of insolvency), thereby diminishing the protection afforded at law by the company law principle of limited liability.

9. Are there any specific statutory rights available to minority shareholders available in your jurisdiction?

Maltese law grants several statutory rights to minority shareholders. The primary statutory right is the so-called unfair prejudice remedy contemplated under Article 402 of the CA. Briefly, this article grants any shareholder the right to pursue court action if said shareholder feels that the affairs of the company have been, are being, or are likely to be conducted in a manner that is, or that any act or omission of the company have been, are, or are likely to be, oppressive, unfairly discriminatory against, or unfairly prejudicial, to a member or members or in a manner that is contrary to the interests of the members as a whole. If an action to this effect is successful, the court has a wide discretion on what measures to impose, which might include regulating the conduct of the company's affairs, requiring, restricting or forbidding a particular act, and in perhaps more extreme cases, dissolving and winding up the company.

Another statutory right granted to minority shareholders is contemplated under Article 214(2)(b)(iii) of the CA, which provides that a court shall order the dissolution of a company where it is of the opinion that that there are grounds of sufficient gravity to warrant the dissolution of the company. Any shareholder may bring an action under this article and, consequently, this is another important tool afforded to minority shareholders.

While Article 402 and 214(2)(b)(iii) might suggest an overlap (in that both contemplate the dissolution of the company), it should be noted that the criteria for each action are different. The former requires the shareholder to prove either oppression, unfair prejudice or unfair discrimination, while the latter simply requires the court to find 'grounds of sufficient gravity', which is arguably a wider test. Moreover, the 402 action provides a wide range of remedial actions that the court may pursue, while the 214(2)(b)(iii) is a somewhat more drastic action which provides the court no remedial action other than ordering the dissolution of the company.

The CA provides some further statutory rights to minority shareholders, such as the right to:

- Receive notice of general meetings;
- Request the court to order the holding of a general meeting;
- Request the court to appoint a director if the number of directors falls below the statutory minimum;
- Request the court to appoint an auditor.

Some further rights are available to minority shareholders who together form qualified majorities of at least 1/10th of the total number of shares having voting rights, including the right to requisition an extraordinary general meeting and to apply for an investigation into the company's affairs.

10. Is it possible to impose restrictions on share transfers under the corporate documents (e.g., articles of association or its equivalent in your jurisdiction) of a company incorporated in your jurisdiction?

Yes. It is quite common for the M&As to include pre-emption rights that would require shareholders to offer shares to other shareholders before selling these to third parties. Similarly drag-along and tag-along provisions are also commonly included in the M&As. The terms and procedure for the exercise of such rights must clearly be indicated in the M&As. Naturally, these can be waived, as commonly occurs in the context of a company acquisition by a third party.

In the case of private limited liability companies, pre-emption rights on transfers of shares are not entrenched in the law and must thus be provided for in the M&As. In the case of a transfer of shares on the enforcement of a pledge, the executing creditor must offer the shares to other shareholders prior to transferring them to third parties or appropriating and acquiring them himself in satisfaction of the debt.

11. Are there any specific concerns or other considerations regarding the composition, technical bankruptcy and other insolvency cases in your jurisdiction?

It should be noted that the bankruptcy regime regulated in the Commercial Code (Chapter 13 of the Laws of Malta), while applying to traders and registered commercial partnerships, does not apply to limited liability companies. The dissolution and winding up of Maltese companies (including on the ground of insolvency) is regulated in the CA itself.

E. Acquisition

12. Which methods are commonly used to acquire a company, e.g., share transfer, asset transfer, etc.?

The most common method of acquiring a company is the purchase of a controlling interest in or all of the issued shares of a company. This would typically occur via a standard purchase of shares agreement, although less commonly it could also occur via a judicial sale or the appropriation of shares held by a pledge.

Asset transfers are also allowed; however, this would not entail the acquisition of the company as such, but rather its business/ going concern, which may include its assets, intellectual property, employees etc.

13. What are the advantages and disadvantages of a share purchase as opposed to other methods?

A share purchase allows the buyer to acquire the company as a whole, with all its assets, liabilities, employees, contractual relationships etc. As such the company's affairs remain intact, as it is only the ownership which is changing. The buyer is thus stepping into the shoes of the prior shareholders, which also means that the history and legacy of the company is preserved. It is also relatively more seamless than an asset purchase.

An asset purchase allows the buyer to purchase only those parts of the company's business which it is interested in. The advantage would be that the buyer can exclude certain parts of the business which are undesirable, including certain liabilities and contracts. The disadvantage is that, from a legacy perspective, the business is moving from one company to the next. In this sense, it is the end of a chapter and the beginning of a new one for the business. It should be noted that considerations relating to merger notification, FDI and mandatory transfer of employees may also apply in the context of asset transfer transactions.

14. What are the approvals and consents typically required (e.g., corporate, regulatory, sector based and third-party approvals) for private acquisitions in your jurisdiction?

From a corporate perspective, where the M&As of the company include pre-emption rights, such rights must be waived by the existing shareholders for the acquisition to proceed. This is typically granted by virtue of an extraordinary resolution of the shareholders. If the M&As of a private LTD are silent, then a shareholder may freely transfer shares without obtaining consent from the other shareholders.

From a regulatory perspective, whether or not approval is required depends on the nature of the company. If the company operates within a regulated industry such as insurance, financial services, aviation or gambling, consent would be required from the relevant regulatory authority. As explained in Question 3, if the company operates within a sensitive FDI area and the acquirer originates from a third country, notification and possibly screening by the NFDISO would be required.

From a competition law perspective, where the acquisition would qualify as a concentration that meets the merger control thresholds established under Maltese law, then a notification to the Office for Competition would be required.

Where the company being acquired holds contractual relationships that contain change of control provisions, a notification to, and possibly consent from, the contracting parties would also need to be made.

15. What are the regulatory competition law requirements applicable to private acquisitions in your jurisdiction?

Under the Control of Concentrations Regulations (S.L. 379.08) (the "**CCR**"), where the acquisition of shares in a Maltese company leads to a lasting change in control (in terms of the EC Consolidated Jurisdictional Notice) it must be notified to the Office for Competition (the "**OfC**") if the relevant turnover thresholds are met. The turnover thresholds, which are cumulative, are the following:

- The undertakings (i.e., buyer and target) concerned had an aggregate turnover in Malta (in the preceding financial year) which exceeded EUR 2,329,373; and
- Each of the undertakings concerned had a turnover in Malta equivalent to at least 10% of the combined aggregate turnover in Malta.

The OfC will review the concentration and declare that the concentration either: (i) falls out of scope of the CCR; (ii) falls within scope of the CCR, but does not give rise to competition concerns and should therefore be declared lawful; or (iii) falls within the scope of CCR, raises serious competition concerns and therefore requires a more thorough (Phase II) investigation. The OfC might then require the buyer to submit certain commitments with a view to rendering the concentration lawful. In any event, the OfC must take a Phase II decision as soon as concerns are removed and not later than 4 (four) months from when the Phase II proceedings are initiated, provided that this time limit may be suspended for a period of up to 1 (one) month.

16. Are there any specific rules applicable for acquisition of public companies in your jurisdiction?

Preliminarily, the CA specifically provides that the M&As of a public company may not: (i) restrict the right to transfer shares; (ii) limit the number of its shareholders; and (iii) prohibit any invitation to the public to subscribe for any shares or debentures of the company.

The above rules represent the main differences between public and private companies in Malta. Otherwise, the rules governing the acquisition of shares are largely similar and would thus be typically included in the M&As of the company, and in any event be generally regulated by the CA.

It ought to be noted that the CA provides some additional rules in the context of public companies. Firstly, the directors of a public company are obliged to register the transfer of any shares in the company in favour of any person who has acquired those shares as a result of a judicial sale. There is no similar provision in the CA which covers private companies.

Secondly, the CA grants a statutory pre-emption right to existing shareholders whenever a public company proposes to issue and allot additional shares for consideration. This pre-emption right may however be waived by an extraordinary resolution in general meeting. The board of directors may also waive such pre-emption rights if duly authorised by the M&As or via an extraordinary resolution in general meeting to this effect.

Certain additional formalities regarding the offer for shares, such as the need for a prospectus in certain cases, are required, although there are certain exemptions to the prospectus requirement, such as where the offer for shares is made in the context of a take-over bid.

17. Is there a requirement to disclose a deal, for instance to regulatory authorities? Is it possible to keep a deal confidential?

As discussed in Question 14 above, certain regulatory authorities would require prior disclosure (and in some cases consequent authorization) of the intended acquisition or change in control if the target company falls within their remit.

Such authorities might include the NFDISO (for FDI purposes), the OfC (for competition), the Malta Gaming Authority (for gambling businesses), the Malta Financial Services Authority (for financial services, banking and insurance) and the Civil Aviation Directorate (for aviation).

Acquisitions of non-regulated businesses or which otherwise don't give rise to FDI or competition law issues don't need to be disclosed in advance. However, any changes in corporate status arising as a result of the deal, such as the change in shareholding, any changes to the board of directors or company secretary, alterations to rights conferred by shares, changes to the M&As, etc., will be made public on the Malta Business Registry Portal.

18. Can sellers be restricted from shopping around during a negotiation process? Is it possible to include break fee or other penalty clauses in acquisition documents to procure deal exclusivity?

Exclusivity is typically entrenched in the letter of intent or similar signed prior to the final share purchase agreement regulating the deal. Since such preliminary agreements are typically non-binding clauses referencing exclusivity should specifically be designated as binding to ensure that the parties are duly safeguarded. It is possible to include break-free or other penalty clauses in such agreements.

19. What are the conditions precedent in a typical acquisition document? Is it common to have conditions to closing such as no material adverse change?

Share purchase agreements will almost always contain conditions precedent to closing. These can vary widely depending on the nature of the target company, its business, any financial commitments it already holds etc. A standard list might include:

- Legal, financial and tax due diligence that is satisfactory to the buyer;
- Obtaining regulatory consents to the transaction (if applicable);
- The passing of any required corporate approvals, waiver of pre-emption rights etc;
- Obtaining consents from third parties for material contracts containing change of control clauses/limitations and any loans, facilities and finance documents;
- The company executing some form of financial restructuring;
- Procuring the exercise or cancellation of any outstanding share options.

The share purchase agreement would typically also include actions which the sellers undertake not to do, carry out or permit between the date of signing of the SPA and closing, such as:

- Not carrying out the business of the company in the ordinary course;
- Not amending the share capital or issuing further shares;
- Not changing the business of the company or selling any company property that is material;
- Not amending the M&As;
- Not employing additional key personnel;
- Not commencing or settling any litigation.

The share purchase agreement would typically also grant the prospective buyer the right not to proceed to closing if there are any material adverse changes, such as the commencement of litigation above a certain quantum or an adverse regulatory event, or if any warranties are breached.

It is not unusual for SPAs to include a locked-box mechanism in which case provisions relating to permitted leakage and compensation or price adjustments for leakage in the period prior to closing are common.

20. What are the typical warranties and limitations in acquisition documents? Is it common to obtain warranty insurance?

Warranties and indemnities are generally subject to lengthy negotiations and can range from fairly limited to quite extensive, depending on the risk appetite of the parties and the value of the deal. Some standard warranties and indemnities included in share purchase agreements might include:

- Warranties covering the capacity, authority and solvency of the sellers and buyers;
- Warranties covering the corporate status, solvency and good standing of the target and any subsidiaries;

- Warranties covering the statutory books, financials and tax position of the target and subsidiaries;
- Warranties covering the assets, contracts, intellectual property, employees and IT systems of the target and subsidiaries.

It is becoming increasingly common for parties (mostly buyers) to obtain warranty & indemnity (W&I) insurance to protect against unintended contractual misrepresentations in the representations and warranties included in the share purchase agreement.

21. Is there a requirement to set a minimum pricing for shares of a target company in an acquisition?

There is no minimum pricing for shares set out under Maltese law. However, it should be noted that, for the purposes of calculating any taxes or stamp duty that might be due, the value of the shares will be considered to be the Fair Market Value ("**FMV**") of such shares, and this notwithstanding that the purchase price included in the share purchase agreement may be lower than such FMV. Where the purchase price is higher than the FMV, then it is said higher purchase price that will be considered as the consideration on which tax will be paid.

22. What types of acquisition financing are available for potential buyers in your jurisdiction? Can a company provide financial assistance to a potential buyer of shares in the target company?

All typical means of acquisition financing are available to potential buyers. Bank finance, shareholder loans, debt security (e.g., by the issue of bonds subject to regulatory requirements), equity finance, venture capital financing, leveraged buyouts etc. are all allowed and regulated by Maltese law.

Maltese law contains prohibition of financial assistance provisions whereby it is unlawful for a company to give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of an acquisition or subscription made or to be made by any person of or for any shares in said company or its parent company.

There is however an exception that would apply if the assistance is being granted in the context of an employee share incentive scheme, provided that such assistance does not reduce the company's net assets below the value of its issued share capital and its undistributable reserves.

Maltese law also includes a more generic whitewash procedure whereby the financial assistance provisions can be whitewashed if:

- The company is a private company;
- The directors, after taking into account the financial position of the company and having considered their general obligations at law, resolve via a majority vote to authorize the grant of financial assistance for the specific transaction;
- The directors' resolution is ratified via an extraordinary resolution of the shareholders;
- A declaration in the prescribed statutory form is submitted to the Malta Business Registry.

23. What are the formalities and procedures for share transfers and how is a share transfer perfected?

Generally, the various formalities and procedures for a share transfer under Maltese law would constitute the following:

- Signing of the share purchase agreement outlining the terms of sale and purchase, including conditions precedent to completion. While this is not strictly mandatory, it is customary because it outlines the parameters of the deal and often provides for important conditions precedent to closing such as regulatory approvals (merger control, FDI, etc.);

- Once the SPA conditions are met, proceed to closing which would generally include:
  - Passing of any necessary corporate approvals in terms of the M&As;
  - Execution by the seller and buyer of a short form share transfer instrument. This is required in term of the CA and also for filing with the relevant authorities;
  - Updating of the register of members (shareholders) of the company;
  - Cancellation of old share certificates and issue of share certificates to the new shareholder;
  - Execution of relevant statutory forms;
  - Execution of statutory tax and duty schedules.
- Once the documents have been executed, they must be filed with the Malta Tax and Customs Administration and the Malta Business Registry within 14 days. Failure to do so within the statutory period will lead to late filing penalties.

24. Are there any incentives (such as tax exemptions) available for acquisitions in your jurisdiction?

Yes. While the default position under Maltese law is that the sale of shares will attract stamp duty and capital gains tax, the Maltese fiscal regime provides various exemptions. Some instances where such exemptions may apply would be where the company holds business interests, more than 90% of which are outside of Malta (for stamp duty), and where the seller is not tax resident in Malta (for capital gains tax).

F. Enforceability

25. Can acquisition documents be executed in a foreign language?

There is no prohibition on the share purchase agreement being executed in a foreign language. However various other documents that would form part of the completion deliverables, particularly those which would require filing with and vetting by the relevant authorities, would need to be in a form that is acceptable to the authorities, which means they would need to be drafted in English or Maltese.

26. Can acquisition documents be governed by a foreign law?

Yes. Indeed, it is quite common for documents in cross-border transactions to be governed by a foreign law which is familiar to all parties, the most popular of which would generally be English law.

27. Are arbitration clauses legally permissible or generally included in acquisition documents?

Parties are free to adopt any dispute resolution mechanism they deem fit, and it is common for arbitration to be adopted in lieu of more conventional court dispute resolution procedures.

Maltese law provides an arbitration regime under the Arbitration Act (Chapter 387, Laws of Malta) and the Arbitration Rules (S.L. 387.01). These laws set out the parameters for domestic arbitrations held in Malta (under the auspices of the Malta Arbitration Centre) and also allow for international arbitrations to be held in terms of the Model Law on International Commercial Arbitration adopted on June 21, 1985 by the United Nations Commission on International Trade Law.

An essential requirement when choosing arbitration for dispute resolution is for the parties to enter into an arbitration agreement which would regulate the terms of the arbitration, such as the number of arbitrators, any appeal options etc. It is common practice for this agreement to be included within the arbitration clauses of the share purchase agreement, which is why it is important for these clauses to be carefully drafted to avoid any potential misinterpretations.

28. Are there any specific formalities for the execution of acquisition documents? Is it possible to remotely/digitally sign documents?

There are no particular formalities regulating the validity of a share purchase agreement and its ancillary documents and they are in fact typically drawn up as private agreements between the parties. Notarial involvement is not required. The share purchase agreement and certain ancillary agreements such as shareholder agreements can be signed in wet ink or remotely (by exchanging scanned copies of signature pages, or via digital signature), although in the latter cases it would be prudent to include such authority in the relevant corporate approvals.

Until recently, certain statutory forms and tax documents requiring filing with the Maltese authorities had to necessarily be signed and submitted in wet ink original. This position was recently revised to bring the Maltese system in line with Regulation (EU) No 910/2014 (the "**eIDAS Regulation**"). Thus, it is nowadays possible for documents to be executed using a qualified electronic signature. It should be noted that such signatures must be made via trusted service providers that are authorised in Malta, as listed in the Malta section of the eIDAS Dashboard of the European Commission.

G. Trends and Projections

29. What are the main current trends in M&A in your jurisdiction?

Following the M&A slowdown experienced during COVID, 2022 and 2023 were busier years for M&A activity in Malta, with 2024 being one of the busiest years on record. The local market is seeing a notable level of acquisitions, particularly in the Technology, Media & Telecommunications (TMT) and igaming sectors, both of which are very strong industries in Malta. Specifically within the igaming sector, we are experiencing a period of consolidation, with large market players actively pursuing acquisitions of smaller players, both vertically and horizontally.

30. Are any significant development or change expected in the near future in relation to M&A in your jurisdiction?

We expect the current market trend, particularly within the igaming sector, to continue. We are also noticing an increase in redomiciliation in and out of Malta and expect these to continue.

MEXICO

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A. General

1. What is the main legal framework applicable to companies in your jurisdiction?

The main legal framework for companies in Mexico is the General Act for Commercial Entities, which provides the general regulations for the corporate governance and organization of corporations and companies. However, there are other laws that apply to companies, such as the Federal Civil Code, the Code of Commerce, the Foreign Investment Act, the Securities Market Act, as well as other particular laws that may apply, depending on the industry or specialized matters, such as telecommunications, mining, energy, aeronautic, transportation, among others.

2. What are the most common types of corporate entities (e.g., joint stock companies, limited liability companies, etc.) used in your jurisdiction?

The most common types of entities in Mexico are (i) *Sociedad Anónima* ("**S.A**.") comparable to corporations and incorporated by shareholders, and (ii) *Sociedad de Responsabilidad Limitada* (***"S. de R.L."***), comparable to limited liability companies, which are formed by members. Nonetheless, there are other commonly used options depending on the specific features of the project or the purpose of the investment such as *Sociedad Anónima Promotora de Inversión* ("**S.A.P.I**."), similar to S.A., regulated by the Securities Market Act, or the *Sociedad Financiera de Objeto Múltiple* (SOFOM), aimed to conduct financial activities related to granting of credit, leasing, or factoring, among others.

All the options above mentioned grant protection to the shareholders/partners. Their liability is limited to the amount of their contributions in the capital stock. Except for very exceptional cases, the "corporate veil" cannot be pierced, and liabilities reach the shareholders/partners.

What are the main differences between them (including but not limited to with regard to the shareholders' liability)?

Between the two main corporate vehicles above referred (S.A. and S. de R.L.), there are several differences, some more relevant than others. Particularly, the most important matter to consider when deciding on the type of company that will be used is the kind of operations that the company will carry out, the investment scheme, and the admission of new shareholders. For example, if the intention is to incorporate a company that will have constant variations in its capital due to rounds of investment or the admission of new shareholders on a recurring basis, it's more advisable to incorporate a S.A., while, on the contrary, if the company is a family business or a small group of shareholders that is not likely to have frequent modifications in its distribution of the capital stock, it would be more optimal to consider a S. de R.L.

Some of the main differences between both types of entities (S.A. and S. de R.L.) are:

- **Ownership:** The holders of interests in a S.A. are called shareholders, and they hold shares which, subject to the provisions of the bylaws, can grant different level of benefits and rights to the shareholders. In a S. de R.L., the holders are members, and they hold equity interests. All equity interests must grant the same rights and obligations.
- **Transfer of ownership:** In a S.A., as a general rule, the shares are freely transferable, except for particular restrictions that may be provided in the bylaws. In a S. de R.L., the admission and the transfer of the participation of the partners requires the consent and approval of the other members, who have the right of first refusal to acquire the equity interests intended to be transferred.
- **Surveillance committee:** S.A. are subject to the mandatory requirement to the appointment of at least 1 (one) examiner who may be or not shareholders. The main purpose of the figure of the examiner is to supervise the compliance by the board, director and managers to corporate governance rules and applicable laws. Regarding the S. de R.L., there is no mandatory requirement to appoint an examiner.
- **Corporate rules:** The law provides more flexibility to incorporate into the bylaws of a S.A. special rules regarding obligations and rights of the shareholders, contributions, investments, restrictions. S.A. (and its modality of S.A.P.I.) is the ideal vehicle when the project is a Joint Venture, or a SPV is required. On the other hand, a S. de R.L. is more suitable for a wholly owned subsidiary, with simple corporate structure.

B. Foreign Investment

3. Are there any restrictions on foreign investors incorporating or acquiring the shares of a company in your jurisdiction?

As a general rule, foreign investors are allowed to conduct business in Mexico, either personally, through a branch (foreign entity doing business in Mexico) or a subsidiary (an incorporated Mexican entity). There are no restrictions to foreign investment.

As exception to the general rule, there are some limitations to foreign investment in very particular scenarios. The Foreign Investment Act foresees some categories of activities that are (i) exclusively reserved to the Mexican government, (ii) exclusively reserved to Mexican nationals and to Mexican companies, in which foreign investment cannot participate, (iii) Activities in which foreign investment is limited to specific percentages, ranging from 10% to 49% and, (iv) Activities which require authorization from the National Commission of Foreign Investment to have more than 49% of foreign participation. Some examples of business sectors to which foreign investment is restricted are terrestrial transportation of passengers, national freight forwarding services, agricultural land, certain port services, among others.

4. Are there any foreign exchange restrictions or conditions applicable to companies such as restrictions to foreign currency shareholder loans?

There are no particular restrictions for transactions to be entered within Mexico, in connection to foreign currency. Loans, investments, capital contributions, and in general, any transaction or payment obligation can be executed in Mexican currency or a foreign currency. If the agreement or contract is silent on the currency, the obligation shall be settled in Mexican pesos. If the agreement is silent on the exchange rate, parties shall use the official exchange rate published by the Mexican Central Bank.

5. Are there any specific considerations for employment of foreign employees in companies incorporated in your jurisdiction?

In order for foreigners to work for companies in Mexico, they must obtain the appropriate immigration permit that allow them to work in the country, whether it be the visitor visa with permission to conduct remunerated activities or the temporary resident visas, depending on each particular case. For both scenarios, a written and legally valid employment agreement between the employer and the foreign employee must be executed, which must include details such as salary, position, duration of employment and working conditions.

The visitor visa with permission to conduct remunerated activities, authorizes the foreigner employee to work or stay in the country for up to 180 days. For this type of visa, it is required to have either a formal job offer or a formal invitation from an authority or institution.

The temporary residency with permission to work in Mexican territory, authorizes the foreign employee to work in Mexico and receive a payment for their work. The foreign employee must have a formal job offer to be able to obtain a work visa. With this permit, the foreign employee is granted the status of temporary resident with permission to work and to stay in the country for a year. This visa card can be renewed.

The companies that employ foreigners must obtain an Employer Certificate from the National Migration Institute (INM). The employer must also enroll their foreign workers on the Mexican Institute of Social Security (IMSS) as well as provide them with social security benefits.

C. Corporate Governance

6. What are the standard management structures (e.g., general assembly, board of directors, etc.) in a corporate entity governed in your jurisdiction and the key liability issues relating to these (e.g., liability of the board members and managers)?

The most important (and minimal) structures, according to the General Act of Commercial Entities, are the following:

Shareholders' Meeting

The shareholders' meeting is 1 (one) of the most important management structures of the Mexican company since, in accordance with the General Act of Commercial Companies, it's the supreme corporate authority of the company; it can approve and ratify all acts and operations of the Company and its resolutions shall be carried out by the person appointed for that purpose or by the general sole director or the board of directors when applicable. It is in charge, among other activities and depending on whether it's an ordinary or extraordinary meeting, of: (i) approving fiscal years, (ii) reviewing and approving the Administration Body and Examiner(s) Report, (iii) appointing and ratifying the members of the administration body and the examiner(s) and their authorities and powers of attorney, (iv) determining the payments of the members of the administration body and its examiner(s) for their duties, and (v) reviewing the auditors' report, if applicable. Also, the shareholders' meeting approve (i) dissolutions and liquidations, (ii) increases and decreases in capital stock, (iii) mergers, and (iv) amendments of the corporate bylaws of the Company.

Regarding liabilities, the general rule is the liability of the shareholders or members is limited to the value of their contributions to the capital stock. However, this rule does not apply to non-limited liability companies, and for certain very specific matters (for example, under certain circumstances, tax liabilities, fraudulent resolutions, among others).

Management Body

The management body may be composed by 1 (one) or more members (sole director or board of directors), which oversees defining the strategy for the execution of the business. Some of its most common activities are:

- Approve the annual report for the shareholders' meeting, to inform the acts carried out, as well as the status of the accounting and management company.
- Appointment or removal of directors, managers, and employees.
- Approve the annual budget and business strategy of the company.

With regards to liabilities, when a representative of the company does not act on the best interest of the company or acts beyond the limits of its authorities (*ultra vires*), commits fraud, acts against Mexican laws and regulations, or acts in bad faith before creditors, such director may be held responsible for any damages or losses caused to the company. Also, under certain circumstances, the directors (as representatives of the company), may be jointly or severally liable for certain tax, environmental or criminal liabilities.

Surveillance Body

Finally, the surveillance body is an internal corporate body (without powers of attorney) responsible for overseeing the activity of the administration body. It can be composed by 1 (one) member (examiner), or a committee composed by several members. This structure is not mandatory for S. de R.L. companies, contrary to S.A. companies, in which is required. The examiner cannot be a member of the administration body, but it can a shareholder.

The main duty of the examiner is to monitor the corporate and business operations of the company in relation to its corporate structures and the activities executed by the administration body or similar management positions, to mitigate or to detect any irregularity. As such, they have the authority, for example, to call to shareholders' meeting when they deem necessary. The members of the surveillance body may be liable for lack of diligent supervision.

The examiners are individually responsible for the compliance of the obligations provided by the corporate bylaws and the General Act of Commercial Entities; however, they may be assisted by third parties acting under their direction or by the services of technicians or independent professionals.

7. What are the audit requirements in corporate entities?

As previously mentioned, S.A. companies are more regulated regarding audit and surveillance requirements and obligations. In accordance with the General Act of Commercial Companies, S.A. companies must appoint at least 1 (one) person to act as an "examiner", which will carry out audit and supervision activities to the operations of the board of directors or general sole director of the company. On the other hand, S. de R.L. companies do not have such obligation; however, they are able to appoint an examiner if the shareholders deem it appropriate.

Additionally, according to the Federal Tax Code, in case companies surpass certain thresholds on their annual income, their financial statements must be audited by a certified accountant, as part of their compliance tax obligations.

Other than the above, there are no additional mandatory corporate requirements for audits to be conducted by the company.

D. Shareholder Rights

8. What are the privileges that can be granted to shareholders? In particular, is it possible to grant voting privileges to shareholders for appointment of board members?

As a general rule, the shareholders voting rights for the election of board members in proportion to their participation. In a non-public S.A., when the management body is composed by 3 (three) or more board members, shareholders having 25% of the capital stock may appoint 1 (one) board member. The bylaws may provide for special classes of shares whereby special rights may be conferred, allowing issuance of shares with privileged (or restricted) voting or economic rights.

9. Are there any specific statutory rights available to minority shareholders available in your jurisdiction?

Corporate law in fact provides rights to minority stockholders, including, to oppose meeting decisions, review balance sheet and books of the company, as well as the ability to appoint at least 1 (one) board member when the administration body is integrated by 3 (three) or more members, as long as such minority represents a 25% of the capital stock. For public companies, whose shares are listed at the Mexican Exchange Stock Market such percentage will be reduced to 10%.

10. Is it possible to impose restrictions on share transfers under the corporate documents (e.g., articles of association or its equivalent in your jurisdiction) of a company incorporated in your jurisdiction?

Mexican law allows for shareholders agreements or bylaws to provide restrictions to the transfer of shares. Some of restrictions and special rules for share transfers that can be contemplated, include previous approval of the board, rights of first refusal, tag-along, drag-along, put-call options, among others.

11. Are there any specific concerns or other considerations regarding the composition, technical bankruptcy, and other insolvency cases in your jurisdiction?

Mexican courts have developed important precedents, experience and criteria with respect to insolvency and bankruptcy procedures and creditor's rights. Insolvency can be filed either voluntarily by the insolvent company, or by a creditor or the district attorney's office directly, by following the procedures stated in its special regulation. Under insolvency statutes, certain creditors will rank ahead secured bank or third parties loans, such as, preferential labor payments, management fees and expenses of the estate.

E. Acquisition

12. Which methods are commonly used to acquire a company, e.g., share transfer, asset transfer, etc.?

In Mexico, the main methods to acquire a private legal entity are the following:

- Total or partial acquisition of shares, securities, or interests by means of a stock purchase agreement;
- total or partial acquisition of the assets of a company/business, through an asset purchase agreement;
- joint venture agreement, typically through the incorporation of a new legal entity, where the parties of the joint venture contribute funds, assets and/or rights, or
- merger with the target entity.

13. What are the advantages and disadvantages of a share purchase as opposed to other methods?

As opposed to the other acquisition methods, share purchase method offers a straightforward control and acquisition of the target entity, and in general terms, share purchase negotiations tend to be shorter than any of the other acquisition methods.

If this method is overseen from a tax perspective, both seller and purchaser are benefited. Tax attributes of the company are indeed transferred with the change of control. The transaction will not trigger value added tax on the shares– while an asset acquisition will trigger value added tax (16% general rate) on certain assets among joint liability on tax liabilities of seller. For seller, under certain elections and formalities, the transfer of shares could be taxed on a gain basis (to avoid withholding taxes, subject to certain requirements and depending on the tax residence of the seller).

Operatively speaking, a share acquisition poses an easier transition, as commercial and employment relations remain in the acquired entity, having a smoother logistic as opposed to asset or joint venture transaction, where purchase order settlement, transit of inventory and sales, pending obligations, accounts receivable and payable, notices to clients, suppliers and third parties, transfer of equipment and machinery ownership shall be taken into consideration.

Finally, depending on the party's perspective, assumption or release of liabilities is an important consideration for the transaction, as purchaser will inherit through the acquisition of shares, all liabilities of the target entity, including civil, labor, administrative, environmental, operating, tax, ongoing disputes, litigations and corporate criminal liabilities, thus purchaser shall conduct an extensive due diligence prior closing transaction and seller might be burdened with pre-closing clean ups and in some cases a purchase price reduction based on monetized risks.

14. What are the approvals and consents typically required (e.g., corporate, regulatory, sector based and third-party approvals) for private acquisitions in your jurisdiction?

Share acquisition consents that shall be met for closing of transaction will be primarily shareholders' approval of the transaction and of any other special requirements or waivers as may be required under its bylaws (for example, waivers of rights of first refusal or option rights of other non-purchasing parties).

Supplier and customer consents or notices will also be relevant for the case of change-of control provisions or asset acquisitions. Approvals of sector regulatory bodies will be directly linked to the activity or industry of the operation of the target company.

Also, depending on the value of the transaction, as well as other economic aspects of the purchasing and selling parties involved, the clearance of the transaction by the applicable economic competition authority (either the Federal Economic Competition Commission or the Federal Telecommunications Institute) might be required. In case that certain thresholds for pre-merger filing are met, the transaction cannot be closed until the relevant antitrust clearance is issued.

15. What are the regulatory competition law requirements applicable to private acquisitions in your jurisdiction?

In case the transaction exceeds certain economic thresholds, an antitrust test must be performed to determine if the private acquisition requires approval from the Federal Telecommunications Institute ("**IFT**"), for the case of companies relating to the telecommunications or broadcasting sectors, or from the Federal Economic Competition Commission ("**COFECE**"), which is the economic competition authority for any other economic sector. However, it is important to mention that due to a constitutional reform published on December 20, 2024, the COFECE and the IFT are about to be replaced by a new antitrust authority once the federal legislation that amends or substitutes the current economic competition legal framework is passed by the Congress. As of March 4, 2025, there is a new law initiative that is under discussion by the legislative bodies but it is still unclear if the current draft of anti-monopoly law will be approved (or substituted by a different law initiative) and exactly when the new antitrust authority will take office. In case the transaction needs to be filed for clearance by the relevant economic competition authority, the transaction may not be closed, until it is approved by the relevant authority, otherwise, important sanctions may be imposed.

M&A transactions in certain industries may be supervised by other authorities, such as banking, insurance, and financial bonds sectors.

16. Are there any specific rules applicable for acquisition of public companies in your jurisdiction?

Publicly traded companies in Mexico can be acquired through a takeover or a public acquisition offer ("**OPA**"), duly authorized by the National Banking and Securities Commission (*Comisión Nacional Bancaria y de Valores* or "**CNBV**") and the Mexican Exchange Stock Market (*Bolsa Mexicana de Valores* or BMV); the securities in question shall be registered at the National Securities Registry (*Registro Nacional de Valores or* RNV).

17. Is there a requirement to disclose a deal, for instance to regulatory authorities? Is it possible to keep a deal confidential?

In order to determine whether an M&A operation can remain fully confidential before authorities, there's two items that shall be considered, firstly if the target company is publicly traded or private, and secondly, to determine antitrust thresholds where a notice shall be filed with the antitrust authority.

For transactions involving private companies, there is no legal provision asserting the obligation of the parties to disclose a transaction; instead, the parties agree when and how to publicly announce the transaction. Depending on the legal vehicle selected, certainly there are filings that shall be performed following closing that are available to the public – such as filings with the electronic system of commercial entities of the Ministry of Economics. Also, other filings will be required, such as tax returns relating the transfer of shares or assets, merger notice to the tax authorities, filings with the National Foreign Investment Registry.

On the other hand, regarding publicly traded corporations, these shall disclose relevant operations, events and transactions that may have an effect over the value of the shares, as well as to provide relevant information to CNBV for OPA approval which shall be disclosed to the public a day prior to the OPA's commencement validity date, and they shall submit certain reports before the Securities National Registry.

18. Can sellers be restricted from shopping around during a negotiation process? Is it possible to include break fee or other penalty clauses in acquisition documents to procure deal exclusivity?

Exclusivity periods provisions are common and well used in Mexican M&A transactions, in order to prevent seller to engage in negotiations regarding assets, shares, or any other subject matter related to the M&A transaction. These provisions are commonly integrated to the term-sheet of memorandums of understanding, letters of intent and non-disclosure agreements, as well as in the promissory purchase agreements or purchase agreements that are subject to closing conditions. The parties may validly agree on break-up fees and other conventional penalties in case of default of the exclusivity obligations.

19. What are the conditions precedent in a typical acquisition document? Is it common to have conditions to closing such as no material adverse change?

Conditions precedent for Mexican M&A transactions usually include for the target company to have obtained all regulatory approvals, consents and/or waivers from corresponding governmental authorities, as well as assurance that there's no legal impediment, claims, actions, or proceedings that may declare the transaction illegal or prohibit its consummation. No material adverse change provisions are customary, and seller and purchaser typically negotiate its scope and limitations. The COVID-19 pandemic introduced new provisions negotiated among the parties to exclude public health governmental orders, among others as material adverse changes or events.

20. What are the typical warranties and limitations in acquisition documents? Is it common to obtain warranty insurance?

Customary representations and warranties in M&A transactions include, corporate organization, consents and approvals, ownership, assets and real estate matters, material contracts, employment matters, environmental, taxes, customs, regulatory matters, anticorruption, and other compliance topics. The type of business activity and sector of the target company will determine representations and warranties that may be required. Representations and warranties on

Environmental, Social and Governmental (ESG) aspects have increased due to international trends.

Representations and warranties insurance is not widely common in M&A transactions in Mexico, but each time, is more frequently seen, particularly, in multijurisdictional/cross-border transactions.

21. Is there a requirement to set a minimum pricing for shares of a target company in an acquisition?

There is no legal provision that obliges or provides a minimum price for shares of a target company in an acquisition; however, purchase price should be based on market value considerations. In case of transactions where related parties are involved, transfer pricing rules shall be considered. Acquisitions below fair market value could be challenged by tax authorities or be subject to fraudulent conveyance claims.

22. What types of acquisition financing are available for potential buyers in your jurisdiction? Can a company provide financial assistance to a potential buyer of shares in the target company?

Several structures of acquisition finance may be considered by buyers of target companies in Mexico, including, bank commercial loans, asset-based loans, mixed senior and subordinated loans, private equity funding, mezzanine loans, leveraged buyout, owner earnout. Financing may come from banking or other financial institutions, either local or international. Therefore, companies may provide financial assistance to the potential buyer of shares, either through equity or debt, or a mix of both.

23. What are the formalities and procedures for share transfers and how is a share transfer perfected?

In Mexico, the minimum formalities for the transfer of stock are (i) the execution of the stock purchase agreement (and although not being a requirement of validity, it is recommended to certify the agreement with a notary public, required for tax filings and appropriate support of the effective date of the transaction), (ii) shareholders resolution approving the transaction, if required under the by-laws of the target company, (iii) delivery and endorsement of share certificates and (iv) registration in the corporate books of the target entity of the relevant transfer of shares. Certain notices will be required before the corresponding authorities, such as tax authorities, Ministry of Economy, National Registry of Foreign Investments and, depending on the target company's activities and/or sector, notices to regulatory entities, as provided by the special regulation of such sector or industry.

24. Are there any incentives (such as tax exemptions) available for acquisitions in your jurisdiction?

M&A transactions are subject to federal, state, and local taxes depending on the type of transaction (for example, if real estate assets are involved in an asset deal, local taxes will apply for the transfer of the real estate).

At the federal level, Seller would have to pay income tax, and buyer (when the acquisition is on assets) would have to pay value added tax. Depending on whether the transaction involves individuals or entities, and their tax residency, different rates and rules would be applicable. Depending on this as well, international tax treaties may be applicable for reduced rates. There are no federal tax exemptions applicable to M&A transactions as a general rule; although, it is relevant to mention that on June 2023, the Federal Government issued a decree that provides up to 100% income tax and value added tax exemptions for 3 (three) and 4 (four) years respectively for companies investing within the Isthmus of Tehuantepec in certain economic activities (electronic, semiconductors, automotive, medical devices, pharmaceutical, agroindustry, generation and distribution of green energy, machinery and equipment, information technology and others). Also, on January 21, 2025, Mexico's Federal Government issued a Decree of federal tax incentives for immediate deduction of certaub investments in new projects as a counter measure against the new tariffs and measures being imposed by the US Government as a result of the new foreign trade policies of its president Donald Trump.

Regarding estate and local taxes, exemptions or special treatments may be applicable, but that would depend on the regulations of specific state with jurisdiction on the particular asset or operation. The typical incentives for new investments include temporary discounts or exceptions in payroll taxes, property transfer taxes and support on capital investments.

Foreign entities could be subject to taxes under certain circumstances, considering, among others, rules of (i) tax residency, (ii) permanent establishment, and (iii) source of income to determine whether taxes are applicable in Mexico.

F. Enforceability

25. Can acquisition documents be executed in a foreign language?

Yes, acquisition documents may be executed in any language, however, for the mandatory notarization in Mexico of any of such documents, for the filing or registration before a Mexican authority (if statutorily required) and for tax compliance purposes, a translation to Spanish is required. In M&A transactions, the standard practice is to prepare a short form purchase agreement in bilingual form, typically Spanish and English, for filing purposes.

26. Can acquisition documents be governed by a foreign law?

Under Mexican law, the election of a foreign law is valid (subject to certain conditions) and, therefore, foreign law can govern the main purchase agreement. However, Mexican statutory regulations and public law provisions must be taken into consideration, such as, formalities required for the transfer and registration of stock, transfer of real estate, notices to authorities, among others. Other topics that should be considered when electing the applicable law are: (i) address of the party with the potential obligation to indemnify (it is easier to enforce and execute a "local" court / arbitration ruling than a "foreign" one; and (ii) arbitration versus courts of law (consider the expertise in foreign law of a court of law of another country versus the knowledge of arbitrators).

27. Are arbitration clauses legally permissible or generally included in acquisition documents?

Yes, arbitration clauses are permissible and normally included in acquisition documents. They are more widely used for transnational transactions or when different jurisdictions are involved. As explained above, in selecting the country for the arbitration and the applicable law, we suggest using the criteria of "enforcement", i.e., selecting the country where the agreement or transaction is likely to be enforced.

28. Are there any specific formalities for the execution of acquisition documents? Is it possible to remotely/digitally sign documents?

Since 2003, through the Code of Commerce, Mexico began regulating digital and electronically signed documents. Later, in 2016, with another amendment to the Commerce Code, it has been approved that all documents, despite being wet-ink or electronically executed, have the same validity and enforceable power before third parties and authorities.

For a digital document to be completely valid, the digital-signature services provider must comply with certain requirements which are regulated by Mexican Official Standard 151, regarding protection and preservation of data messages and digitization of documents (such fully recognized signature, "advanced e-signature"). If the provider of e-signature services does not have this certification, the e-signature will not be considered equally valid as a wet-ink signature, and therefore, it will not be an advanced e-signature.

Finally, for customary uses and practices, more than legal provisions, there are some debates on the validity of advanced e-signature in certain documents (for example, in labor and employment disputes). In M&A transactions in Mexico, wet-ink signatures are still preferred and recommended.

G. Trends and Projections

29. What are the main current trends in M&A in your jurisdiction?

Due to the nearshoring opportunities for Mexico, as a strategic neighbor of the United States of America, M&A transactions have been importantly active and rising in Mexico. The trending targets in Mexico are manufacturing companies, agro-industries, pharmaceutical, electronic, automotive, financial, digital industries, telecommunications, logistics and infrastructure. We have seen M&A transactions in their different forms: stock sales, asset acquisition, joint ventures, strategic expansions, and divestitures. Also, we have seen both M&A financed by private equity capital, syndicated bank loans (under different structures) and owner earn-outs. However, as further explained in the following section, Mexico has been facing important challenges in the international trade scenario due to the new US measures under the Trump's administration, which effects are still to be assessed.

30. Are any significant development or change expected in the near future in relation to M&A in your jurisdiction?

Mexico's first female president, Claudia Sheinbaum, took office on October 1, 2024. She has close ties with the former president and therefore, it is anticipated that she will continue the strategic government policies of her predecessor. During the first weeks of her tenure, several constitutional and law amendments aiming to convert the Federal Electric Commission ("CFE" for its acronym in Spanish) and the oil production entity, PEMEX from state-owned "productive" to "public" companies, have been in the process of approval. These amendments seek to strengthen the powers of these state-owned companies and limit private investment in certain energy activities. For instance, one of the objectives is that 54% of the energy production is concentrated by the CFE, while 46% may be concessioned to private companies subject to strict rules to be issued. It is also anticipated that the energy transition to renewable sources will be exclusive to the Mexican government.

Apart from that, the Mexican government shared in October 2024 its strategy to promote and support private and foreign investment. Among the areas where the government is interested in promoting investment are housing, trains, highways, ports, and infrastructure in general, among other activities that are expected to be continued, such as manufacturing, technology and consumer products.

It is also relevant to mention that an important judicial reform was approved by the Congress in September 2024. This reform aims to have judges, magistrates and Supreme Court ministers elected by popular vote (in replacement of the former judicial-career system). Due to the uncertainty of the practical effects of this reform in the day-to-day administration of justice in Mexico, it is expected that foreign law (when feasible) and arbitration provisions will become more frequent in cross-border M&A transactions.

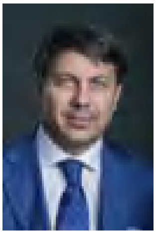
Another trend to mention is that representation & warranty insurance in Mexico is becoming more frequent in cross-border and multijurisdictional M&A transactions.

Finally, Mexico has been navigating within uncertain waters due to, first, the tariff threats and, then, the effective 25%-tariff imposition by Donald Trump on March 4, 2025 (date in which this Mexico chapter was completed). It is unclear if these tariffs will be effective long term or not but, in any case, international companies will have to deal with the new foreign trade scenarios, review their international sale, manufacturing, supply or distribution agreements and review and adapt their strategic plans in the short and long terms. Mexico has opened anti-dumping investigations with respect to certain products coming from China, and it is expected that Mexico will impose certain retaliatory measures against the importation duties imposed by the US government (in case the current scenario does not change).

Despite the above, Mexico is still being seen as a strategic location to do business and to take advantage of the nearshoring opportunities. Business decisions are being taken under a long term vision, and the current troubled waters in the international relations sea have not created, until now, a generalized freeze of ongoing M&A transactions or business projects in Mexico.

MOLDOVA

EFRIM ROȘCA ASOCIAȚII LAW FIRM



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A. General

1. **What is the main legal framework applicable to companies in your jurisdiction?**

The Civil Code of Republic of Moldova provides general regulations of legal entities. Limited Liability Companies ("**LLC**") and Joint Stock Companies ("**JSC**") are also governed by the special laws: the Law on Limited Liability Companies, the Law Regarding Joint Stock Companies. Other legal framework applicable for the operation of companies and M&A transactions include: the Law on the State Registration of Legal Entities and Individual Entrepreneurs, the Competition Law, and the Law on the Capital Market.

2. **What are the most common types of corporate entities (e.g., joint stock companies, limited liability companies, etc.) used in your jurisdiction? What are the main differences between them (including but not limited to with regard to the shareholders' liability)?**

Within the Republic of Moldova's business environment, LLCs are prominently favoured. Their operational flexibility combined with a supportive regulatory framework makes them a top choice for both budding entrepreneurs and established enterprises, including those with foreign capital. Consequently, there's a significant disparity in the prevalence of LLCs compared to other structures, such as JSCs.

Both types of corporate entities operate with their own legal identities, and the responsibility of their members (shareholders) is restricted to the value of their capital contributions.

The primary distinctions between LLCs and JSCs lie in their initial capital requirements. While LLCs may have a share capital of at least MDL 1 (approximately EUR 0,005) consisting of contributions in kind or cash, JSCs necessitate an initial capital of minimum MDL 600,000 which is approximately EUR 30,000. Another difference pertains to the corporate governance structure, which tends to be more complex for JSCs, notably due to the mandatory presence of a company board.

Concurrently, the registration timelines differ. An LLC can be swiftly registered in just 4 (four) hours under an expedited process, whereas a JSC undergoes a more intricate establishment procedure.

Other types of entities are available but are rarely used (especially in the context of M&A transactions).

B. Foreign Investment

3. Are there any restrictions on foreign investors incorporating or acquiring the shares of a company in your jurisdiction?

Generally, in our jurisdiction, there are no restrictions on foreign investors incorporating or acquiring the shares of a company. However, there are specific considerations and additional preliminary conditions, particularly in the context of the Law on the Examination Mechanism for Investments of Importance to State Security No. 174 dated November 11, 2021.

The law applies to investment activities by both individuals and legal entities who, in any manner, directly or indirectly, individually or in collaboration with third parties, including as beneficial owners, intend to carry out or are conducting specific types of investment activities and/or transactions that are significant for state security.

Areas deemed significant for state security encompass a wide range of sectors including:

- hydrometeorological and geophysical activities;
- waste management, especially radioactive;
- infrastructure sectors like energy, transport, water, aerospace, defense, and electoral systems;
- advanced technologies like artificial intelligence, robotics, cybersecurity, aerospace, defense, quantum, nuclear, nanotechnologies, and biotechnologies;
- production of cryptographic information protection means;
- production and commercial acquisition of state secret protection means;
- explosives production for industrial use;
- aviation security activities;
- design and operation of aircraft and their components;
- management of airports, train stations, waterways, and ports;
- TV broadcasting and audiovisual services;
- communication services, geological studies of subsoil resources;
- production and trading of weapons and military equipment.

There are restrictions on individuals and legal entities (including foreigners) who intend to invest in the above-mentioned areas significant for state security. These restrictions apply to those:

- residing in jurisdictions that do not meet international transparency standards;
- involved in money laundering and terrorism financing activities;

- engaged in activities threatening the state's security or public order;
- having ties with foreign governments, entities, or individuals that pose a threat to national security;
- connected with organized criminal groups or foreign intelligence services linked to international terrorist organizations;
- convicted of corruption, money laundering, terrorism financing, or similar offenses.

Any potential investor intending to invest in the vital sectors for state security must obtain prior approval from the Council for the Promotion of National Importance Investment Projects ("**Council**").

If an investor intends to transfer control of their investment to another individual or legal entity, they must obtain consent from the Council. This is termed the 'change of control clause', and if it is not expressly stated in investment agreements, it is presumed to exist.

In summary, while our jurisdiction is generally open to foreign investors, those intending to invest in areas of importance to state security must observe specific procedures, ensure they aren't subject to any of the mentioned restrictions, and obtain prior approvals, including when there's a change in control of the investment.

4. Are there any foreign exchange restrictions or conditions applicable to companies such as restrictions to foreign currency shareholder loans?

This summary provides just a broad overview of the foreign exchange (and currency) regulations applicable to companies in the Republic of Moldova.

Payments and Transfers:

- Payments and transfers related to current foreign exchange operations between residents and non-residents can be made without restrictions.
- Non-residents can freely receive/transfer payments within or from the Republic of Moldova.
- Non-residents can transfer funds from their accounts in licensed banks or from their payment accounts with resident non-bank payment service providers abroad without any limitations.

Currency Regulations:

- Within Moldova (means the payments made with local banks, for current and local operations), payments and transfers between residents and non-residents are primarily made in the national currency, with certain allowances for foreign currencies.
- However, in Moldova, payments and transfers in foreign currency are prohibited in specified cases, including retail shopping, provision of local utilities, and wages paid to non-resident employees by resident employers.
- Payments and transfers between residents in Moldova are usually in the national currency, but exceptions are explicitly stated in the law. These exceptions encompass various operations, including transactions involving licensed banks, insurance services, payment for excess baggage at international airports, and foreign currency donations, among others.

Direct Investments:

- Direct investment operations relate to establishing or maintaining lasting economic ties between the investor and the entity in which capital is invested.

- Lasting economic ties are characterized by holding 10% or more of the share capital or voting rights or by having significant influence over the entity's administration or operations.
- Direct investments can be made through various modalities, such as establishing a legal entity, buying an existing entity, granting and receiving long-term loans, real estate transactions, and reinvesting earnings. No notification usually is required for these operations.

However, loans from non-resident shareholders (investors) with a term of less than 5 (five) years exceeding EUR 10,000 require notification to the National Bank of Moldova.

5. Are there any specific considerations for employment of foreign employees in companies incorporated in your jurisdiction?

Foreign employees seeking to work in Moldova typically need to secure a work permit or a residence permit specifically tailored for employment purposes.

For most positions within a company, except the role of a general director or administrator, usually the following documents are required:

a. Questionnaire: A filled-out form as per the standards set by the migration authority.

b. Passport: A copy of the page containing the identification details from the foreigner's national passport.

c. Employment Contract: A draft of the individual employment agreement highlighting the monthly salary, which must at least match the projected average monthly wage for that fiscal year. The current threshold stands at approximately 600 EUR/month.

d. Criminal Record: This must be sourced from the employee's country of residence, then translated and notarized into Romanian.

e. Proof of Residence: Original and a copy of either a property document or a rental contract. If using a lease agreement, it should be registered with the tax service before submitting.

f. Photograph: A color photo measuring 3x4 cm.

g. Job Announcement: The employer should have made a public job posting on appropriate job websites or through a competent local public authority, stating the specific position for which the employee will be hired. This should be done a few days before the document submission.

h. Power of Attorney: This is needed if the procedure is being done on behalf of the applicant.

The foreigner who was initially recorded with the assignment of the state identification number of the natural person (IDNP), with or without the issuance of identity documents, without his presence on the territory of the Republic of Moldova, is entitled to work without obtaining a visa, the right of residence or the right of temporary residence, without first obtaining the right of temporary residence for the purpose of work and a temporary residence permit provided that the following conditions are cumulatively fulfilled:

a) the foreign employee has a state identification number of the natural person (IDNP) and electronic identity in accordance with the law;

b) the foreign employee is not and will not be during the performance of work on the territory of the Republic of Moldova for a period that exceeds the right of residence under the terms of the law;

c) the foreign employee does not have the status of a resident of the Republic of Moldova under the conditions of the Fiscal Code of the Republic of Moldova;

d) work is provided based on the individual employment contract concluded in the form of an electronic document, signed with a qualified electronic signature, issued under the law.

Certain jobs or sectors might have different conditions or documentation requirements. The procedure might be simpler or differ for specific roles, like administrators in IT companies.

Ukrainian citizens have the option to go through a different, more streamlined procedure termed 'Temporary protection'. This is both technically and operationally easier than the conventional work permit process. Permit can be secured within 2 (two) weeks post the online submission of the required documents and application. The applicant should have a registered lease agreement with the tax service and must not have stayed for more than 90 days within a span of 180 calendar days.

C. Corporate Governance

6. What are the standard management structures (e.g., general assembly, board of directors, etc.) in a corporate entity governed in your jurisdiction and the key liability issues relating to these (e.g., liability of the board members and managers)?

In the jurisdiction of Moldova, the management structure of a corporate entity is generally determined by its type, either an LLC or a JSC. Here's a closer look at each:

1. Limited Liability Company (LLC):

A. General Meeting of Shareholders ("**GMS**"): The GMS is the supreme governing body in an LLC. It holds the broadest powers to make decisions concerning the company's activities, including changes in share capital, approval of annual reports, and the appointment or removal of administrators. Decisions are typically taken by the majority of votes of the shareholders present.

B. Administrator(s): This is the executive body of the LLC. The administrator (or administrators, if there are 2 (two) or more) manages the day-to-day operations of the company and represents the company in its dealings with third parties. A legal person can also act as the administrator of an LLC.

C. Board of Directors: While most LLCs in Moldova traditionally opt against having a board of directors, the law does not prohibit or restrict their establishment.

D. Liability of LLC Members: The liability of an LLC's members is limited to their contribution to the share capital. However, administrators can be held liable to the company, its shareholders, and third parties for damages resulting from their negligence or wilful misconduct.

2. Joint Stock Company (JSC):

A. General Meeting of Shareholders (GMS): Just like in an LLC, the GMS in a JSC is the top decision-making body. It makes major decisions, such as amending the company's bylaws, approving annual financial statements, and electing members of the board of directors.

B. Board of Directors: A characteristic feature of JSCs, the board of directors plays a pivotal role in setting the company's strategic direction and supervising the executive body's activities. Members of the board are elected by the shareholders and are responsible for significant decisions that shape the course of the company.

C. Liability of JSC Members: Similar to LLCs, the liability of shareholders in a JSC is limited to their contribution to the share capital. However, members of the board of directors and other managerial staff can be held accountable for breaches of their fiduciary duties or any negligent or wilful actions that harm the company or its shareholders.

Both LLCs and JSCs are subject to some overarching principles laid down in the Civil Code regarding the liability of their executive bodies. These include:

- Obligation to Pursue the Purpose of the Legal Entity: The executive must work in the best interest and objective of the company.
- Obligation to Act with Competence and Diligence: The executive should perform their duties with the requisite skill and care expected of their position.
- Obligation to Avoid Conflicts of Interest: The executive must not let personal interests clash with those of the company.
- Obligation Not to Accept Benefits from Third Parties: The executive shouldn't accept personal benefits from third parties if it could compromise their decision-making for the company.
- Obligation to Declare Interest in a Proposed Legal Act or Transaction: If an executive has a personal interest in any company transaction, it must be disclosed.
- Obligation of Confidentiality: The executive must maintain and protect the confidentiality of the company's information.

In conclusion, while there are common elements in the management structures of both LLCs and JSCs, their features and nuances vary. It's essential for entities and their members to be aware of their roles and the potential liabilities associated to ensure smooth operations and compliance with Moldovan law.

7. What are the audit requirements in corporate entities?

The following entities are required to undergo mandatory audit:

a. Medium-sized Entities: Entities that aren't classified as micro or small and, as of the reporting date, do not exceed 2 (two) of the following criteria:

Total assets: MDL 318,000,000 (approx. EUR 16,445,000).

Sales revenue: MDL 636,000,000 (approx. EUR 32,889,000).

Average number of employees during the accounting period: 250.

b. Large Entities: Entities that, at the reporting date, surpass 2 (two) of the following limits:

Total assets: MDL 318,000,000 (approx. EUR 16,445,000).

Sales revenue: MDL 636,000,000 (approx. EUR 32,889,000).

Average number of employees during the accounting period: 250.

c. Public Interest Entities: These comprise:

- Entities with securities admitted for trading on a regulated market.
- Banks.
- Insurance (or reinsurance) companies.
- Collective investment bodies in securities (legal entities).
- Large entities that are state enterprises or joint-stock companies in which the state holds over 50% of the share capital.

d. Consolidated Financial Statements: Groups that present consolidated financial statements.

Medium-sized entities and large entities keep double-entry bookkeeping and prepare complete financial statements according to national standards of bookkeeping. Public interest entities always keep double-entry bookkeeping and prepare financial statements according to IFRS.

Entities that aren't subject to the mandatory audit requirements can still opt for an audit. They may decide to include provisions in their Statute or other internal documents that specify their procedure for undertaking an audit.

D. Shareholder Rights

8. What are the privileges that can be granted to shareholders? In particular, is it possible to grant voting privileges to shareholders for appointment of board members?

As a basic principle, shareholders usually get rights corresponding to the ownership of the shares. Shareholders of JSCs or LLCs can enter into a shareholders' agreement to set out their commitments to exercise their rights in a certain way. Such agreements may establish alternative rules, for example regarding the proportionality (or setting another rule, or setting an obligation to vote in a specific way) of the vote to the value of the shares, the distribution of net profit, the procedures for appointing board members, including granting certain shareholders personal rights (for example the right to appoint board members).

9. Are there any specific statutory rights available to minority shareholders available in your jurisdiction?

Minority shareholders are given the same statutory rights as majority shareholders, particularly in terms of access to information and collection of dividends. However, the Law on Limited Liability Companies stipulates that a shareholder with less than 33% ownership can retreat from the company at any time without requiring the consent of other shareholders. With respect to JSCs, the minority shareholder has the right to request at any time that a person, who independently or in conjunction with those affiliated with him, owns more than 90% of the total volume of shares, purchase their held shares.

10. Is it possible to impose restrictions on share transfers under the corporate documents (e.g., articles of association or its equivalent in your jurisdiction) of a company incorporated in your jurisdiction?

In the Republic of Moldova, corporate documents of an incorporated company can indeed have stipulations limiting share transfers. Both the articles of association and the shareholders' agreement can mandate that share transfers receive prior approval from either the company itself or its board of directors. It is recommended to include such limitations in public registers (such as register of legal entities) to make the opposable to third parties. Nevertheless, any restriction on the transfer of shares shouldn't entirely prevent their sale, as that would render the restriction futile.

11. Are there any specific concerns or other considerations regarding the composition, technical bankruptcy and other insolvency cases in your jurisdiction?

In the Republic of Moldova, the insolvency process is governed by the Insolvency Law, which allows both the creditor and the debtor to initiate insolvency proceedings. Upon filing an application, the court has the authority to commence various procedures, such as general insolvency proceedings, simplified bankruptcy, or the restructuring of the company.

A distinctive feature of Moldova's insolvency system is the central role played by insolvency practitioners. These are licensed professionals tasked with overseeing and managing the insolvency process, whether it involves restructuring the company or moving towards liquidation.

The rights of foreign creditors are generally recognized and protected in Moldovan insolvency proceedings, but navigating the process might require local expertise and understanding of Moldovan procedures and laws.

For potential investors or parties interested in acquiring assets from insolvent companies, it's crucial to be aware of potential liabilities, especially hidden ones, that might not be immediately obvious. Due diligence is paramount.

E. Acquisition

12. Which methods are commonly used to acquire a company, e.g., share transfer, asset transfer, etc.?

In Moldova, as in many other countries, there is a range of methods to acquire a company. These primarily encompass share transfers, asset transfers, mergers. The most prevalent form of company acquisition involves purchasing either the entirety or a portion of the company's shares. Nevertheless, it's vital to understand that the most appropriate method should be assessed on an individual basis, taking into account the specifics of each case.

13. What are the advantages and disadvantages of a share purchase as opposed to other methods?

A share purchase offers the advantage of simplicity, as buyers acquire the company in its entirety, including all its assets, rights, and obligations, often without the need for intricate asset transfers or renegotiations of contracts. Additionally, certain tax benefits and the retention of existing contracts, licenses, and permits can make share purchases appealing. On the downside, buyers assume all of the company's liabilities, both known and unknown, and might face challenges with hidden liabilities, potential shareholder disputes, or integration issues, making the process potentially riskier and more complex compared to other acquisition methods.

14. What are the approvals and consents typically required (e.g., corporate, regulatory, sector based and third-party approvals) for private acquisitions in your jurisdiction?

In Moldova, private acquisitions often necessitate a series of corporate approvals. This can include the endorsement of the board of directors and potentially a specific percentage of shareholders, depending on the company's internal documents like the articles of association or shareholders' agreements.

Regulatory consents are also crucial. Acquisitions that might influence market competition would require the approval of the Competition Council. Moreover, there are sectors where approval from specific authorities is necessary, such as those from the National Bank of Moldova for banking and financial transactions, or the National Agency for Energy Regulation for energy-related acquisitions.

Lastly, third-party approvals can be a determining factor. These arise from contractual obligations where a change in company control might necessitate consents, such as in the case of certain loans, leases, or other contractual agreements.

15. What are the regulatory competition law requirements applicable to private acquisitions in your jurisdiction?

The laws governing the enforcement of merger control are Competition Law No. 183 of July 11, 2012 and Competition Council Regulation on Mergers No. 17 of August 30, 2013. It is worth mentioning that the Moldovan legislation on competition constitutes a transposition of European Union regulations, implementing acts, and notices.

In Moldova, private acquisitions that fall under the definition of a merger and reach certain thresholds are subject to the merger control by the Moldovan Competition Council.

If a transaction meets the following cumulative thresholds set out in the Moldova Competition Law, the parties must submit a notification to the Moldova Competition Council:

- The aggregate turnover of all the undertakings concerned, recorded in the year preceding the transaction, is more than MDL 50,000,000; and
- The turnover of each of at least 2 (two) of the undertakings concerned, recorded within Moldova and in the year preceding the transaction, is more than MDL 20,000,000.

The aggregate turnover of the undertakings concerned is calculated by adding together the respective turnovers of the following:

a. undertakings concerned;
b. those undertakings in which the undertaking concerned (i.e., BCR and the acquiring undertaking), directly or indirectly:
   - owns more than half the capital or business assets, or
   - has the power to exercise more than half of the voting rights, or
   - has the power to appoint more than half of the members of the supervisory board, the administrative board or bodies legally representing the undertakings, or
   - has the right to manage the undertakings' affairs;
c. those undertakings which have in the undertaking concerned the rights or powers listed in (b);
d. those undertakings in which an undertaking as referred to in (c) has the rights or powers listed in (b);
e. those undertakings in which 2 (two) or more undertakings as referred to in (a) to (d) jointly have the rights or powers listed in (b).

Within 10 (ten) business days after the submission, the Moldova Competition Council will inform the notifying party if the notification meets the validity requirements and if more information is required.

Further, there are 2 (two) investigation phases:

(i) <u>Phase I</u> – within 30 business days the Moldova Competition Council decides upon (i) clearing the merger; or (ii) opening the phase II investigation, if the operation raises competition concerns.

<u>(ii) Phase II</u> - the Moldova Competition Council has 90 business days to make a final decision on the compatibility of the merger with the Moldovan competition legislation. Following this phase, the Competition Council will either clear or prohibit the merger.

The law provides that, until the Moldova Competition Council issues a decision related to the approval of the acquisition of control, the following actions cannot be implemented:

- the entry of the acquired legal entity on another/new market;
- the exit of the acquired legal entity from the market where it carried out its operations;

- the changing of the scope of activity of the acquired legal entity;
- the exercising of the voting rights for the appointment of members in the executive management of the acquired legal entity;
- the exercising of the voting rights for the approval of the income and expenses budget of the acquired legal entity;
- the exercising of the voting rights for the approval of the business plan of the acquired legal entity;
- the exercising of the voting rights for the approval of the investment plan of the acquired legal entity;
- the changing of the name of the acquired legal entity;
- the restructuring, closing, or splitting up of the acquired legal entity;
- the sale of the assets of the acquired legal entity;
- the dismissal of the employees of the acquired legal entity;
- the conclusion or termination of long-term contracts or other important agreements signed with third parties;
- the listing of the acquired legal entity on the stock market.

If the Moldovan Competition Council finds that the acquisition meets the abovementioned thresholds has not been notified, it takes 1 (one) of the following measures:

- Adopts a decision declaring that the merger does not raise competition concerns and sets the fine for non-notification; or
- Adopts a decision declaring that the merger raises competition concerns and sets a fine for non-notification (which will be higher than the fine that was set in the first case). The Moldovan Competition Council also requests the undertakings concerned to dissolve the concentration in order to restore the situation prior to the implementation of the concentration;

16. Are there any specific rules applicable for acquisition of public companies in your jurisdiction?

Acquisition of Public Companies in Moldova: In the Republic of Moldova, the acquisition of public companies is primarily undertaken through 2 (two) types of takeover bids: the obligatory public takeover bid and the voluntary takeover bid.

Obligatory Public Takeover Bids: An obligatory takeover bid is triggered when an individual or entity, either alone or in collusion with others, directly or indirectly acquires more than 50% of the total voting securities of a public company or of the securities that can be converted or provide the right to acquire such voting securities.

Voluntary Takeover Bids: A voluntary takeover bid is made at the discretion of the bidder without any obligation to acquire a specific number of securities. Such a bid aims to obtain more than 50% of the total voting securities of an issuer. When intending to make a voluntary takeover bid, the person must:

- Notify the National Commission for Financial Markets, the issuer of the securities in question, and the market or system operator where the securities are traded.
- Publish this intention in 1 (one) or more nationally circulated periodicals.

The National Commission for Financial Markets then has the responsibility to either approve or reject the offer prospectus within 10 (ten) business days from the date of application submission. This period can be extended to 15 business days if further verification is deemed necessary, especially regarding the proposed offer price.

Transfer of Securities Issued by Public Interest Entities: Securities issued by public interest entities can only be transferred on the regulated market if the sale transaction involves up to 1% of the total securities of a single class. If shares of a public company are not currently traded on the Moldovan regulated market, and an entity wishes to sell its entire shareholding, the only viable method to transfer ownership is through the special transactions section of the Stock Exchange of Moldova's regulated market. This requires compliance with conditions related to special transactions, coordination with the National Commission of the Financial Market, and potentially the National Bank of Moldova. For the purpose of such a sale transaction, the shares of the public company in question would be registered on the regulated market in a distinct list and remain there only for the duration of the trading period.

Shares Sale and Purchase Agreement ("SPA"):

While the above details the formalities for transferring ownership, the seller and acquirer can directly negotiate and finalize a SPA, agreeing upon a freely negotiated price and terms. Payment terms are determined based on mutual agreement in the SPA. Moldovan law offers considerable freedom in this regard, without imposing specific constraints on such agreements, beyond standard provisions on sale-purchase contracts.

Role of Professional Securities Market Participants: It's pivotal to note that transactions on the regulated market must be executed exclusively by professional securities market participants. Consequently, both the seller and the acquirer of a public company's shares must be represented by professional investment companies or brokers during the transaction. Such brokers are not authorized to introduce additional restrictions or criteria concerning transactions involving securities issued by banks.

17. Is there a requirement to disclose a deal, for instance to regulatory authorities? Is it possible to keep a deal confidential?

Moldovan law does not impose mandatory disclosure requirements for deals. Nonetheless, particular transactions might be subject to specialized regulations that mandate notifying relevant authorities under merger control. Otherwise, maintaining the confidentiality of a deal is feasible, and it is customary for the involved parties to establish a non-disclosure agreement before commencing negotiations.

18. Can sellers be restricted from shopping around during a negotiation process? Is it possible to include break fee or other penalty clauses in acquisition documents to procure deal exclusivity?

In the realm of mergers and acquisitions within Moldova, it has become increasingly prevalent for parties to seek provisions that ensure exclusivity and commitment throughout the negotiation process.

To further solidify the commitment of the parties involved, break fee or penalty clauses are incorporated into acquisition documents. These penalty clauses are commonly found in term sheets, SPAs with conditions precedent, pre-contracts, and other M&A-related documents. The intent is to compensate the aggrieved party for the time, effort, and costs they've incurred in the lead-up to the potential transaction.

Considerations and Practical Tips:

- It's crucial to define the parameters of the exclusivity clause clearly. Determine the duration of the exclusivity period and the specific actions that would be deemed as breaches.
- When negotiating a break fee, consider its proportionality. While it should compensate the aggrieved party, it shouldn't be punitive or prohibitive in excess.

In conclusion, exclusivity and break fee clauses serve as effective tools in M&A negotiations, ensuring commitment and providing compensation in case of breaches. While their usage has been on the rise in Moldova, it's essential to craft them with care, precision, and a forward-looking perspective to safeguard the interests of all parties involved.

19. What are the conditions precedent in a typical acquisition document? Is it common to have conditions to closing such as no material adverse change?

While the exact conditions will vary depending on the specifics of each deal, certain conditions precedent are more commonly found in acquisition agreements in Moldova. These include:

- Approval by the General Meeting of Shareholders or Competent Governing Body: Often, the acquisition cannot move forward without the express consent of the existing shareholders or the competent governing body of the entity being acquired.
- Regulatory Approvals: Depending on the nature and scope of the transaction, various approvals might be required, such as Competition Council, National Bank of Moldova, sector-specific authorities: Depending on the industry, approvals from health, environmental, or telecommunications regulatory bodies might be essential.
- Due Diligence Satisfaction: The acquiring party usually conducts a thorough examination of the target company's assets, liabilities, contracts, and other legal obligations. The satisfaction of any findings from this due diligence can be a condition precedent.
- Obtaining Third-Party Consents: If the target company has existing contracts or obligations that require third-party consent for a change of control or assignment, obtaining these consents can be a necessary condition.
- Clearance of Encumbrances: Ensuring that the target company's assets are free from liens or encumbrances that might affect the acquisition's value or purpose.
- Financing Arrangements: For acquisitions that require external financing, securing and confirming these financial arrangements can be a critical condition.
- Employee and Key Management Retention: In deals where the continuity of the business post-acquisition is crucial, retaining key employees or management teams might be set as a condition.
- No Material Adverse Change (MAC) Clause: Ensuring that there's no significant negative change in the target's business or financial situation between the signing and closing of the deal.

Incorporating these conditions precedent ensures a comprehensive approach to the transaction, addressing various aspects that could impact its success. However, it's essential to tailor these conditions to the specific transaction at hand, ensuring they are relevant, necessary, and not overly burdensome to either party.

20. What are the typical warranties and limitations in acquisition documents? Is it common to obtain warranty insurance?

In Moldova, acquisition agreements often feature a series of warranties provided by the seller to the buyer. These warranties aim to assure the buyer regarding certain aspects of the target company and to identify potential risks. While the exact nature and scope of these warranties can vary based on the specifics of each transaction, some commonly encountered warranties include:

- Title and Ownership: The seller warrants that it owns the shares or assets being sold free and clear of any encumbrances and has the full right, power, and authority to sell them.
- Financial Statements: The seller assures that all financial statements provided are accurate, complete, and have been prepared in accordance with applicable accounting principles.
- Operational Warranties: These may cover aspects such as the validity of contracts, absence of ongoing disputes, and compliance with relevant laws and regulations.
- Intellectual Property: Warranties relating to the ownership, validity, and infringement-free status of intellectual property rights owned or used by the target company.
- Environmental and Regulatory Compliance: Assurances that the target company complies with all environmental laws and regulations and possesses necessary permits and licenses.
- Absence of Litigation: The seller confirms that there are no ongoing, pending, or threatened legal actions or claims against the target company.
- Tax Compliance: Warranties concerning the target company's compliance with all tax obligations and the absence of undisclosed tax liabilities.
- Material Adverse Change: The seller warrants that no material adverse changes have occurred in the target company's business, assets, or financial condition since a specified date.

Limitations: Warranties typically come with certain limitations, including:

- Time Limitations: Warranties might be limited to a specified duration post-closing, after which the buyer cannot make claims against them.
- Disclosure Schedules: Sellers often provide disclosure schedules listing exceptions to their warranties. These schedules effectively limit the seller's liability by excluding these exceptions from the warranties.
- Monetary Caps: There might be a cap on the total monetary amount the buyer can claim under the warranties.

Regarding Warranty Insurance, it's noteworthy to mention that, in Moldova, the concept of obtaining warranty insurance in M&A transactions is extremely rare and is practically not utilized in local practice. The market dynamics and the local ecosystem have not yet widely adopted this form of insurance, and parties typically rely on the negotiated terms of the agreement for protection.

21. Is there a requirement to set a minimum pricing for shares of a target company in an acquisition?

In the context of acquisitions in Moldova, determining the pricing for shares of a target company is typically driven by negotiations between the parties, market dynamics, and due diligence findings. However, there are specific nuances to consider:

- General Principle: For most corporate entities in Moldova, there's no legal mandate that sets a minimum price for shares during an acquisition. The pricing is predominantly a result of mutual agreement between the buyer and the seller, and it can be influenced by a variety of factors such as the financial health of the target company, its market position, growth prospects, and potential synergies that the acquirer expects to achieve.
- Public Interest Entities: For entities of public interest, which include publicly traded companies and certain significant financial institutions, among others, the landscape is different. These entities are often subject to stricter regulatory oversight, and the pricing of their shares during an acquisition might be subject to specific regulations and requirements. This regulatory framework is designed to protect minority shareholders, ensure transparency, and prevent market manipulation. In some cases, there might be provisions that require the share price in an acquisition to be at least equivalent to a fair market value, determined by an independent expert or based on recent trading prices. Additionally, the price might be subjected to scrutiny by relevant regulatory bodies to ensure that it is not detrimental to minority shareholders or the broader public interest.

22. What types of acquisition financing are available for potential buyers in your jurisdiction? Can a company provide financial assistance to a potential buyer of shares in the target company?

In the ever-evolving corporate landscape of Moldova, acquisition financing plays a pivotal role in facilitating mergers and acquisitions. Drawing from years of legal practice in this jurisdiction, the available financing avenues and the nuances of financial assistance provision can be delineated as follows:

Primary Financing Methods:

- Bank Financing: The most prevalent form of acquisition financing remains loans from domestic or international banks. The terms and conditions of such loans vary based on the financial standing of the acquiring company, the perceived risk associated with the target company, and the overall macroeconomic climate. Typically, these loans might be secured against assets of the acquiring company or, in some instances, against assets of the target company post-acquisition.
- International Institutions: For substantial acquisitions, especially those with a potential of broader economic impact or significance in specific sectors, financing can sometimes be sourced from international financial institutions. These organizations may offer more favorable terms, given their developmental mandate, but would usually have stringent criteria for due diligence and would often seek assurances regarding governance, sustainability, and other broader goals.

Financial Assistance by the Target Company:

While Moldovan law does not explicitly prohibit a target company from providing financial assistance to a potential buyer of its shares, such arrangements are relatively rare in practice.

It's crucial to approach these arrangements with caution, considering the potential implications for minority shareholders and other stakeholders. Financial assistance could lead to potential conflicts of interest, reduce the liquidity or financial standing of the target company, or be perceived as self-dealing.

Any such transaction would need to be thoroughly evaluated to ensure it is in the best interests of the company and its shareholders and does not contravene any fiduciary duties or specific provisions in the company's charter or bylaws.

23. What are the formalities and procedures for share transfers and how is a share transfer perfected?

Drawing on extensive experience in the realm of mergers and acquisitions, the following delineates the key steps and considerations essential to perfecting a share transfer:

SPA Formalities:

- Documentary Requirements: As of January 10, 2022, the law has facilitated a more streamlined approach to share transfers, allowing SPAs to be executed in a simple written form.
- Notarization as a Best Practice: Despite the relaxation in documentary requirements, a prudent approach, especially for substantial M&A deals, is to conclude the agreements before a notary. Notarization provides an added layer of legal safeguard, ensuring the authenticity of signatures, the capacity of parties, and the overall veracity of the transaction.

Post-Agreement Clearances: Regulatory Approvals: Depending on the nature and scale of the transaction, certain clearances or approvals might be necessitated from regulators or third parties. It's imperative that these approvals are sought in a timely manner, ensuring there are no legal impediments to the completion of the share transfer.

Finalizing the Share Transfer: Registration at the Public Services Agency: Irrespective of the nature of the transaction, the ultimate step to effectuate a share transfer is its registration at the Public Services Agency. This formal registration is the definitive act, ensuring the legal change in ownership and reflecting the new shareholding structure in official records.

Special Considerations for Specific Entities: Certain business entities, due to their nature or the sector they operate in, have additional conditions that need to be met during a share transfer. This applies, but is not limited to, banks, insurance companies, and non-banking financial institutions. In such cases, additional clearances, compliance checks, or even specific procedural steps might be warranted to ensure a legally sound transfer.

24. Are there any incentives (such as tax exemptions) available for acquisitions in your jurisdiction?

As a general rule, Moldova does not offer specific tax exemptions or incentives tailored for M&A deals. While there aren't specific incentives in the M&A context, potential acquirers and sellers should be conversant with the standard taxation framework in Moldova. Familiarity with applicable corporate tax rates, capital gains implications, and other pertinent tax matters is essential.

Though not M&A specific, there might be sector-specific or regional incentives available in Moldova that indirectly benefit acquisitions. For instance, industries designated as priority sectors or investments in certain regions might come with their set of incentives - as an example the single tax of 7% applicable to IT Park residents in Moldova, or special VAT regime for the residents of free economic zones. While these aren't tailored for acquisitions, they might influence the broader financial implications of a deal.

F. Enforceability

25. Can acquisition documents be executed in a foreign language?

It is acceptable to execute the acquisition documents in a foreign language. However, in any case when there is required to interact with public authorities – obtain a clearance from a regulator, register the share transfer at the Public Services Agency and so on, it will be necessary to have the documents drafted or translated into Romanian as well.

26. Can acquisition documents be governed by a foreign law?

It is possible to have the acquisition documents governed by a foreign law.

27. Are arbitration clauses legally permissible or generally included in acquisition documents?

It is legally permissible to include arbitration clauses in the acquisition documents, and it is a standard practice to do so for important M&A deals.

28. Are there any specific formalities for the execution of acquisition documents? Is it possible to remotely/digitally sign documents?

Moldovan law does not require specific formalities for the execution of acquisition documents. Also, it is legally permissible to digitally sign a document. Law No. 124 of May 19, 2022 on electronic identification and trust services provides that a qualified electronic signature has the same legal value as a handwritten signature.

G. Trends and Projections

29. What are the main current trends in M&A in your jurisdiction?

The mergers and acquisitions scene in Moldova has witnessed several significant phases and shifts in recent times. This dynamism has been fuelled by geopolitical, economic, and legislative changes that have influenced the trajectory of M&A activities in the country.

Key Recent Phases:

- 2014-2018: This period was marked by the acquisition of the most prominent local banks in Moldova by leading international investors and institutions. The phase laid the groundwork for intensified international participation in the Moldovan financial sector.
- COVID-19 Era: The pandemic induced a surge in deals within the IT sector and the local IT parks. The health crisis highlighted the significance of digital infrastructure and resulted in heightened interest in IT-related acquisitions.
- Legacy Takeovers: Another discernible trend has been the takeover of legacy local companies, often established by Moldovan entrepreneurs in the late 1990s and early 2000s. These acquisitions span across sectors like pharma, furniture, agriculture, and media.
- War Crisis Period: Recent geopolitical tensions have spurred investments from professional investors or sizable corporations in production and manufacturing companies, signalling preparation for local or regional expansion.
- Post-EU Candidacy Shift (Current Phase): Moldova's application for EU membership in March 2022 and its subsequent attainment of the EU candidate status in June 2022 have fostered a new wave of interest in its M&A space. Presently, we observe heightened enthusiasm from experienced investors targeting sectors like IT, agriculture, real estate, retail, and manufacturing, recognizing the nation's growing alignment with the European market.

30. Are any significant development or change expected in the near future in relation to M&A in your jurisdiction?

Legislative Evolution:

A new law entered into force on October 22, 2023. Moldova will witness the enforcement of a transformative law aimed at overhauling its corporate governance. We had the privilege to contribute as members of the working group tasked with framing this legislation.

The genesis of this new law can be traced to various sources, including:

- European Model Companies Act (EMCA): This provides a scientifically rigorous foundation for European corporate law, drawing inspiration from the U.S. Model Business Corporation Act (MBCA);
- Estonia's Commercial Code;
- Swiss Corporate Legislation;
- Model Business Corporation Act (U.S.); and
- Ukrainian Law on Limited and Unlimited Liability Companies.

Pivotal Changes include:

- Explicit regulation of a shareholder's agreement.
- Abandoning the proportionality rule, allowing for freedom in stipulating rights associated with share values through the company's statutes.
- Granting minority shareholders, a unilateral right to exit the company.
- Introduction of a 'phantom stock', enabling companies to offer a portion of the net profit to key employees as an incentive for loyalty.
- Removal of the cap on the number of shareholders (previously set at 50).
- The possibility of waiving pre-emption rights through the company's statutes.
- Exemption from the need to register statutory amendments related to details maintained in the State Register of Legal Entities.
- Facilitation of capital increase by converting the company's monetary obligations or through consumable goods.

Concluding Thoughts:

These imminent legislative changes are poised to enhance the competitiveness of Moldova as a jurisdiction. The anticipated reforms will not only attract more sophisticated transactions but also offer valuable tools for investors and business professionals. The modernization of corporate governance aligns Moldova with European and international M&A standards, setting the stage for a vibrant and progressive business environment.

MONTENEGRO

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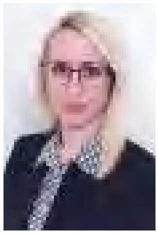

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A. General

1. What is the main legal framework applicable to companies in your jurisdiction?

The Law on Business Entities (Official Gazette of Montenegro No. 065/20,146/21) is the main legal framework which regulates the types of business organizations that can be registered in Montenegro.

2. What are the most common types of corporate entities (e.g., joint stock companies, limited liability companies, etc.) used in your jurisdiction? What are the main differences between them (including but not limited to with regard to the shareholders' liability)?

In accordance to the law following types of business organization is possible to establish:

Entrepreneur,

Partnership,

Limited Partnership,

Joint Stock Company (**"JSC"**),

Limited Liability Company **("LLC"),** and

Foreign Entity Branch ("**Branch**").

Out of the above stated modes of business organization there are 2 (two) models that are usually used by foreigners "Limited Liability Company" and "Foreign Entity Branch".

Limited Liability Company

LLC is a form of business organization highly recommended to be established for various aspects, including:

- It can be organized by both foreign and domestic individuals and legal entities;
- Founders are liable for the company's actions up to the amount of their equity in the company;

- There is no minimum number of founders and maximum is 30;
- Minimum amount of founding capital is EUR 1,00 with no maximum limit;
- Registered founding capital must be fully paid, but can also be freely disposed of;
- There are no registered or bearer shares, but founders hold equities in the company;
- Company's obligatory bodies are assembly and executive director, while board of directors is optional;
- In a one-shareholder company, a shareholder exercises all rights and obligations of the Assembly;
- Equities are not registered with the securities commission,
- Executive director can only be an individual, and not a corporate structure;
- LLC gains the status of an independent legal entity upon registration with Montenegrin Company Registry.

LLC is a form of business organization used most often by both domestic and foreign investors, mostly because of its independency and limited liability towards the shareholder.

Foreign Entity Branch

Foreign Entity Branch is the type of business organization used sometimes by the foreign investors, for the following reasons and practical aspects, including:

- Branch must be registered with the Montenegrin Company Registry;
- It must conduct business activity in full compliance with the Montenegrin regulations;
- Branch must report all changes in the mother company to the Montenegrin Company Registry;
- Branch does not have a status of an independent legal entity,
- Branch has its founder/mother company and authorized representative as equivalent to the executive director in the LLC,

Taking into consideration practical requirements of the state and municipality bodies, in all aspects of its function, Branch is equal to the LLC and requirements attached to the status of LLC.

B. Foreign Investment

3. Are there any restrictions on foreign investors incorporating or acquiring the shares of a company in your jurisdiction?

Foreign investor may be a foreign natural or legal person established abroad, a company with more than 25% foreign capital, a Montenegrin citizen residing abroad for more than a year and the company established in Montenegro by a foreign entity.

Foreign investors have the following options:

- Establish a company (either alone or with other investors),
- Invest in companies,
- Purchase a company or portion of it,
- Establish a part of a company;
- are subject the same tax regulations as domestic investors.

The share of foreign investors may be in cash, goods, services, property and securities.

4. Are there any foreign exchange restrictions or conditions applicable to companies such as restrictions to foreign currency shareholder loans?

In Montenegro, it is not possible to open any corporate bank account for companies registered in Montenegro if the founder of such company is a legal entity or company from an offshore jurisdiction or destination which is on black list of the Central Bank of Montenegro. Therefore, it is important to check this before company registration, because such limitation does not exist for company registration, but it can disable the company's operations.

5. Are there any specific considerations for employment of foreign employees in companies incorporated in your jurisdiction?

Foreigners have to apply for a single permit for temporary residence and work which should be issued in the form of an ID card with biometric data and will serve as proof of legal residence, the right to work, and as an identification document.

C. Corporate Governance

6. What are the standard management structures (e.g., general assembly, board of directors, etc.) in a corporate entity governed in your jurisdiction and the key liability issues relating to these (e.g., liability of the board members and managers)?

In accordance to the law, the shareholders' assembly and the executive director are the obligatory bodies of the LLC as well as for JSC.

The board of directors is a mandatory body at JSC, and it is an optional body at LLC. The members of the board of directors are responsible for any damage that they could cause to the company.

7. What are the audit requirements in corporate entities?

All Montenegrin business entities are required to provide annual financial statements.

Joint stock companies, financial institutions, insurance companies as well as medium-sized and large companies, are required to conduct an audit of their financial statements.

D. Shareholder Rights

8. What are the privileges that can be granted to shareholders? In particular, is it possible to grant voting privileges to shareholders for appointment of board members?

The shareholders have the right to participate and vote in the assembly of the joint stock company. It is also possible to conclude a shareholders' agreement between a certain number of company shareholders to determine in advance how to vote based on their shares.

In LLC a shareholder/member of the company may have only 1 (one) share in the company, which is his percentage in the basic capital of the company. The voting rights of the shareholders/members of the limited liability company and their property rights towards the company are proportional to the shares of the members in the company's share capital.

9. Are there any specific statutory rights available to minority shareholders available in your jurisdiction?

Each shareholder has the rights granted to him by the shares he owns, with the fact that the owners of the same class of shares have the same rights.

All shareholders are treated equally under equal circumstances.

10. Is it possible to impose restrictions on share transfers under the corporate documents (e.g., articles of association or its equivalent in your jurisdiction) of a company incorporated in your jurisdiction?

There is no such possibility.

11. Are there any specific concerns or other considerations regarding the composition, technical bankruptcy and other insolvency cases in your jurisdiction?

No.

E. Acquisition

12. Which methods are commonly used to acquire a company, e.g., share transfer, asset transfer, etc.?

At LLC it is usually share transfer.

13. What are the advantages and disadvantages of a share purchase as opposed to other methods?

Share transfer at LLC is mostly cost and tax efficient.

14. What are the approvals and consents typically required (e.g., corporate, regulatory, sector based and third-party approvals) for private acquisitions in your jurisdiction?

It depends on the company structure and other circumstances. For usual LLCs there are no specific requirements than registration procedure of share transfer at the company register.

15. What are the regulatory competition law requirements applicable to private acquisitions in your jurisdiction?

Concentration shall be notified to the national competition authority if:

a) combined aggregate annual turnover of all undertakings participating in the concentration, generated by sale of goods and/or services on the Montenegrin market, exceeds EUR 5,000,000 according to the financial statements for the financial year preceding the concentration;

or

b) combined aggregate annual turnover of all undertakings participating in the concentration, generated by sale of goods and/or services on the worldwide market in the year preceding the concentration, exceeds EUR 20,000,000, provided that at least 1 (one) of the participants to the concentration generated at least EUR 1,000,000 million on the Montenegrin market in the same period.

16. Are there any specific rules applicable for acquisition of public companies in your jurisdiction?

It depends of the certain company and its business activity.

17. Is there a requirement to disclose a deal, for instance to regulatory authorities? Is it possible to keep a deal confidential?

The main share transfer agreement has to be notarized and disclosed to the company register, but there is possible to keep a deal confidential through specific legal structure of the deal.

18. Can sellers be restricted from shopping around during a negotiation process? Is it possible to include break fee or other penalty clauses in acquisition documents to procure deal exclusivity?

The parties can stipulate those restrictions through the pre-purchase agreement or other documents, depending on the deal.

19. What are the conditions precedent in a typical acquisition document? Is it common to have conditions to closing such as no material adverse change?

If it is necessary, for example, to obtain the approval of the competent antitrust agency in Montenegro or another jurisdiction, it is usual to agree to fulfill that condition as precedent.

20. What are the typical warranties and limitations in acquisition documents? Is it common to obtain warranty insurance?

It is usual that the acquisition document contains warranties of both the seller and the buyer. Other warranties than contractual warranties are not typical for these kinds of transactions.

21. Is there a requirement to set a minimum pricing for shares of a target company in an acquisition?

There is no such requirement.

22. What types of acquisition financing are available for potential buyers in your jurisdiction? Can a company provide financial assistance to a potential buyer of shares in the target company?

There are only the usual types of financing, such as bank loans, etc. There are no specific types of acquisition financing.

23. What are the formalities and procedures for share transfers and how is a share transfer perfected?

The share transfer agreement must be notarized, and the new shareholder should submit the new article of associations, to the company register for the registration of the share transfer.

24. Are there any incentives (such as tax exemptions) available for acquisitions in your jurisdiction?

Not available.

F. Enforceability

25. Can acquisition documents be executed in a foreign language?

Acquisition documents can be executed Montenegrin and foreign language on bilingual form.

26. Can acquisition documents be governed by a foreign law?

The main share transfer agreement has to be governed by Montenegrin law, but other documents preceding can be governed by foreign law.

27. Are arbitration clauses legally permissible or generally included in acquisition documents?

Yes, arbitration clauses are legally permissible in acquisition documents.

28. Are there any specific formalities for the execution of acquisition documents? Is it possible to remotely/digitally sign documents?

The main share transfer agreement cannot be signed digitally because the signatures have to be notarized, which means that signatories have to be personally present and sign the agreement before the notary. Other documents that preceding to the main share transfer agreement can be signed remotely/digitally.

G. Trends and Projections

29. What are the main current trends in M&A in your jurisdiction?

M&A in Montenegro depends mostly of the trends from region. Despite deal values being noticeably lower, M&A activity in the region continued at a steady pace in 2022 and increased in 2023.

In 2023, the total value of M&A deals in Montenegro amounted to 189 million euros, which was a significant increase compared to 2021, but such a trend did not persist in 2023.

30. Are any significant development or change expected in the near future in relation to M&A in your jurisdiction?

As a result of several macroeconomic and other reasons, overall M&A activity has been uneven among countries and territories in 2023. It reflects to Montenegro also but we do not expect significant development or change in near future in relation to M&A.

NETHERLANDS

ORANGE CLOVER

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A. General

1. What is the main legal framework applicable to companies in your jurisdiction?

The main legal framework applicable to companies in the Netherlands is the Book 2 of the Dutch Civil Code (DCC). For listed companies, there is also the Dutch Corporate Governance Code ("**DCGC**").

2. What are the most common types of corporate entities (e.g., joint stock companies, limited liability companies, etc.) used in your jurisdiction? What are the main differences between them (including but not limited to with regard to the shareholders' liability)?

The most common types of corporate entities used in the Netherlands are the public limited company ("**NV**") and the private limited company (**"BV"**). The main difference between them is that an NV is required to have a minimum share capital of €45,000 and is subject to more stringent regulations, while a BV has a lower minimum share capital of €0.01 and is subject to less stringent regulations. In both types of companies, shareholders have limited liability.

B. Foreign Investment

3. Are there any restrictions on foreign investors incorporating or acquiring the shares of a company in your jurisdiction?

There are only limited restrictions on foreign investors incorporating or acquiring the shares of a company in the Netherlands. The restrictions result from Dutch foreign direct investment screening mechanisms which apply to certain sectors and investments in vital providers and companies active in the area of sensitive technology and telecommunications.

4. Are there any foreign exchange restrictions or conditions applicable to companies such as restrictions to foreign currency shareholder loans?

There are no foreign exchange restrictions or conditions applicable to companies in the Netherlands.

5. Are there any specific considerations for employment of foreign employees in companies incorporated in your jurisdiction?

There are no specific considerations for the employment of foreign employees in companies incorporated in the Netherlands. Non-EU/EEA employees will require a work permit (with limited exceptions possible for example in case of high-skilled employees).

C. Corporate Governance

6. What are the standard management structures (e.g., general assembly, board of directors, etc.) in a corporate entity governed in your jurisdiction and the key liability issues relating to these (e.g., liability of the board members and managers)?

The standard management structures in a corporate entity governed in the Netherlands are the general meeting of shareholders and the board of directors. A supervisory board can be formed in two tiers. It is also possible to have a one-tier board with executive and non-executive directors. The board of directors is responsible for the management of the company and the supervisory board is responsible for monitoring the board of directors. Board members (and on a more limited basis supervisory board members) can be held liable for damages caused by a breach of their duties.

7. What are the audit requirements in corporate entities?

The audit requirements depend on the size of the Dutch corporate entity. Medium-sized and large companies are required to have an audit of their (if relevant, consolidated) financial statements conducted by a registered auditor or authorised accounting consultant. However, for micro and small companies, an audit is not required.

D. Shareholder Rights

8. What are the privileges that can be granted to shareholders? In particular, is it possible to grant voting privileges to shareholders for appointment of board members?

Shares can be issued with the right to dividends but without the right to vote and also without the right to dividends but with the right to vote. Preferred shares can be issued with a certain preference in case of distribution of profits. Separate share groups can be issued with (amongst others) the right to appoint specific board members.

9. Are there any specific statutory rights available to minority shareholders available in your jurisdiction?

Minority shareholders in the Netherlands have certain statutory rights, such as the right to information, the right to participate in a general meeting of shareholders, and the right to request the court to appoint a provisional director.

There is a specific protection mechanism under Dutch law, whereby a minority shareholder can invoke the dispute settlement arrangement of Section 1 of Title 8 of Book 2 of the Dutch Civil Code. A minority shareholder who has been harmed in his/her rights or interests by the conduct of one or more co-shareholders, in such a way that the continuation of his shareholding can no longer reasonably be expected of him/her, can file a notice of withdrawal against those co-shareholders.

10. Is it possible to impose restrictions on share transfers under the corporate documents (e.g., articles of association or its equivalent in your jurisdiction) of a company incorporated in your jurisdiction?

It is possible to impose transfer restrictions on share transfers under the articles of association of a Dutch company. Typically, these are in the form of a right of first refusal or the requirement of prior consent from the shareholders' meeting.

11. Are there any specific concerns or other considerations regarding the composition, technical bankruptcy and other insolvency cases in your jurisdiction?

The Dutch Bankruptcy Act (*Faillissementswet*) and the European Regulation on Insolvency Proceedings are the primary legal frameworks governing insolvency proceedings in the Netherlands. Insolvency proceedings applicable to Dutch companies are bankruptcy and a suspension of payments. Dutch bankruptcy requires non-payment of debts (not more liabilities than assets). Both the insolvent company and a creditor can file for bankruptcy. There are no specific requirements for a Dutch company to file for bankruptcy. However it might be advisable to file for bankruptcy to avoid directors' liability: this might be invoked if the insolvent company continues business and enters into new contracts when knowing the company cannot fulfil its payment obligations, or when selective payments are being made to specific creditors.

E. Acquisition

12. Which methods are commonly used to acquire a company, e.g., share transfer, asset transfer, etc.?

The most common method to acquire a company in the Netherlands is through the purchase and transfer of shares. Other methods include asset transfer and merger if there is sufficient rationale therefor.

13. What are the advantages and disadvantages of a share purchase as opposed to other methods?

The advantage of a share purchase is that the buyer acquires the target company as a going concern, including all of its assets and liabilities. The disadvantage is that the buyer takes on all of the target company's liabilities. Amongst others, there will be additional advantages or disadvantages in terms of time, cost and tax perspective depending on the circumstances.

14. What are the approvals and consents typically required (e.g., corporate, regulatory, sector based and third-party approvals) for private acquisitions in your jurisdiction?

The approvals and consents typically required for private acquisitions in the Netherlands are corporate approvals from the seller, purchaser and target company, Dutch works council positive advice, regulatory approvals from the Dutch Authority for the Financial Markets (AFM) if applicable, and competition law clearance from the Netherlands Authority for Consumers and Markets (ACM) if applicable.

15. What are the regulatory competition law requirements applicable to private acquisitions in your jurisdiction?

The regulatory competition law requirements applicable to private acquisitions in the Netherlands are governed by EU and Dutch competition law, depending on the level of concentration (combined turnover or turnover).

16. Are there any specific rules applicable for acquisition of public companies in your jurisdiction?

There are specific rules applicable for the acquisition of public companies in the Netherlands, such as the obligation to make a public offer if the acquirer acquires more than 30% of the voting rights in the target company.

17. Is there a requirement to disclose a deal, for instance to regulatory authorities? Is it possible to keep a deal confidential?

There are certain requirements to disclose a deal to regulatory authorities in the Netherlands. Disclosure is, amongst other, required in case of acquisition of public listed shares subject to meeting various thresholds or in respect of certain foreign direct investments as set out above in respect of that topic.

18. Can sellers be restricted from shopping around during a negotiation process? Is it possible to include break fee or other penalty clauses in acquisition documents to procure deal exclusivity?

Sellers can be restricted from shopping around during a negotiation process, and it is possible to include break fee or other penalty clauses in acquisition documents to procure deal exclusivity.

19. What are the conditions precedent in a typical acquisition document? Is it common to have conditions to closing such as no material adverse change?

The conditions precedent in a typical acquisition document include due diligence, regulatory approvals, and corporate approvals (including where applicable Dutch works council advice). It is common to have a no material adverse change to closing (subject to commercial negotiations).

20. What are the typical warranties and limitations in acquisition documents? Is it common to obtain warranty insurance?

Typical warranties in acquisition documents include representations and warranties related to the target company's financial condition, legal compliance, and intellectual property. Limitations on liability are also common, such as caps on damages and time limits for making claims. It is common to obtain warranty insurance in the Netherlands.

21. Is there a requirement to set a minimum pricing for shares of a target company in an acquisition?

There is no requirement to set a minimum pricing for shares of a target company in an acquisition in the Netherlands.

22. What types of acquisition financing are available for potential buyers in your jurisdiction? Can a company provide financial assistance to a potential buyer of shares in the target company?

Acquisition financing in the Netherlands is typically provided by banks or other financial institutions. Specific financial assistance restrictions apply to NV type of companies but not to BV type of companies.

23. What are the formalities and procedures for share transfers and how is a share transfer perfected?

Registered shares in Dutch companies are transferred by means of a Dutch notarial deed of transfer. The transfer is registered in the shareholders register in order to limit third party protections.

24. Are there any incentives (such as tax exemptions) available for acquisitions in your jurisdiction?

There are no general incentives such as tax exemptions available for acquisitions in the Netherlands, but the Netherlands has a favourable tax environment and tax treaty network which may benefit the acquiring company.

F. Enforceability

25. Can acquisition documents be executed in a foreign language?

Acquisition documents can be executed in a foreign language.

26. Can acquisition documents be governed by a foreign law?

Acquisition documents other than the deed of transfer of shares can be governed by a foreign law.

27. Are arbitration clauses legally permissible or generally included in acquisition documents?

Arbitration clauses are legally permissible. They are generally not included in acquisition documents in the Netherlands since the Dutch courts process is generally considered to be more (cost) effective.

28. Are there any specific formalities for the execution of acquisition documents? Is it possible to remotely/digitally sign documents?

There are no specific formalities for the execution of acquisition documents in the Netherlands. It is possible to sign documents remotely/digitally.

G. Trends and Projections

29. What are the main current trends in M&A in your jurisdiction?

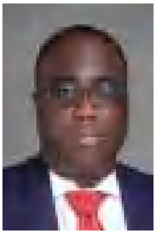
Under current unstable market and geopolitical conditions, the M&A market is still fully active but it is difficult to distil a current main trend.

30. Are any significant development or change expected in the near future in relation to M&A in your jurisdiction?

The same as above. The development of greater foreign direct investment screening.

NIGERIA

BLOOMFIELD LAW



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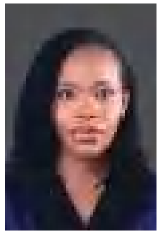

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A. General

1. What is the main legal framework applicable to companies in your jurisdiction?

The main legal framework applicable to companies in Nigeria is the Companies and Allied Matters Act of 2020 (the "**CAMA 2020**"). The CAMA 2020, was amended by the Business Facilitation (Miscellaneous Provision) Act of 2022 which was recently enacted.

There are also other pieces of legislation, applicable to companies in Nigeria including:

i. Companies Regulations 2021;
ii. Investments and Securities Act (ISA) 2007;
iii. Federal Competition and Consumer Protection Act (FCCPA) 2018;
iv. Nigerian Investment Promotion Commission Act (NIPC Act);
v. National Office for Technology Acquisition and Promotion Act (NOTAP);
vi. Banks and Other Financial Institutions Act (BOFIA) 2020; and
vii. Foreign Exchange (Monitoring and Miscellaneous Provisions) Act amongst others.

2. What are the most common types of corporate entities (e.g., joint stock companies, limited liability companies, etc.) used in your jurisdiction? What are the main differences between them (including but not limited to with regard to the shareholders' liability)?

The most common types of companies in Nigeria are limited liability and unlimited liability companies. The financial liability of shareholders of limited liability companies limited to the amount unpaid on their shares, whilst there is no limit for the financial liability of the shareholders of an unlimited liability company, as per Section 21 of the Companies and Allied Matters Act 2020.

A limited liability company may be either private or public depending on the proposed number of shareholders, its minimum issued share capital and its ability to offer shares or debentures to the general public.

Whilst the minimum and maximum number of shareholders of a private limited company must be one (1) and fifty (50) respectively, a public limited liability company is expected to have a minimum of two (2) shareholders with no maximum specified.

Also, a public limited liability company is not restricted from offering its shares and debenture to the Company whilst a private limited liability company is restricted.

B. Foreign Investment

3. Are there any restrictions on foreign investors incorporating or acquiring the shares of a company in your jurisdiction?

There are generally no restrictions on foreign investors incorporating or acquiring the shares of a company in Nigeria.

However, foreign investors are prohibited from incorporating a company that will venture into businesses listed as the 'negative list' under the Nigerian Investment Promotion Commission. These businesses are as follows:

- production of arms and ammunitions.
- production of and dealing in narcotic drugs and psychotropic substances.
- production of military and para-military wears and accoutrement, including those of the Police and the Customs, Immigration and Prison Services.
- such other items as the Federal Executive Council may, from time to time, determine.

4. Are there any foreign exchange restrictions or conditions applicable to companies such as restrictions to foreign currency shareholder loans?

There are no restrictions or conditions applicable to Nigerian companies in respect of foreign exchange ("**FX**") shareholder loans. However, for a company accessing FX to be able to repatriate the same to the country of source at the Central Bank of Nigeria ("**CBN**") official exchange rate, which by the way is the lowest rate, the company is required to bring in the foreign currency into Nigeria through an authorized dealer using a Certificate of Capital Importation ("**CCI**"). An authorized dealer must issue the company an electronic CCI ("**e-CCI**") within twenty-four (24) hours of capital importation. The e-CCI allows the company right to the repatriation of capital and access to FX at the CBN official exchange rate.

It is pertinent to state that the continued relevance of the e-CCI is now subject to question with the unification of the Nigerian FX Market.

5. Are there any specific considerations for employment of foreign employees in companies incorporated in your jurisdiction?

Yes, there are specific considerations for the employment of foreign employees in companies in Nigeria. The considerations include:

i. The company must have an expatriate quota which is a document that permits companies to employ expatriates to specifically approved job designations and also specifies the period of such employment; and

ii. The employee will also be required to obtain the relevant visas and permits to enable him/her to work in Nigeria.

It is important to note that the foreigners (known as expatriates) are employed with a view to training and transferring requisite skills to Nigerians during the period of employment.

C. Corporate Governance

6. What are the standard management structures (e.g., general assembly, board of directors, etc.) in a corporate entity governed in your jurisdiction and the key liability issues relating to these (e.g., liability of the board members and managers)?

GENERAL MEETING

Every company, except for small (a private company with a turnover of not more than Twenty-Five Million Naira (N25,000,000) , net assets value of not more than Twelve Million and Five Hundred Thousand Naira (N12,500,000), no foreign or government-related shareholders and its directors hold at least fifty-one percent (51%) of its share capital. See Section 394 (3) of CAMA as amended by Regulation 19 of the Companies Regulations 2021) and single shareholder companies, are mandated in each year to hold a general meeting as its annual meeting in addition to its other meetings in that year, provided that the time limit between one general meeting and the next shall not exceed fifteen (15) months unless extended by the Corporate Affairs Commission (the "**Commission**") for a period not exceeding three (3) months.

Notwithstanding the foregoing, a newly incorporated company need not hold a general meeting in its year of incorporation and should hold its annual general meeting within eighteen (18) months from the date of incorporation.

Where a company fails to hold its general meeting in a year, the Commission may call or direct the calling of the general meeting of the company. Where the company fails to call its general meeting as provided above, the company and every officer of the company shall be liable to a penalty in such amount as the Commission shall specify.

BOARD OF DIRECTORS' MEETING

The Companies and Allied Matters Act 2020 mandates every company, not being a small company, to have a minimum of two (2) directors. CAMA expressly directed companies having less than two (2) directors to appoint new directors within one (1) month or cease to carry on business after the expiration of the one (1) month period.

If a director or member of a company, which is not a small company, knows that a company carries on business after the number of directors has fallen below two members, for a period of more than sixty (60) days, then he/she is responsible for all liabilities and debts incurred by the company, during that period in which the company carried on its business.

A person who is proposed to be appointed a director of a public company and who is more than seventy (70) years old or who has been appointed a director in any other public company shall disclose his age and the fact of multiple directorships at the meeting of the company. Failure to disclose shall render the director liable to a penalty as the Commission may specify.

Where an insolvent person acts as a director of or directly or indirectly takes part in, or is concerned in the management of any company, he commits an offence and is liable on conviction to a fine as the Court deems fit, or imprisonment for a term of at least six (6) months but not more than two years, or both.

Further, the first meeting of the directors of a company shall be held not later than six (6) months after the incorporation of the company and the liabilities of the directors of a company are as specified in the articles of association of the company.

7. What are the audit requirements in corporate entities?

Every company, except from a small company and a company that has not carried on business since its incorporation, is required to appoint an auditor or auditors to audit its financial statements.

D. Shareholder Rights

8. What are the privileges that can be granted to shareholders? In particular, is it possible to grant voting privileges to shareholders for appointment of board members?

The privileges that are granted to shareholders include right to vote on matters affecting the company (including appointment of director(s) and auditor(s) amongst others), right to share in dividend and right to appoint a proxy to attend meetings in its stead amongst others.

9. Are there any specific statutory rights available to minority shareholders available in your jurisdiction?

Yes, there are specific statutory rights available to minority shareholders in Nigeria. These rights include:

i. Members Direct Action: A minority shareholder in a company may institute actions to seek redress for the wrongs done against itself particularly regarding its right as a shareholder. This action may be instituted either in a personal or in a representative capacity.

ii. Derivative Action: This allows minority members to apply to the court for leave to institute an action on behalf of the company. This is suitable where the company is being mismanaged by a director or the former director of the company and the Board of Directors and the members in general meeting have refused to take steps to sue or rectify the mismanagement.

iii. Relief on Grounds of Unfairly Prejudicial and Oppressive Conduct: This is suitable where the minority seeks to prove that an act taken on behalf of the company has been so taken to oppress the minority shareholder.

iv. Investigation of the Company by the Corporate Affairs Commission: An application may be made by one-tenth of members of a company to the Commission to investigate the affairs of the Company. The Commission may also on its volition make an investigation where it is suspected that the company's affairs are conducted with an intent to defraud or an act or proposed act or omission of the company will be prejudicial or that the Company was formed for an unlawful purpose.

10. Is it possible to impose restrictions on share transfers under the corporate documents (e.g., articles of association or its equivalent in your jurisdiction) of a company incorporated in your jurisdiction?

Yes, we confirm that a company may under its articles of association or a shareholders' agreement impose restrictions on share transfers. For instance, the corporate documents of a private limited liability company always include restrictions on share transfer.

11. Are there any specific concerns or other considerations regarding the composition, technical bankruptcy and other insolvency cases in your jurisdiction?

A major concern regarding the composition, technical bankruptcy and other insolvency cases prior to 2020 was the lack of comprehensive legislation in the area of insolvency practice. However, with the enactment of CAMA 2020 and the Insolvency Regulation of 2022, there is in place a comprehensive governance and procedural framework for insolvency practice in line with international best practices.

E. Acquisition

12. Which methods are commonly used to acquire a company, e.g., share transfer, asset transfer, etc.?

In Nigeria, the methods commonly used to acquire a company are share transfer and asset transfer.

13. What are the advantages and disadvantages of a share purchase as opposed to other methods?

The advantages of Share Purchase as opposed to Asset Purchase include the following:

i. Share purchase is much simpler and straightforward. There is no need for assets retitling as well as other formalities such as re-registration etc.

ii. In a share purchase agreement, the buyer may acquire the shares of the company. The buyer may choose to rebrand and change any aspects of the company's business.

iii. In a share purchase, the buyer will benefit from existing contracts already assigned to it, existing licenses and permits of the seller without worrying about third-party consent.

iv. In a share purchase, the buyer benefits from the goodwill and credit history.

The disadvantages of share transfer include the following:

a. Acquisition of Liabilities: In a share purchase, the buyer has limited right to cherry pick the assets and liabilities it is acquiring. It is acquiring the company in its entirety including unwanted assets and liabilities to the extent specified in the share purchase agreement.

b. Minority shareholders may hinder the share transfer if they refuse to sell their shares or the transfer, subject to their rights in the corporate documents of the company.

c. The goodwill of a company whose shares are to be acquired would be taken into account in determining the purchase price for the shares/transactions.

14. What are the approvals and consents typically required (e.g., corporate, regulatory, sector based and third-party approvals) for private acquisitions in your jurisdiction?

Subject to the provision of the corporate documents of the company, the approvals and consents typically required for private acquisitions in Nigeria are:

a. Approval by the board of directors of the target company and acquiring company (the "**Companies**").

b. Approval by the members in general meetings of the companies. Such approval is to be indicated by a special resolution.

c. Approval of the Federal Competition and Consumer Protection Commission ("**FCCPC**") where the acquisition amounts to a merger.

d. Sanction of the Federal High Court (where applicable).

e. Sector specific approvals such as CBN's approval (for financial institutions) and National Insurance Commission's approval for insurance companies, amongst others.

15. What are the regulatory competition law requirements applicable to private acquisitions in your jurisdiction?

The competitive law governing acquisition is the FCCPC.

The competitive law requirements applicable to private acquisitions in Nigeria are:

a. Whether the merger falls within the notifiable threshold which is that (a) the combined turnover of the target and acquiring undertakings in, into and from Nigeria equals or exceeds One Billion Naira (₦1,000,000,000) in the financial year preceding the merger and (b) the annual turnover of the target undertaking in, into and from Nigeria in the financial year preceding the merger equals or exceeds than Five Hundred Million Naira (₦500,000,000);

b. Where the merger or acquisition falls within the notifiable threshold, the FCCPC will consider the underlisted before giving its approval:

- Whether or not the merger is likely to substantially prevent or lessen competition. The FCCPC shall assess the strength of competition in the relevant market and the probability that the undertaking in the market after the merger will behave competitively or cooperatively, taking into account any factor that is relevant to competition in that including (a) the actual or potential level of import competition in the market; (b) the ease of entry into the market including tariff and regulatory barriers; (c) the level and trend of concentration and history of collusion in the market; and (d) the degree of countervailing power in the market amongst others.
- If it appears that the merger is likely to substantially prevent or lessen competition, then determine (a) whether or not the merger is likely to result in any technological efficiency or another pro-competitive gain which will be greater than and off-set or is likely to result from the merger and would not likely be obtained if the merger is prevented; and (b) whether the merger can or cannot be justified on substantial public interest grounds by assessing factors such as a particular industrial section or region, employment, ability of national industries to compete with international market and the ability of small and medium scale enterprises to become competitive.

16. Are there any specific rules applicable for acquisition of public companies in your jurisdiction?

Yes, there are certain rules applicable to the acquisition of public companies in Nigeria. These rules are found in the following pieces of legislation:

a. The Companies and Allied Matters Act 2020

b. The Investment and Securities Act

c. The Securities and Exchange Commission Rules and Regulations

d. The Federal Competition and Consumer Protection Act

17. Is there a requirement to disclose a deal, for instance to regulatory authorities? Is it possible to keep a deal confidential?

Yes, the FCCPC Merger Review Guidelines 2020 and the FCCPA Merger Review Regulations 2020 require parties to disclose the deal to FCCPC in the application for consent where the merger is above the notifiable threshold. However, the Commission is mandated to keep confidential the contents of an application and any documents so accompanying same.

Further, the only instance where parties are not mandated to disclose the deal is in the case of a small merger.

18. Can sellers be restricted from shopping around during a negotiation process? Is it possible to include break fee or other penalty clauses in acquisition documents to procure deal exclusivity?

Yes, sellers may be restricted from shopping around during a negotiation process by the inclusion of clauses such as exclusivity, break fee and other penalty provisions in the preliminary negotiation document (such as a term sheet) and acquisition documents.

19. What are the conditions precedent in a typical acquisition document? Is it common to have conditions to closing such as no material adverse change?

Condition precedents in a typical acquisition document include:

- The discharge of any mortgage, charge, pledge and other encumbrance on the shares or assets to be acquired;
- Parties obtaining the requisite consents and approval required for the acquisition pursuant to their articles of association and corporate constitutive documents;
- Procurement of the required regulatory and third parties' approvals, consents and notifications such as the FCCPC Approval.
- Execution of all share transfer and acquisition documents;
- The transfer of the original share certificate(s) for the shares or title documents of the assets to the buyer; and
- Absence of any material adverse change which is typical for transactions of this nature amongst others.

20. What are the typical warranties and limitations in acquisition documents? Is it common to obtain warranty insurance?

The typical warranties in acquisition documents include the following:

i. Incorporation and Authority of the Parties;
ii. Legal capacity of the Parties;
iii. Due Diligence;
iv. Insurance;
v. Absence of Proceedings;
vi. Pension payments
vii. Taxation
viii. Intellectual property

Whilst the limitation on liability typically included in acquisition documents include purchaser's knowledge, limitation on quantum and time to make a warranty claim, taxation, contingent liability, conduct of claims, recovery from third parties and retrospective legislation amongst others.

21. Is there a requirement to set a minimum pricing for shares of a target company in an acquisition?

There are no laws or regulations that provide a requirement for a party to set a minimum pricing for shares of a target company.

22. What types of acquisition financing are available for potential buyers in your jurisdiction? Can a company provide financial assistance to a potential buyer of shares in the target company?

A potential buyer may finance its acquisition through equity or debt financing.

In Nigeria, it is unlawful for a company to provide financial assistance directly or indirectly to a potential buyer for the acquisition of its shares except in limited circumstances such as where lending of money is part of the ordinary business of the company, the financial assistance is in accordance of any scheme for the time being, making by a company of loans to persons, other than directors, bona fide in the employment of the company and any act and transaction authorized by law amongst others.

23. What are the formalities and procedures for share transfers and how is a share transfer perfected?

Shares can be transferred to the potential buyer by an instrument of transfer duly executed. The instrument of transfer may be a deed of share surrender or share transfer form and resolution approving the transfer of the shares to the potential buyer.

The seller is to deliver the original share certificate covering the transfer shares to the potential buyer (if it proposes to sell all the shares to the buyer) or in the case where only a portion of the seller's shares is to be transferred, deliver the share certificate covering its interests and the instrument of transfer to a company with a request that the instrument of transfer be recognized and registered.

The buyer shall file the instrument of transfer with CAC and upon receipt of the certified true copy evidencing the transfer, the buyer shall submit the document to the company for the registration of its name in the member's register. The company shall register the interest of the buyer in the register of members if satisfied that all conditions of transfer have been met. Upon registration of the buyer's name in the register of members, the company will issue a new share certificate (reflecting the transfer shares) to the purchaser (the new shareholder) and another share certificate to the shareholder whose shares have been transferred.

24. Are there any incentives (such as tax exemptions) available for acquisitions in your jurisdiction?

Yes, there are certain tax exemptions available for acquisitions. Section 32 of the Capital Gains Tax Act as amended ("**CGTA**") for example, provides that Capital Gain Tax shall apply on the sale or transfer of assets in respect of an M&A arrangement at the rate of ten percent (10%) except where:

(i) the proceeds of such disposal must be reinvested within the same year of assessment in the acquisition of shares in the same or other Nigerian companies: provided that tax shall accrue proportionately on the portion of the proceeds which are not reinvested;

(ii) disposal proceeds, in aggregate, must be less than One Million Naira (N100,000,000) in any twelve (12) consecutive months; or

(iii) such shares are transferred between an approved borrower and lender in a regulated Securities Lending Transaction

F. Enforceability

25. Can acquisition documents be executed in a foreign language?

Whilst the acquisition documents may be executed in a foreign language if parties to the transaction understand the language, it is advisable that the acquisition document be executed in English considering that (a) it is our official language and (b) the acquisition documents may be submitted to regulatory authority during application for consent and will not be accepted if the documents are not in English language.

26. Can acquisition documents be governed by a foreign law?

Yes, the parties may choose the law of any country of their choice as the governing law provided that the law has some form of connection with the transaction, or it is deemed a neutral forum by the parties.

27. Are arbitration clauses legally permissible or generally included in acquisition documents?

Yes, arbitration clauses are legally permissible and can be generally included in acquisition documents.

28. Are there any specific formalities for the execution of acquisition documents? Is it possible to remotely/digitally sign documents?

There are no specific formalities for the execution of acquisition documents. Acquisition documents can be signed remotely or digitally.

G. Trends and Projections

29. What are the main current trends in M&A in your jurisdiction?

Some of the notable M&A deals were mostly involved in the start-up technology space-which received more funding than previous years, the oil and gas sector, the financial services sector inclusive of banking, insurance and pensions, and the healthcare sector.

In the oil and gas sector, some of the transactions include:

i. Africa Capitalworks, which acquired a significant equity stake in Dorman Long Engineering Ltd

ii. Seplat Energy proposed to acquire Mobil Producing Nigeria Unlimited's offshore shallow water business; and TNOG Oil & Gas Limited's (a related company of Heirs Holdings and Transcorp) acquired 45 per cent participating interest in Nigerian oil licence OML 17 and related assets from Shell Petroleum Development Company of Nigeria Limited, Total E&P Nigeria Limited and ENI.

In the Finance sector, some of the notable trends include:

i. Titan Trust Bank Limited's acquisition of eighty nine point three-nine percent (89.39%) of the issued share capital of Union Bank of Nigeria Plc and Guaranty Trust Holding Company Plc's acquisition of one hundred percent (100%) shares in Investment One Funds Management Limited.

ii. First Pension Custodian Nigeria Limited, a subsidiary of First Bank Nigeria Limited, also acquired one hundred percent (100%) shares of Access Pension Fund Custodian Limited (a subsidiary of Access Bank Plc).

30. Are any significant development or change expected in the near future in relation to M&A in your jurisdiction?

Yes, there are certain developments expected in the near future concerning M&A.

M&A activity in the past was fueled by investors' desire to participate in Nigeria's rapidly developing economy. However, continued uncertainty surrounding the foreign exchange regime, coupled with slower economic growth and the emergence of other frontier markets, has led investors to become more selective with Nigerian investment. Despite the concerns and worries, Nigeria continues to witness growing M&A activity across different sectors, including technology, especially in the start-up space, financial services, telecommunications, manufacturing and consumer goods, and oil and gas sectors.

Deals have been a mix of local and cross-border with startups continuing to raise significant funding in order to expand their operations and businesses. It is expected that in the near future, there will be an increase in M&A transactions in the country. It is also believed that the regulatory framework will be amended to include contemporary issues surrounding M&A transactions thus making it more attractive as an investment option than it already is.

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A. General

1. What is the main legal framework applicable to companies in your jurisdiction?

North Macedonia's legal system is based on civil law principles, with codified laws taking precedence. The country's foundational legal document, the Constitution of North Macedonia, establishes a framework that supports free-market principles and fosters a competitive business environment. To specifically cater to the intricacies of M&A, a myriad of specialized laws have been introduced over the years. North Macedonia's ambition for European Union ("**EU**") membership is a driving force behind many of these legislative reforms. Macedonia's obligation to harmonize its national legislation with EU legislation derives from its status as an EU candidate country, so implementation of EU legislation is mandatory.

The primary legal instrument that applies to companies in North Macedonia is the Law on Trading Companies 2004 ("**Companies Law**"). This umbrella law provides regulations for the establishment, management, operation, and dissolution of all types of companies, including organizational units of foreign companies. Moreover, the Companies Law prescribes rules on mergers and acquisitions, related party transactions, financial reporting, and other relevant rules. In addition to the Companies Law, other relevant legal instruments include the Law on Takeover of Joint Stock Companies 2013, which outlines the rules for the takeover of joint stock companies, the Law on Protection of Competition 2010, which governs merger control and restraints of trade and dominance, and the Law on Bankruptcy 2006 which governs the reorganization and bankruptcy of companies. Many sector-specific legal instruments also prescribe specific rules for companies operating in telecommunications and media, banking and finance, insurance, pharmaceutical, energy, transport, mining, gambling and other sectors.

2. What are the most common types of corporate entities (e.g., joint stock companies, limited liability companies, etc.) used in your jurisdiction? What are the main differences between them (including but not limited to with regard to the shareholders' liability)?

The most common business vehicles in North Macedonia are limited liability companies and joint stock companies. The limited liability company is the preferred business vehicle for many regulated and unregulated businesses, primarily because of its flexibility and simplicity. The key distinctions of a limited liability company include:

1) Regulatory obligations. Limited liability companies are not subject to specific regulatory obligations based on its corporate form.

2) Shareholders. A limited liability company must have at least 1 (one) shareholder but cannot have more than 50. Each shareholder is permitted to hold only 1 (one) share, with a nominal value set at a minimum of EUR 100.

3) Limitation of liability. The standout advantage of a limited liability company is that its shareholders are shielded from the company's debts beyond what they initially invested for their shares.

4) Capital requirements. A limited liability company must have a minimum share capital of EUR 5,000. This capital can include both cash and in-kind contributions.

In contrast, a joint stock company is a preferred choice for businesses that wish to raise public capital. The primary allure of a joint stock company is its capability to raise capital by offering shares to the broader public, an option not available to a limited liability company. Moreover, a joint stock company is a mandatory business vehicle for certain types of regulated businesses, such as banks and insurance companies. Joint stock companies are subject to more stringent regulations, ensuring transparency and accountability, especially when interfacing with public investors.

Joint stock companies must publicly disclose a wealth of information, ranging from financial metrics, shareholder structure, and operational insights to other price-sensitive data. The Macedonian Stock Exchange ("**MSE**") is the only regulated stock exchange in North Macedonia that acts as a central marketplace for the admission and trading of equity, debt and other securities. The MSE was established in 1995 and commenced trading in 1996. The MSE is a member of the Federation of Euro-Asian Stock Exchanges (FEAS) and an affiliated member of the Federation of European Stock Exchange (FESE). The MSE, like other stock exchanges in South-East Europe ("**SEE**"), is relatively small and has not attracted investments from large institutional investors as they tend to view the whole SEE region as 1 (one) marketplace. There are 2 (two) principal markets in North Macedonia, each of which is operated by the MSE:

1) **Official Market**: The official market for listed securities ("**Official Market**") is the MSE's flagship market for larger, more established companies. The Official Market is home to the largest Macedonian companies subject to the highest standards of regulation and governance. The Official Market has 4 (four) main segments:

- Super Listing segment.
- Exchange Listing.

- Mandatory Listing.
- Listing of Small Joint-Stock Companies.

2) **Regular Market**: The Regular Market is a market of unlisted securities which has 2 (two) main segments:

- Market of Companies with Special Disclosure Obligations which includes companies:
  - o that have made an initial public offering ("**IPO**"); or
  - o companies with a share capital of at least EUR 1 million and at least 50 shareholders.
- Free Market, where all securities, other than those in the Official Market and the Market of companies with special Disclosure Obligations, are traded.

In 2021, the MSE adopted a new Corporate Governance Code, which applies to companies with shares listed on the Official Market that meet the criteria set out in the listing rules. These companies must report annually whether they have followed the practices in the code. As in other European countries with capital markets of a similar size and structure, North Macedonia's new code applies an approach known as "comply or explain". This approach allows companies not to apply a particular standard – for example, one that may not be feasible due to the company's size or structure – provided they explain to shareholders and the market why they have chosen to do so. All other listed companies that do not meet the criteria of the listing rule are encouraged to report voluntarily on how they implement the code. The goal of the new corporate governance code is to support the successful development of local companies. The code also introduces for the first-time principles and provisions on corporate sustainability, as well as the environmental and social impact of their operations.

The number of shareholders in a joint stock company is not limited. Similar to a limited liability company, shareholders of a joint stock company are not liable for the company's debts beyond what they invested for their shares. A joint stock company mandates a share capital of at least EUR 25,000 if it is incorporated without an IPO or EUR 50,000 if an IPO is intended.

B. Foreign Investment

3. Are there any restrictions on foreign investors incorporating or acquiring the shares of a company in your jurisdiction?

North Macedonia has consistently worked towards creating a favorable and welcoming climate for foreign investments. Recognizing foreign direct investment (FDI) 's significant role in economic growth, job creation, and technological advancement, the country has implemented several policies to attract and retain foreign investors. North Macedonia has largely liberalized its foreign investment regime. There are no limitations on foreign ownership or control in most sectors, which means foreign entities can incorporate or acquire the entire share capital of a Macedonian company. Foreign investors are generally accorded the same rights and obligations as domestic investors. This non-discriminatory stance ensures a level playing field. The country has ratified numerous bilateral investment treaties, offering protection against expropriation and guaranteeing the repatriation of profits. Furthermore, North Macedonia is a signatory to the Convention on the Settlement of Investment Disputes, which facilitates an impartial platform for resolving any disputes between foreign investors and the state. North Macedonia offers various incentives, including tax breaks, reduced tariff rates, and subsidies, particularly for investments in technology parks, free economic zones, and industries identified as priority sectors. Significant efforts have been made to enhance infrastructure and connectivity, making it easier for foreign businesses to set up and operate in the country. The government has initiated reforms to simplify the process of business registration and licensing, thereby reducing the bureaucratic burden on foreign investors.

While there are no restrictions on foreign investors incorporating or acquiring shares in a Macedonian company, they must report to the Register of Direct Investments of Non-Residents (Direct Investments Register) for statistical purposes the following:

1) The incorporation of a company or increase of the share capital of a company fully owned by the investor, establishment of branches or the acquisition of the entire share capital of an existing company.
2) Shareholdings in a new or existing company that exceed more than 10% of the entire share capital or voting rights.
3) Long-term loans with a maturity period of 5 (five) years, if the loan was granted by the investor to a company fully owned by the investor.
4) Long-term loans with a maturity period of 5 (five) years or more, if the loan was granted to establish a lasting economic link between affiliated companies.

4. Are there any foreign exchange restrictions or conditions applicable to companies such as restrictions to foreign currency shareholder loans?

There are no restrictions on making loans by foreign lenders or granting security or guarantees to foreign lenders. However, local borrowers who are granted a loan by foreign lenders or local security providers who provide security to foreign lenders must report the transactions to the National Bank of the Republic of North Macedonia ("**NBRNM**") within 10 (ten) business days from entering into the finance or security documents. The NBRM issues a letter of confirmation to the borrower or the security provider confirming receipt of the notice and setting out the registration number of the transaction. The borrower or the security provider must report to the NBRM any changes to a reported transaction within 5 (five) business days from the change if it relates to the loan agreement or the balance of the loan.

Local borrowers also must report to the Direct Investments Register long-term loans with a maturity period of 5 (five) years (if the investor granted the loan to a company fully owned by the investor) or a long-term loan with a maturity period of 5 (five) years or more (if the loan was granted to establish a lasting economic link between affiliated companies). Local borrowers must report the above transactions to the Direct Investments Register within 60 days from entering into the relevant loan agreement with the foreign lender.

5. Are there any specific considerations for employment of foreign employees in companies incorporated in your jurisdiction?

The employment and work of foreigners in North Macedonia is governed by the Law on Employment and Work of Foreigners 2015 ("**LEWF**"). Under the LEWF, any foreigner intending to work in North Macedonia must previously obtain a temporary residence permit issued by the Macedonian Ministry of Internal Affairs (MOI). The temporary residence permit represents a single integrated permit for both work and residence of foreigners. Foreigners who have been granted a temporary residence permit for work are allowed to reside in North Macedonia only for the purpose of work. The temporary residence permit for work purposes may be issued to a foreigner only if the Macedonian Employment Agency issues a positive opinion that the foreigner meets the requirements per the LEWF. A temporary residence permit can be issued for up to 1 (one) year. However, it can be renewed for a period of up to 2 (two) years.

There are specific rules for the cross-border transfer of employees by a foreign company to its subsidiary or branch in North Macedonia. As a rule, foreign companies may temporarily transfer their employees (“**Transferred Employees”**) from the location of their permanent employment abroad to their subsidiary or a branch in North Macedonia to carry out work based on an agreement for the assignment of the Transferred Employees. Apart from entering into an assignment of employees' agreement, foreign companies are also required to apply on behalf of the Transferred Employees and obtain a temporary residence permit for each of the Transferred Employees. Temporary residence permits can be obtained only for Transferred Employees who were employed with the foreign company for at least 1 (one) year and the temporary residence permits of the Transferred Employees may be renewed for an additional period of up to 1 (one) year by the filing of an application for renewal at least 30 days before expiry of the temporary residence permits.

The issuing of temporary residence permits to the Transferred Employees is subject to quotas which the Macedonian Government sets annually. Therefore, if the quotas are met in 1 (one) calendar year, no additional temporary residence permits can be issued until the beginning of the following year. Additionally, under the LEWF, the Macedonian Government has a discretionary right to set limitations on the number of temporary residence permits issued to foreigners in different categories such as (i) job positions, (ii) industries; (iii) regions and municipalities in North Macedonia, if it considers that such limitations would benefit the public and/or commercial interests of the Macedonian labor market.

C. Corporate Governance

6. What are the standard management structures (e.g., general assembly, board of directors, etc.) in a corporate entity governed in your jurisdiction and the key liability issues relating to these (e.g., liability of the board members and managers)?

A limited liability company can be managed either by individual directors or by a collective management body comprised of individual directors. The shareholders also can appoint a supervisory board with competence to oversee the management. The supervisory board is comprised of at least 3 (three) members who are appointed by the shareholders' meeting. If a supervisory board is not appointed, the shareholders' meeting oversees the work of the directors.

Joint stock companies are required to adhere to specific management structures. They can opt for either a one-tier or two-tier management system. In a one-tier management system, the company is governed by a board that integrates executive and non-executive members. The board is responsible for both strategic decisions and daily operations. Oversight and control of the board's actions and resolutions are vested in the shareholders' meeting. The company is governed by a management board and a supervisory board in a two-tier management system. This management board is accountable to a supervisory board that provides oversight. The supervisory board ensures that the management board's decisions align with the interests of the shareholders and comply with relevant laws and regulations.

The directors of limited liability companies and joint stock companies have fiduciary duties and can be held liable for their actions. Directors must act in the best interests of the company. This includes duties of care and loyalty, which mean that directors should make informed decisions, avoid conflicts of interest, and put the company's interests ahead of their own. If directors fail to uphold their fiduciary duties, they can be held liable for damages to the company. This might include situations where a director's negligence or misconduct leads to financial loss. If a decision made by the board of a joint stock company causes damage to the company, all board members may be held jointly and severally liable. This means an injured party can pursue 1 (one) or all the directors for the full damages. In some instances, directors can also face criminal charges for severe breaches of duty, such as fraud, embezzlement, or other illegal activities carried out in their capacity as directors. Directors can sometimes be exempted from liability if they can prove that they acted in good faith, relied on expert advice, and had reasonable grounds to believe their action was in the company's best interests.

7. **What are the audit requirements in corporate entities?**

Audit requirements for companies vary between limited liability companies and joint stock companies. Limited liability companies must audit their annual financial statements only in some instances (if they establish and operate wholly-owned subsidiaries). In contrast, all listed joint stock companies must audit their annual financial statements and make them available to the shareholders and the general public by publishing them on the company's website and the MSE official website. Companies subject to mandatory audit must have their financial statements audited by an auditor or audit firm licensed in North Macedonia. The auditors must adhere to the International Standards on Auditing (ISA) and local regulations. After the completion of the audit, the auditor issues an audit report. This report provides an opinion on whether the financial statements give a true and fair view of the company's financial position, financial performance, and cash flows in accordance with applicable financial reporting standards.

D. Shareholder Rights

8. **What are the privileges that can be granted to shareholders? In particular, is it possible to grant voting privileges to shareholders for appointment of board members?**

Shareholders' privileges or rights are determined by the Companies Law, the company's articles of association, shareholders' agreements, and other relevant governing documents of a company. Typically, each share in a company corresponds to a vote. However, companies might issue different classes of shares, some of which might carry multiple votes per share or no voting rights at all. Shareholders generally have the right to receive dividends, portions of a company's profits distributed to its shareholders. Shareholders also have the right to attend, speak, and vote at general meetings and access certain company information, including financial statements and board minutes. They can also initiate legal action against company officers and directors for actions that harm the company. In case of company liquidation, shareholders may have the right to a proportionate distribution of the remaining assets after all debts and liabilities have been paid.

Voting privileges can be granted to certain shareholders specifically for appointing board members. This can be achieved through creating different classes of shares, where certain classes have enhanced voting rights concerning the appointment of board members or a system where a shareholder can allocate all of their votes to a single nominee for the board of directors rather than spreading them across multiple candidates. Shareholders' agreements can include provisions that give certain shareholders enhanced rights to nominate or appoint board members.

9. Are there any specific statutory rights available to minority shareholders available in your jurisdiction?

Macedonian law recognizes the potential vulnerability of minority shareholders and provides them with specific rights to protect their interests against potential abuse by the majority shareholders or the company's management. While the specifics can vary based on periodic amendments and judicial interpretations, some general rights often accorded to minority shareholders in North Macedonia are:

1) Right to information: Minority shareholders have the right to request certain company documents, such as financial statements, board minutes, and other relevant documents, to keep themselves informed about the company's affairs.
2) Right to call a shareholders' Meeting: Minority shareholders, upon reaching a certain percentage of ownership (typically defined by the statute or company's articles), can request the convening of a shareholders' meeting.
3) Right to challenge decisions: Minority shareholders have the right to challenge certain decisions made by the company, especially if they believe those decisions are contrary to the law or the company's by-laws or if they adversely affect their interests.
4) Right to dividends: If the company decides to distribute dividends, minority shareholders have a right to their proportionate share.
5) Right to exit: In certain circumstances, minority shareholders may have the right to require the company or other shareholders to purchase their shares, especially if certain decisions are made that fundamentally change the company's character.

10. Is it possible to impose restrictions on share transfers under the corporate documents (e.g., articles of association or its equivalent in your jurisdiction) of a company incorporated in your jurisdiction?

In North Macedonia, it is possible to impose restrictions on share transfers through corporate documents, most notably the company's articles of association. These restrictions can help ensure that the ownership of the company remains within a particular group or to vet potential new shareholders. Some common types of restrictions include:

1) Right of first refusal: This provision requires a shareholder wishing to sell their shares to first offer them to the other existing shareholders at the same price and terms as offered by a third-party buyer.
2) Pre-emptive rights: When new shares are issued, existing shareholders get the first opportunity to purchase them, often in proportion to their existing holdings, before they're offered to external parties.
3) Approval or consent clauses: The transfer of shares may be subject to the approval of the board of directors or a specified majority of shareholders.
4) Tag-along rights: If a majority shareholder sells their stake, minority

shareholders have the right to join the transaction and sell their minority stake at the same terms and conditions.

5) Drag-along rights: If a majority shareholder sells their stake, they can require minority shareholders to join the transaction, forcing them to sell their shares at the same terms and conditions.

6) Lock-in periods: Specifies a duration during which shareholders cannot sell their shares.

11. Are there any specific concerns or other considerations regarding the composition, technical bankruptcy and other insolvency cases in your jurisdiction?

In North Macedonia, as with many jurisdictions, there are particular concerns and considerations to be aware of regarding the composition, technical bankruptcy, and other insolvency cases.

Composition can be a way for companies in financial distress to avoid bankruptcy. When considering a composition, both the debtor and the creditors should assess the viability of the proposed terms and whether it offers a better outcome than a bankruptcy proceeding. Under the Out-of-Court Settlement Act 2014 ("**Restructuring Law"**), a company must commence a financial restructuring process if it is insolvent for over 30 days. The restructuring process involves negotiating a restructuring plan between the company and its unsecured creditors to provide more favorable terms for settling the creditors' claims compared to bankruptcy proceedings. The Restructuring Law excludes secured creditors from the restructuring process, and the restructuring plan does not bind them since they have the right to settle their claim from the object of the security interest in priority to unsecured creditors. Secured creditors can choose to participate in the restructuring process only if they waive their security interests.

Technical bankruptcy is a situation where a company's liabilities exceed its assets but hasn't yet filed for bankruptcy. It's crucial for company directors to recognize signs of technical bankruptcy and to act diligently, as they might face personal liability for continuing to trade while insolvent. Once a company becomes insolvent or is in a state of technical bankruptcy, the management has a legal obligation to file for bankruptcy within 45 days. Directors might be held personally liable if they don't act promptly upon recognizing insolvency or if they act detrimentally, worsening the financial position of the creditors. This can include accusations of wrongful or fraudulent trading.

As a general rule, on commencement of bankruptcy over a company, any transactions entered into by the company and its creditors that prevent the equitable settlement of the creditors' claims, or that provide preferential treatment to certain creditors, can be challenged by the bankruptcy administrator or any of the company's creditors. These transactions include:

1) **Preferential Treatment**

A transaction can be challenged if:

- The creditor has settled its claim or has received security for its claim on the basis of the transaction.
- The company was insolvent when it finalized the transaction.
- The creditor had actual knowledge (or must have had actual knowledge) about the company being insolvent.
- The company finalized the transaction 90 days before the proposal for the commencement of bankruptcy.

Any transactions that meet the above criteria and were finalized after filing the proposal for commencement can also be challenged if the creditor had actual knowledge (or must have had actual knowledge) about the company being insolvent or the proposal for the commencement of bankruptcy.

Any transactions on the basis of which a creditor has settled its claim or received security for its claim can be challenged if:

- The creditor had no right to demand settlement of its claim or to receive security.
- The creditor had no right to demand settlement of its claim or to receive security in a way provided by the company.
- The creditor had no right to demand settlement of its claim or to receive security at that particular moment in time.
- The company finalized the transaction 30 days before the proposal for the commencement of bankruptcy. The suspect period for challenging is 90 days before filing the proposal for the commencement of bankruptcy, only if the company was insolvent, or the creditor had actual knowledge that the transaction was detrimental to the other creditors.

2) **Transactions at an Undervalue**

   Any transactions in which the company received no consideration, or significantly less consideration than it provided, that was finalized within the 4 (four) years before the proposal for commencement for bankruptcy, can also be challenged.

3) **Damaging of Creditors**

   Any transactions in which the company intentionally caused damage to its creditors, finalized in the 10 (ten) years before the proposal for commencement for bankruptcy, can also be challenged.

On a company's bankruptcy, secured creditors can settle their claims by direct enforcement of their security interest, without regard to the form of the security. The security interests are not included in the company's bankruptcy estate, and secured creditors have the exclusive right to settle their claims from the net sale proceeds of the security interest. If a security interest has not been validly perfected, the creditor will be deemed to be an unsecured creditor, and its claim will be subject to ranking together with the claims of all the unsecured creditors. If 2 (two) security interests over a particular asset are equal, the first created will have priority.

Unsecured creditors' claims are ranked into higher and lower priority categories. Unsecured creditors' claims in the lower priority category can be settled only after full settlement of the claims in the higher priority category, while unsecured creditors' claims with the same priority are settled proportionally to the value of their relevant claim. The categories priority for unsecured creditors' claims is as follows (from highest to lowest):

- Costs of the bankruptcy proceedings that include court taxes, bankruptcy administrator's costs and fees, costs for maintenance of the assets of the company and other related expenses.
- Insolvent's employees' net salaries and mandatory health and social insurance benefits for the last 3 (three) months before commencement of the bankruptcy proceedings, personal injury claims under health and safety at work regulations, as well as unused annual leave compensation for the current calendar year.

- Creditors' claims, for example, account receivables, taxes, other outstanding liabilities to the government and others.
- Interest on creditors' claims which became due on the date of commencement of the bankruptcy proceedings; costs of creditors arising out of or in connection with their participation in the bankruptcy proceedings; criminal or misdemeanor fines; claims of creditors arising out of agreements at an undervalue; and claims for the repayment of loans or other claims of the company's shareholders.

E. Acquisition

12. Which methods are commonly used to acquire a company, e.g., share transfer, asset transfer, etc.?

The most common method for the acquisition of a company in North Macedonia is a share transfer. Control over a company can also be obtained by a statutory merger, that is, by merging the company into the acquirer. However, a statutory merger is not a common mechanism for the acquisition of a company, as many specific hurdles must be addressed during the merger process. For example, the implementation of a statutory merger requires the management of the merging companies to enter into a merger agreement which is subject to shareholder authorization. Moreover, the shareholders can contest the merger if certain conditions are met. Also, on the successful implementation of a statutory merger, the shareholders of the target company become shareholders of the acquiring company.

13. What are the advantages and disadvantages of a share purchase as opposed to other methods?

The main advantages of a share purchase include:

1) Simplicity and speed: Typically, a share purchase is administratively simpler and faster than an asset purchase since it involves the transfer of shares rather than individual assets and liabilities.
2) Transfer of intangible assets: Share purchases automatically include intangible assets such as licenses, permits, and contracts that might be non-transferable in an asset purchase.
3) Tax neutrality: The transfer of shares is not a taxable event.
4) Preservation of contracts: Contracts with customers, suppliers, or employees remain with the company, eliminating the need to renegotiate or assign each contract.
5) No reevaluation: Assets and liabilities remain on the balance sheet at their book value without the need for revaluation.

The main disadvantages of a share purchase include:

1) Assumption of liabilities: The buyer assumes all the liabilities of the company, both known and unknown.
2) Due diligence complexity: The due diligence process can be more complicated and lengthier since the buyer needs to examine all aspects of the company, including contingent liabilities.
3) Potential for minority shareholders: If not all shares are acquired, minority shareholders could retain rights, potentially complicating governance.

14. What are the approvals and consents typically required (e.g., corporate, regulatory, sector based and third-party approvals) for private acquisitions in your jurisdiction?

Various approvals and consents may be required for private acquisitions, depending on the nature of the business, its industry sector, and the specifics of the transaction. Some of the typical approvals and consents that may be necessary include,

1) **Corporate approvals**

   Depending on the articles of association (or equivalent corporate documents) of the company being acquired, the approval of a certain percentage of shareholders may be required for the sale or transfer of shares. The board of directors may need to approve the transaction, especially if it significantly alters the corporate structure or strategy of the company.

2) **Regulatory approvals**

- Merger clearance: If the acquisition results in a significant concentration in the market, approval may be required from the Commission for Protection of Competition ("**Commission**").
- Securities and Exchange Commission: If the target company is a publicly listed entity, the Securities and Exchange Commission might have specific requirements or notifications related to the transaction.

3) **Sector-Based Approvals**

- Banking and finance: Acquisitions in the banking or financial sectors may require approval from the National Bank of the Republic of North Macedonia or the Ministry of Finance of the Republic of North Macedonia.
- Telecommunications: Acquisitions in the telecom sector may necessitate consent from the Agency for Electronic Communications.
- Energy: Transactions involving energy companies might need the green light from the Energy Regulatory Commission.
- Insurance: The acquisition of insurance companies or significant stakes in them may require clearance from the Insurance Supervision Agency.

4) **Third-party Approvals**

   Some contracts that the target company is a party to may have change-of-control provisions or clauses that necessitate the consent of the other party/parties before an acquisition.

15. What are the regulatory competition law requirements applicable to private acquisitions in your jurisdiction?

Merger control in North Macedonia is governed by the Law on the Protection of Competition 2010 ("**Competition Law"**). The competent regulatory authority for merger control in Macedonia is the Commission. The Commission has exclusive jurisdiction to investigate and make a final decision on merger notifications, both in Phase I and Phase II (*as defined below*) proceedings.

There are no sector-specific merger control regulations, and currently, there are no developments that indicate that there are any plans to introduce sector-specific merger control rules in any industry. The general merger control regime applies equally to all qualifying concentrations, irrespective of the industry and sector. The Competition Law applies only to transactions that qualify as concentrations of capital, resulting in a permanent change of control involving undertakings that meet specific turnover and market share thresholds. Under the Competition Law, concentrations include transactions where:

(i) 2 (two) or more previously independent undertakings (or parts of undertakings) merge.

(ii) 1 (one) or more undertakings acquire, directly or indirectly, control of 1 (one) or more other undertakings by:

a. purchasing securities or assets;

b. contract;

c. any other means.

(iii) 2 (two) or more undertakings create a "full-function" joint venture, that is, a joint venture of two or more independent undertakings that has all the features of an autonomous economic undertaking.

Control is defined as rights, contracts or any other means that, either separately or combined, and having regard to the considerations of fact and law involved, confer the possibility of exercising a decisive influence on an undertaking. In particular, control can be exercised through the ownership or the right to use all or part of the assets of an undertaking or rights or contracts that confer a decisive influence on the composition, voting or decision-making of the bodies of the undertaking. In cases of acquisitions of minority interests, the Commission can investigate whether the acquirer can still exercise legal or de facto control over the undertaking through special rights attaching to shares or granted in shareholders' agreements, board representation, ownership and use of assets and related commercial issues. Since there is no precise shareholding or any other test for assessing whether decisive influence over an undertaking has been obtained, the Commission decides each case on its facts.

Despite a contemplated permanent change of control and the turnover and market share thresholds requirements being met, merger clearance is not required where:

(i) A bank, an insurance company or another financial institution, whose business activity includes trading securities, temporarily acquires shares for their ensuing resale within a period of a year from the date of their acquisition provided that during this period, the shareholders' rights are not exercised to influence the competitive behavior of that undertaking in the market.

(ii) A person acquires control over an undertaking in the capacity of a bankruptcy or as a liquidation administrator.

(iii) An investment fund acquires shares in an undertaking, provided that its shareholders' rights are exercised only to maintain the full value of the investment and not to influence the competitive behavior of that undertaking in the market.

The thresholds for the application of the merger control regime are relatively low in comparison to other jurisdictions in Central and Eastern Europe. A notification is required where a transaction that qualifies as a concentration satisfies the following thresholds:

(i) The aggregate worldwide annual turnover of all the parties in the preceding accounting year exceeded EUR 10 million, and at least one of the parties has a registered presence in North Macedonia.

(ii) The aggregate annual turnover of all the parties to the concentration in North Macedonia exceeded EUR 2.5 million in the preceding accounting year.

(iii) One of the parties to the concentration has a market share in North Macedonia exceeding 40%, or the parties have a combined market share exceeding 60%.

The turnover of an undertaking is defined as the amount derived from the sale of products or the provision of services (excluding turnover taxes and rebates) in the preceding financial year. In this context, the turnover of the whole group of undertakings (to which the relevant undertaking belongs) is taken into account. In a merger involving the acquisition of an undertaking, the turnover of the seller is not taken into account, only the turnover of the undertaking being acquired. The turnover of joint ventures is calculated by taking into account the whole turnover of the parents (and their groups) intending to share control of the joint venture.

Notification of mergers that meet the relevant turnover and market share thresholds set out in the Competition Law is mandatory, and there are no exceptions. In the case of an acquisition of joint control or of a merger that creates a new undertaking, the notification must be jointly submitted by the parties to the merger or by the undertakings acquiring joint control. In the case of acquisition of sole control, the acquirer alone must notify the Commission.

The Competition Law does not set out a specific deadline for the notification of a merger. However, it requires the parties to a concentration to notify the Commission (i) before completing a transaction (and following the conclusion of an acquisition agreement), or (ii) when announcing a public bid, or (iii) when acquiring a controlling interest. A notification can also be made where the undertakings concerned demonstrate to the Commission a good faith intention to enter into an agreement or, in the case of a public bid, where they have publicly announced an intention to make such a bid.

The Commission encourages and is willing to provide informal guidance to parties before a notification is made. The parties to a concentration are advised to make pre-notification contact with the Commission as early as possible, preferably 2 (two) to 3 (three) weeks before making the notification. The discussions will usually cover whether the concentration is notifiable (especially for joint ventures), any additional information that needs to be supplied by the parties in the notification, and any issues of concern to the parties.

As a rule, the Competition Law does not allow the completion of notifiable transactions before the parties to the transactions obtain merger clearance from the Commission. Exceptionally, the obligation to suspend the transaction does not apply to public bids for the purchase of securities that are traded on the market, provided that (i) the notification is made by the parties to the transaction without delay and (ii) the acquirer exercises any voting rights only to maintain the full value of the investment.

The parties to a concentration can file substantiated requests for exemption from the suspension obligations to the Commission at any time. However, these exemptions are very rare in practice. When deciding on the requests, the Commission will, in particular, consider (i) the effect of the suspension of the transaction on the undertakings concerned or on third parties and (ii) the potential adverse effects on competition caused by the concentration. Based on its review, the Commission can also grant a conditional exemption from the suspension obligations to ensure effective competition.

The Competition Law requires the Commission to reach a ("**Phase I**") decision on whether the merger is in compliance with the Competition Law or whether a more in-depth ("**Phase II**") investigation is needed within 25 business days from receipt of a complete notification by the parties to the transaction. This time limit can be extended by the Commission to up to 35 business days if the parties to the concentration undertake commitments to ensure compliance of the merger with the Competition Act. If the Commission launches a Phase II investigation, it must decide on the notification within 90 business days from the launch date of the investigation. This time limit can be extended by the Commission at any time during the Phase II investigation based on an agreement with the parties to the concentration. However, each extension cannot exceed 20 business days.

If the Commission fails to decide within the above time limits (including any extensions, if applicable), the concentration will be deemed to comply with the Competition Law. Exceptionally, the time limits can be waived where the Commission must carry out a dawn raid or obtain information about the undertakings' financial standing, business relationships and other relevant details for its investigation from other sources (that is, state authorities, third parties and others).

The Competition Act prohibits concentrations that significantly impede effective competition in the Macedonian market, or a substantial part of it, as a result of the creation or strengthening of a dominant position. The same substantive test also applies to full-function joint ventures. In its assessment, the Commission will consider:

(i) The need to maintain and develop effective competition, especially in terms of structure and actual or potential competition on the relevant market.

(ii) The market position of the parties to the concentration and their economic and financial power.

(iii) The supply and alternatives available to suppliers and users, as well as their access to the suppliers or markets.

(iv) Barriers to entry or exit from the relevant market.

(v) The supply and demand trends for the relevant goods and/or services.

(vi) Consumers' interests.

(vii) Technological and economic development, but only under the condition this benefits the consumers and that the concentration does not constitute an impediment to competition.

Apart from the assessment of whether joint ventures will impede effective competition in the Macedonian market, they are also assessed on whether the object or effect of the joint venture is to co-ordinate the competitive behavior of 2 (two) or more parents to the joint venture. For example, this includes 2 (two) or more parents retaining activities in the relevant markets, including the same market, or on an upstream, downstream or closely related neighboring market to that of the joint venture. In this context, the notification to the Commission pertaining to joint ventures must contain full details of the overlapping activities of the parents in the relevant markets.

Failure to notify the Commission about a notifiable transaction is a grave offence, and it can carry fines of up to 10% of the worldwide (group) turnover of the undertakings in the previous accounting year. In addition, the Commission can also order the transaction to be unwound and/or temporarily prohibit the activity of the undertakings involved (from 3 (three) to 30 days for legal entities and from 3 (three) to 15 days for natural persons), as measures aimed at preventing the distortion of the competition in the market. If the penalties imposed are not paid by the parties to the concentration, the Commission can enforce them against their overall assets. The penalties for implementing a transaction before obtaining approval or after prohibition can also carry fines of up to 10% of the worldwide (group) turnover of the undertakings in the previous accounting year.

Filing a notification and providing inaccurate or misleading information (whether intentionally or negligently) is considered a minor offence and can carry a fine of up to 1% of the worldwide group turnover of the undertakings in the previous accounting year.

16. Are there any specific rules applicable for acquisition of public companies in your jurisdiction?

The principal mechanism to obtain control of a public company with dispersed ownership that is listed on the MSE is a takeover offer (whether voluntary or mandatory) to all the company's shareholders to purchase their voting shares. Where a company has 1 (one) or more major shareholders (in particular, shareholders who own controlling stakes), takeovers are commonly structured as voluntary takeover offers with the major shareholders entering into bilateral conditional share purchase agreements (or undertakings to tender their shares) as the basis for parallel block trade transactions. In such cases, the consideration for the shares in the takeover offer cannot be lower than the consideration for the shares in the block trade. Alternatively, a bidder and the majority shareholders can initially execute and finalize a block trade transaction which would subsequently trigger the obligation of the bidder to launch a mandatory offer for the remaining shares of the company.

Public takeovers are regulated by the Takeover Act. The Takeover Act is enforced by the Securities and Exchange Commission (SEC) and applies to takeover offers for:

(i) Companies whose securities are admitted to trading on the MSE.

(ii) Companies with so-called special disclosure obligations under the Securities Act 2005 that is:

a. companies that have made an IPO; or

b. companies that have a share capital of at least EUR 1 million and at least 50 shareholders.

The Takeover Act does not apply to takeover offers for shares in the ownership of any governmental entities, such as public enterprises, agencies, funds or any other legal entities that carry out public service. The acquisition of shares in a company that has been de-listed or a company which no longer has the status of a company with special disclosure obligations is subject to the takeover offer rules within 1 (one) year from the de-listing or termination of special disclosure obligations of that company.

17. Is there a requirement to disclose a deal, for instance to regulatory authorities? Is it possible to keep a deal confidential?

The deal must be disclosed to the regulatory authorities for the purpose of perfection of the transfer of the shares.

18. Can sellers be restricted from shopping around during a negotiation process? Is it possible to include break fee or other penalty clauses in acquisition documents to procure deal exclusivity?

Sellers can be restricted from "shopping around" during the negotiation process, and there are several mechanisms to achieve this exclusivity. Before diving into a detailed negotiation for a full-blown acquisition agreement, the parties might sign a letter of intent or term sheet. This document can include an exclusivity clause where the seller agrees not to pursue or entertain offers from other potential buyers for a specified period. The duration is often subject to negotiation, with periods ranging from a few weeks to several months.

The inclusion of break fees is also common. This acts as a deterrent to ensure that the seller does not casually entertain other offers after granting exclusivity to a particular buyer. Conversely, (reverse) break fees can also be imposed on buyers if they decide not to proceed with an acquisition without a legitimate reason. This is a penalty that the buyer agrees to pay if they can't complete the acquisition due to reasons like failure to obtain financing. It provides the seller with some compensation for the opportunity cost of being off the market during the exclusivity period.

19. What are the conditions precedent in a typical acquisition document? Is it common to have conditions to closing such as no material adverse change?

The nature and extent of conditions precedent can vary widely based on the sector, nature, and size of the deal. However, some typical conditions precedent in acquisition documents include:

1) Regulatory approvals:

- Obtaining necessary approvals or clearances from regulatory bodies, such as competition or antitrust authorities.
- Where the company operates in a regulated industry (e.g., banking, insurance, telecommunications), approval may be needed from the relevant regulatory body.

2) Consents and approvals:

- Obtaining consents from third parties, which could include key contractual counterparties, landlords, or lenders, especially if existing contracts have a change of control provisions.
- Due Diligence Satisfactory Results: The buyer's satisfactory completion of financial, legal, tax, operational, and environmental due diligence.

3) No material adverse change: The absence of a material adverse change (MAC) or material adverse effect (MAE) in the target company's business, assets, financial condition, or results of operations between signing and closing.
4) Accuracy of warranties and representations: Confirming that the seller's representations and warranties are true and accurate as of the closing date.
5) No breach of covenants. The parties' compliance with interim covenants or obligations agreed upon in the SPA, which can include conduct of business in the ordinary course or no disposal of key assets.
6) Completion of pre-closing reorganizations. Any structural or internal reorganizations or adjustments agreed upon by the parties should be completed before closing.
7) Corporate approvals. Obtaining relevant corporate approvals, such as board resolutions or shareholder approvals, if required.
8) Documentation. Delivery of certain documents, such as executed director or shareholder resolutions, certificates of incorporation, or good standing certificates.
9) Settlement of outstanding litigation. Resolving specific disputes, claims, or litigations that might impact the transaction.
10) Third-party financing. For transactions where the buyer requires external financing, a typical CP would be the securing of this financing on terms satisfactory to the buyer.

11) Other contract-specific conditions. Depending on the specifics of the deal, other conditions could relate to intellectual property clearances, employee matters (e.g., key employee retention),

20. What are the typical warranties and limitations in acquisition documents? Is it common to obtain warranty insurance?

Typical warranties in acquisition documents in North Macedonia include:

1) Title and capacity. Confirmation that the seller has the legal title to the shares or assets being sold and has the full capacity and authority to sell them.
2) Financial statements. Assurances that the company's financial statements are accurate, have been prepared in accordance with relevant accounting standards, and present a true and fair view of the company's financial position.
3) Absence of undisclosed liabilities. Assurance that there are no undisclosed liabilities or obligations of the company which are not reflected in the financial statements.
4) Assets. Assurance that the company owns or has a valid license to all its key assets and that these assets are in good condition, subject to normal wear and tear.
5) Contracts. Confirmation about the validity and enforceability of key contracts and that the company is not in breach of any significant contractual obligations.
6) Compliance with laws. Assurance that the company has complied with all applicable laws and regulations and that there are no ongoing or anticipated legal disputes or investigations.
7) Intellectual property. Assurances regarding the ownership, validity, and non-infringement of intellectual property rights held by the company.
8) Employees and pensions. Warranties regarding employee contracts, the absence of labor disputes, and any pension or other post-employment obligations.
9) Tax. Confirmation that the company has paid all due taxes and that there are no ongoing tax disputes or investigations.
10) Environmental Issues. Warranties concerning compliance with environmental laws and the absence of environmental liabilities.

Typical limitations on warranties include:

1) Disclosure. Warranties can be qualified by disclosures made by the seller, often contained in a disclosure letter that highlights exceptions to the warranties provided.
2) Time limits. Warranties might be time-limited, meaning they expire after a certain period post-completion.
3) Monetary caps. There could be a cap on the amount the buyer can claim under the warranties.
4) De minimis limits. Claims might be permissible only if they exceed a certain minimum threshold.
5) Knowledge and materiality qualifications. Some warranties might be qualified by what the seller "knowingly" is aware of, or if a matter is "material" to the business.

Warranty and Indemnity (W&I) insurance, also known as representations and warranties insurance, is a policy designed to protect the buyer (or sometimes the seller) against breaches of warranties in the acquisition agreement. W&I insurance is not common in North Macedonia.

21. Is there a requirement to set a minimum pricing for shares of a target company in an acquisition?

There are no requirements to set a minimum pricing for shares of a target company in an acquisition.

22. What types of acquisition financing are available for potential buyers in your jurisdiction? Can a company provide financial assistance to a potential buyer of shares in the target company?

In North Macedonia, as in many countries, there are several options available for acquisition financing:

1) Bank loans. Traditional bank financing remains a prevalent source for acquisitions. This might include term loans specifically for the purpose of funding the acquisition.
2) Private equity. Investors or private equity funds might provide capital for acquisitions in return for equity stakes in the acquiring company or the target company post-acquisition.
3) Mezzanine financing. This is a hybrid form of financing that combines features of debt and equity. It might involve convertible debt or debt with attached equity warrants.
4) Bonds and notes. Larger companies might issue bonds or notes in the capital markets to raise funds for acquisitions.
5) Vendor financing. In some cases, the seller might provide financing to the buyer, where a portion of the purchase price is deferred and paid over time.
6) Asset-based lending. Using assets (like receivables or inventory) as collateral to secure loans.
7) Equity financing. Raising capital for the acquisition by issuing new shares or other equity instruments.

Macedonian law, like many jurisdictions following European Union directives and practices, has restrictions on companies providing financial assistance for the purchase of their own shares or the shares of their parent companies. Such restrictions aim to protect the company's capital and creditors. Typically, there are whitewash procedures or exceptions that might allow financial assistance under certain conditions, such as obtaining approvals from shareholders or ensuring that the assistance doesn't prejudice the interests of creditors. If a company in North Macedonia provides unlawful financial assistance, it can face legal consequences, and the involved transactions can be declared void.

23. What are the formalities and procedures for share transfers and how is a share transfer perfected?

Documents commonly produced and executed in a signing meeting for the acquisition of a private company include (i) share purchase agreement; and (ii) shareholder's and/or board resolutions of the seller and the buyer approving the transaction and authorizing the directors to sign the share purchase agreement. Documents commonly produced and executed at closing include:

- Offer for the transfer of the shares and the statement of acceptance or rejection of the offer.
- Share purchase agreement, executed by a notary public.
- Shareholder resolutions for the target (for example, approving the registration of the buyer as a shareholder).
- New articles, verified by a notary public.
- Statement by the new shareholder of the company that there is no legal obstacle for it to be a shareholder of the company; this must also be verified by a notary public.

- Statement by the directors of the company that all of the required actions have been carried out to allow for the registration of the corporate changes related to the registration of the new shareholder.

Upon closing, the buyer is required to report the transfer of the shares to the Central Registry of the Republic of North Macedonia and the Direct Investments Register (if a foreign entity) for the purpose of recording of the title of ownership on the acquired shares.

24. Are there any incentives (such as tax exemptions) available for acquisitions in your jurisdiction?

There are no incentives (such as tax exemptions) available for acquisition in North Macedonia.

F. Enforceability

25. Can acquisition documents be executed in a foreign language?

Acquisition documents in North Macedonia can be executed in a foreign language, especially when 1 (one) or more of the parties involved are from foreign jurisdictions. However, while parties can execute documents in a foreign language, it is generally required that an official translation into Macedonian be attached if the document is to be used for any official purposes in North Macedonia. This is particularly important for documents that need to be registered with public registries or submitted to government authorities. If an acquisition document (e.g., a share purchase agreement involving shares of a limited liability company) requires notarization by a notary public, the notary will typically require a Macedonian version of the document or, at the very least, a certified translation. The notary needs to ensure that all parties understand the document they're executing. Translations should be performed by certified translators registered in North Macedonia to ensure their acceptability by official entities. The translated document often carries the stamp and signature of the certified translator, attesting to the accuracy of the translation.

In cross-border transactions, parties often include a "choice of language" clause specifying which version (i.e., language) of the agreement will prevail in case of any discrepancies or misunderstandings between the translated versions. Even if the main acquisition document is in a foreign language, ancillary documents required for registration, regulatory approval, or other formal procedures in North Macedonia (like board resolutions, approvals, and notifications) should preferably be in Macedonian or accompanied by an official translation.

26. Can acquisition documents be governed by a foreign law?

Parties in a cross-border transaction involving North Macedonia can choose a foreign law to govern their acquisition documents. The principle of "party autonomy" in Macedonian private international law allows parties in a contract to select the governing law, even if it's a foreign law. While the choice of foreign law is generally respected, any application of that law that contravenes the public policy of North Macedonia or its mandatory legal provisions may not be enforceable. For instance, certain aspects related to Macedonian corporate law, real estate transfers, or competition regulations might still need to adhere to local Macedonian legal provisions. Choosing a foreign law can have practical implications, including potential complexities in understanding and applying that law. Local Macedonian authorities or third parties might be more accustomed to Macedonian law, so there could be challenges or delays when interacting with them under an agreement governed by foreign law. The nature of the transaction might influence the feasibility of choosing foreign law. For instance, in transactions purely related to assets located in North Macedonia or regulatory matters, it might be more practical to have Macedonian law as the governing law.

27. Are arbitration clauses legally permissible or generally included in acquisition documents?

North Macedonia recognizes the validity and enforceability of arbitration agreements, including those in acquisition documents. Arbitration clauses are generally included in acquisition documents for cross-border transactions involving a Macedonian entity and a foreign entity since arbitration offers a neutral ground that might be preferable over local courts in either party's jurisdiction. As a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958), North Macedonia is required to ensure the recognition and enforcement of foreign arbitral awards.

28. Are there any specific formalities for the execution of acquisition documents? Is it possible to remotely/digitally sign documents?

Depending on the type of acquisition (e.g., shares in a limited liability company), the acquisition document might require notarization. Notarization ensures that the parties are correctly identified, that they understand the contents of the document, and that they are signing it voluntarily. North Macedonia has made strides in adopting electronic governance and digital transactions. The Law on Electronic Documents and Electronic Signature governs the use of electronic signatures in North Macedonia. As per the law, there are 3 (three) types of electronic signatures: simple, advanced, and qualified. Only the qualified electronic signature has the same legal effect as a handwritten signature. To use a qualified electronic signature, a person needs a qualified electronic signature certificate, which can be obtained from accredited certification bodies in North Macedonia. However, while many documents can be signed digitally, certain key transaction documents, especially those requiring notarization, might still need to be executed in person before a notary public.

G. Trends and Projections

29. What are the main current trends in M&A in your jurisdiction?

North Macedonia's aspirations to join the European Union have significantly influenced its economic and legal reforms. This ongoing process often plays a role in M&A activity, as businesses anticipate the implications of potential EU membership, which might increase foreign investments and cross-border transactions. There is a growing interest in infrastructure development, including transportation and energy projects. Foreign investments in these sectors are leading to M&A activities, especially as North Macedonia aims to enhance its connectivity and energy security. Like many countries in the Balkans, North Macedonia saw growth in its tech and startup sectors. Foreign investors showed interest in tech companies, leading to potential M&A opportunities.

The government's efforts to improve the business environment and streamline regulatory procedures influenced the M&A landscape. Simplified administrative procedures and tax incentives could attract more foreign investors. The consolidation trend in the banking and financial services sector was noticeable in many parts of Europe, and North Macedonia was no exception. This trend could result in mergers or acquisitions among local and foreign banks or financial institutions. Given North Macedonia's natural beauty and historical sites, investments and interest in the tourism and real estate sectors could lead to M&A activities.

30. Are any significant development or change expected in the near future in relation to M&A in your jurisdiction?

Economic challenges, such as unemployment or external economic pressures, could create opportunities for acquisitions, especially of distressed assets or companies seeking strategic partnerships for growth. Regional stability and geopolitical developments in the Balkans can influence M&A activity.

POLAND

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A. General

1. What is the main legal framework applicable to companies in your jurisdiction?

The primary source of Polish company law is the Commercial Companies Code ("**CCC**") (*Kodeks spółek handlowych*) of September 15, 2000 which provides a comprehensive framework of company law in Poland. Other legislation important for the operation of companies in Poland includes:

- The Entrepreneurs' Act of March 6, 2018
- The Act on the rules of participation of foreign entrepreneurs and other foreign persons in the economic trade on the territory of Poland of March 6, 2018
- The Act on the National Court Register (KRS) of August 20, 1997
- The Law on Bankruptcy of February 28, 2003
- The Polish Accounting Act dated September 29, 1994 (as amended)

2. What are the most common types of corporate entities (e.g., joint stock companies, limited liability companies, etc.) used in your jurisdiction? What are the main differences between them (including but not limited to with regard to the shareholders' liability)?

The most common types of corporate entities are:

- Limited liability company ("**LLC**") (*spółka z ograniczoną odpowiedzialnością or sp. z o.o.*) – this is the most common form of corporate entity used in Poland.
- Joint stock company ("**JSC**") (*spółka akcyjna or S.A.*) – this is a more regulated form of company used mainly in connection with larger businesses.

Both companies have separate legal

personalities and the liability of their members (shareholders) is limited to the amount of their capital contributions.

The main differences relate to the mandatory initial capital contributions (PLN 5,000 for the LLC and PLN 100,000 for the JSC) and the corporate governance structure which tends to be more complicated for the JSC (e.g. it is mandatory for the JSC to have a supervisory board which is not always the case for the LLCs).

Since July 2021, it is also possible to set up a new type of company, a simple joint-stock company ("**SJSC"**) (*prosta spółka akcyjna*), which is mainly aimed at start-ups. It is the most flexible corporate vehicle in Polish corporate law and has a minimal joint-stock capital of PLN 1. It remains to be seen, however, how popular it will prove for investors in Poland.

Other types of entities can also be used for conducting business (e.g. a limited partnership but these are much less common in the context of M&A transactions).

B. Foreign Investment

3. Are there any restrictions on foreign investors incorporating or acquiring the shares of a company in your jurisdiction?

On top of the merger control obligations at the Polish and EU level (see section 15 below) restrictions on foreign investors in Poland include the following regimes: (i) sensitive sectors FI, (ii) strategic entities FI, (iii) regulated sectors, and (iv) the EU Foreign Subsidies Regulation ("**FSR**").

Sensitive sectors FI regime: acquisitions by all non-European Economic Area ("EEA")/ European Union ("EU")/OECD investors of Polish protected entities require consent from the Office of Competition and Consumer Protection ("**OCCP**"). The regime covers a broad range of transactions, including (i) acquisitions of 20% or more of shares, voting rights or rights to profits in a protected entity or acquisitions that result in crossing 20% or 40% threshold of respective entitlement (voting rights, shares or share in the profits) in a protected entity; or (ii) transactions leading to acquisition of dominance over a protected entity.

Protected entities are entities domiciled in Poland and:

- publicly listed in Poland;
- active in key sensitive sectors (such as, amongst others, energy, defense, chemical, software, pharmaceutical, food and beverage sectors, stevedoring in Polish ports and cloud computing);
- developing software to operate specified systems; or
- holding assets considered as critical infrastructure;

which generated more than EUR 10 million turnover in Poland in at least one of the last two financial years preceding the transaction (excluding intra-group turnover).

Notification is required in most cases prior to closing. Post-closing approval is required in case of indirect acquisition of a protected entity.

The regime was previously COVID-19 related, but has been extended until July 24, 2025.

Strategic entities FI regime: in addition, acquisitions of more than 20% of shares or votes of entities that are considered to be strategic entities seventeen Polish companies as at March 2024), regardless of domicile of the acquirer, requires clearance from the relevant authority, in most cases prior to closing. The list of strategic entities is updated annually by the Council of Ministers, and it is up to the discretion of ministers which companies will be included on the list.

Other regulated regimes: additionally, the Polish law sets out restrictions regarding foreign ownership of shares in companies operating in certain regulated sectors (for example television and radio operators). Special clearance is also required for acquisitions of real estate in Poland by non-EEA and non-Swiss investors.

FSR regime: additionally, the FSR regimes gives the European Commission ("EC") powers to address distortive effects of non-EU subsidies on the EU market. The FSR imposes a mandatory notification requirement for deals where the EU turnover of the target (for acquisitions), the joint venture or one of the merging parties (for mergers) is €500m or more and the companies involved have received at least €50m in combined financial contributions from non-EU countries. Additionally, the EC has general power to investigate all other market situations where there may have been foreign subsidies from non-EU countries.

4. Are there any foreign exchange restrictions or conditions applicable to companies such as restrictions to foreign currency shareholder loans?

Generally, not.

5. Are there any specific considerations for employment of foreign employees in companies incorporated in your jurisdiction?

In general, foreigners from countries outside of the EU and EEA must hold a work permit to work in Poland (subject to some exceptions, e.g., in respect of individuals working for less than six months per year as a member of the management board of a Polish company).

C. Corporate Governance

6. What are the standard management structures (e.g., general assembly, board of directors, etc.) in a corporate entity governed in your jurisdiction and the key liability issues relating to these (e.g., liability of the board members and managers)?

The bodies that control an LLC/JSC are the management board and the shareholders through the shareholders' meeting. The management board may consist of one or more members and is responsible for the day-to-day management of the company.

Additionally, a supervisory board is required (i) in all JSCs and (ii) in the case of LLCs, where the share capital exceeds PLN 500,000 and the LLC has more than 25 shareholders. In the case of an LLC, an audit committee with narrower powers may be established instead of a supervisory board. However, this solution is not often used in practice.

A member of the management board is liable to the company for any damage caused as a result of acts or omissions in breach of the applicable laws and the company's articles of association. Members of the board may also incur specific liabilities for corporate breaches (such as providing false information in their representation that contributions towards the share capital of the company have been made by all shareholders when filing for registration of the company) and liability for criminal offences (for example, if they fail to file for bankruptcy when required to do so under applicable laws).

7. What are the audit requirements in corporate entities?

Annual financial statements of all JSCs and entities in certain sectors (such as banks and insurance companies) must be audited.

In addition, certain other entities (such as LLCs), must have their annual statements audited if they satisfy certain conditions (e.g. they have balance sheet assets above EUR 2,500,000 and have a staff headcount of at least 50 people per year).

D. Shareholder Rights

8. What are the privileges that can be granted to shareholders? In particular, is it possible to grant voting privileges to shareholders for appointment of board members?

Shareholders can also be granted additional rights and these can be granted either as personal rights (for example the right to appoint board members) or be attached to shares (for example an enhanced dividend right).

9. Are there any specific statutory rights available to minority shareholders available in your jurisdiction?

While there is no definition of a minority shareholder in the CCC, it does give certain rights to minority shareholders (such as the right to request the company to call an extraordinary shareholders' meeting, include certain items in the agenda of a shareholders' meeting etc.).

These rights can be enjoyed by shareholders representing at least 10% (or in the case of the inclusion of items on a shareholders' meeting agenda, 5%) of the company's share capital (in respect of LLCs) or 5% of the company's share capital (in respect of JSCs).

In addition, in certain circumstances, a minority shareholder of a JSC has a right to demand the purchase of its shares.

Separately, each shareholder (including minority shareholders) is authorized to challenge resolutions adopted at a shareholders' meeting (e.g., if any such resolution violates the law).

10. Is it possible to impose restrictions on share transfers under the corporate documents (e.g., articles of association or its equivalent in your jurisdiction) of a company incorporated in your jurisdiction?

It is possible to include certain restrictions on share transfers in the company's articles of association (such as a requirement for consent to transfer of the company's supervisory board or the shareholders' meeting). However, limiting transferability of shares cannot result in an absolute prohibition on their disposal as any such restriction would be ineffective. In addition, there may be certain time limits for such restrictions (e.g., in respect of a JSC).

11. Are there any specific concerns or other considerations regarding the composition, technical bankruptcy and other insolvency cases in your jurisdiction?

The board must convene a shareholders' meeting if the balance sheet drawn up by the management board shows a loss exceeding the aggregated supplementary and reserve capitals and half of the share capital.

It is a criminal offence for the management board to fail to file for bankruptcy. Generally, liability of an LLC will not attach to the board members. However, if enforcement proceedings against the company will be ineffective, then the board members are jointly liable with the LLC for the company's liabilities. Board members may discharge themselves from liability if they can demonstrate that:

(i) a petition for bankruptcy was filed at the appropriate time, a decision on opening the restructuring proceedings (*otwarcie postępowania restrukturyzacyjnego*) or a decision on approving the arrangement (*zatwierdzenie układu*) was issued; or

(ii) they were not responsible for not filing a petition for bankruptcy, or

(iii) the circumstances specified in point (i) above did not cause any damage to the creditors.

E. Acquisition

12. Which methods are commonly used to acquire a company, e.g. share transfer, asset transfer, etc.?

Both share and asset acquisitions are commonly used for acquiring businesses in Poland, with share acquisitions being the most common structure.

13. What are the advantages and disadvantages of a share purchase as opposed to other methods?

As in other jurisdictions, share acquisitions tend to be simpler as they do not require individual assets to be listed (all of the company's assets transfer automatically with the company), there is no need for consent to transfer individual agreements (though there may be change of control provisions that are triggered) etc. Share acquisitions may also be more advantageous from the tax perspective.

On the other hand, as in other jurisdictions, share purchases involve acquiring the target company with all of its assets and liabilities.

14. What are the approvals and consents typically required (e.g., corporate, regulatory, sector based and third-party approvals) for private acquisitions in your jurisdiction?

In general, other than the FDI consents set out above and the merger control clearances set out below, no third party consents are required in respect of the acquisition of shares in LLCs and JSCs.

The articles of association of the target company may, however, include a requirement for consent from the company, contain pre-emption rights for the existing shareholders or set out other restrictions previously agreed among shareholders.

Spousal consent is generally required in respect of any transactions where the subject of such transaction is part of a joint marital estate.

In an asset sale which is classified as the sale of a business or part of a business, the consent of shareholders is required.

15. What are the regulatory competition law requirements applicable to private acquisitions in your jurisdiction?

Both EU and Polish competition laws apply to acquisitions of companies in Poland (deciding which laws apply largely depends on the size and geographic reach of the parties' businesses).

If competition laws are triggered, regardless of which laws apply, the transaction must be notified to the competent authority, and it is unlawful to complete it before clearance is obtained.

According to Polish competition law, a merger notification must be filed if:

- the combined worldwide turnover of all the undertakings involved in the financial year preceding the year of the notification exceeds EUR 1 billion; or
- the combined Polish turnover of all the undertakings involved in the financial year preceding the year of the notification exceeds EUR 50 million.

The de minimis exemption applies if the turnover generated by target or assets did not exceed the equivalent of EUR 10 million in either of the two financial years preceding the notification.

Creation of a JV (including investments in minority shareholding stake) may also trigger the filing obligation and should be analysed on a case-by-case basis.

Pursuant to competition laws completing a transaction prior to clearance does not render the transaction void but may result in heavy fines.

Under Polish merger control rules, a transaction is also deemed to have been cleared if OCCP fails to issue a decision within the prescribed time limits.

16. Are there any specific rules applicable for acquisition of public companies in your jurisdiction?

Yes, there are special rules that apply to acquisitions of shares in listed companies (when such acquisitions exceed certain thresholds). These include, amongst others, rules relating to mandatory tender offers, minimum price requirements, disclosure obligations, notification requirements and squeeze out procedures.

17. Is there a requirement to disclose a deal, for instance to regulatory authorities? Is it possible to keep a deal confidential?

The transaction needs to be disclosed if any mandatory consents or approvals (including any regulatory consents if the target is a regulated entity) are required or if the target is a listed entity. Separately, the identities of shareholders of LLCs holding more than 10% of share capital are disclosed in the National Court Register. In contrast, in respect of JSCs, only the identity of the sole shareholder (if there is one) is disclosed in the National Court Register.

However, the registration records of both LLCs and JSCs are publicly available and can be viewed in court by anyone (such records may include details of shareholders).

18. Can sellers be restricted from shopping around during a negotiation process? Is it possible to include break fee or other penalty clauses in acquisition documents to procure deal exclusivity?

Exclusivity agreements are frequently entered into in respect of M&A transactions in Poland. These may include break fees which, while not very common, are allowed provided they comply with the legal requirements (such as not exceeding a reasonable estimate of costs etc.).

19. What are the conditions precedent in a typical acquisition document? Is it common to have conditions to closing such as no material adverse change?

A typical acquisition document would, if applicable, include conditions relating to merger control approvals and third party consents having been obtained, completion of pre-closing reorganizations etc.

It is common to see no material adverse change conditions.

20. What are the typical warranties and limitations in acquisition documents? Is it common to obtain warranty insurance?

As in a number of jurisdictions, the scope of representations and warranties would primarily depend on the bargaining position of the seller and the buyer (e.g. private equity funds are unlikely to provide warranties beyond title and capacity). In general, the scope of warranties in Poland is similar to those seen in other European markets.

Typical limitations include maximum liability cap, time limitations for bringing a claim, de minimis and basket. The warranties tend also to be qualified by matters that have been disclosed to the buyer.

Warranty and indemnity insurance has also become more popular in Poland and is now widely available, even for relatively smaller deals.

21. Is there a requirement to set a minimum pricing for shares of a target company in an acquisition?

Only in respect of listed companies.

22. What types of acquisition financing are available for potential buyers in your jurisdiction? Can a company provide financial assistance to a potential buyer of shares in the target company?

In general, there is no prohibition on the target providing financial assistance and it may advance funds, provide loans or grant security in connection with the acquisition of its shares by a potential buyer (as long as such financing is provided on market terms and after it has analysed its solvency position). However, there are some limitations on financial assistance with respect to acquisition of shares in a JSC.

23. What are the formalities and procedures for share transfers and how is a share transfer perfected?

As noted below, in respect of LLCs, in order to be effective, share transfer agreement must be in writing with the signatures certified by a notary public present at the signing. In order for the transfer to be recognized by the target company, it needs to be notified to it alongside evidence of valid transfer.

In respect of JSCs, the transfer is perfected when the purchaser of the shares is entered into the electronic share register of the target company, maintained by a third party (usually brokerage houses).

There are also certain notifications (for example towards the company) that need to be complied with in relation to the transfer.

24. Are there any incentives (such as tax exemptions) available for acquisitions in your jurisdiction?

There are no specific tax exemptions available for share or asset acquisitions in Poland.

F. Enforceability

25. Can acquisition documents be executed in a foreign language?

Yes in most cases. The exception are asset deals, which involve real estate. In such cases the agreement must be executed in the form of a notarial deed, which is drawn up in Polish.

26. Can acquisition documents be governed by a foreign law?

Yes (though certain mandatory provisions of the CCC will apply regardless of the governing law choice). In the case of an asset deal concerning assets (including real estate) located in Poland, Polish property law applies, irrespective of the law chosen for the contract.

27. Are arbitration clauses legally permissible or generally included in acquisition documents?

Yes, they are legally permissible and commonly included, in particular in larger or cross border transactions.

28. Are there any specific formalities for the execution of acquisition documents? Is it possible to remotely/digitally sign documents?

Transfers of shares in LLCs must be in writing with the signatures certified by a notary public present at the signing (a weaker form than a notarization).

In the case of share transfers in JCCs, notarization is not required.

A sale of a business or a part of a business must be in writing with the signatures certified by a notary public present at the signing. A sale of a business or a part of a business or a sale of assets that include real estate requires notarization.

It is possible to sign documents electronically through the use of qualified electronic signatures (which have to be issued by a provider listed in the register of the National Certification Center). However, such signatures cannot be used where there is a requirement for the document to be in a particular form (for example notarial deed execution for acquisition of real estate or where the signatures need to be certified by a notary public (as in case of the LLC share transfers)).

G. Trends and Projections

29. What are the main current trends in M&A in your jurisdiction?

Despite a challenging macroeconomic climate in Poland, the country's M&A market persists as the major market within the CEE region. Activity is notably vibrant within the energy, healthcare and TMT sectors. It is also worth noting that the ESG considerations are capturing greater investor interest.

The use of warranty and indemnity insurance is also on the rise, becoming relatively standard in major transactions. This trend reflects a growing sophistication in the market for these insurance products.

30. Are any significant development or change expected in the near future in relation to M&A in your jurisdiction?

No.

QATAR

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A. General

1. What is the main legal framework applicable to companies in your jurisdiction?

The law that is governing all types of companies in Qatar is Law No. 11 of 2015 ("**Companies Law**").

2. What are the most common types of corporate entities (e.g., joint stock companies, limited liability companies, etc.) used in your jurisdiction? What are the main differences between them (including but not limited to with regard to the shareholders' liability)?

The most common types of corporate entities are Limited Liability Companies, Holding Companies, Public Shareholding Companies and Private Shareholding Companies. We describe a brief explanation for each type of these companies.

<u>Limited Liability Companies:</u>

A limited liability company is a company, consisting of 1 to 50 partners. Partners are responsible only to the extent of their shareholding in the capital. Tradable shares certificates shall not be issued to partners for their stakes in the company.

<u>Holding Companies:</u>

A holding company is a shareholding, limited liability or sole proprietorship company that financially and managerially controls one or more other companies. The controlled companies, when owned by at least (51%) in share or stakes by the holding company, shall become subsidiaries of the holding company.

<u>Public Shareholding Company:</u>

Public Shareholding Company is a company, comprising of at least five shareholders, where its capital is divided into transferrable shares of equal value. The shareholders shall only be liable to the extent of their contributions to the company's capital. The founders shall subscribe to shares not less than (20%), and no more than (60%) of the company's share capital. The company shall offer shares for public subscription within 60 days of the date of its incorporation. The company shall be managed by an elected board of directors. The foreign shareholding will be subject to the oversight of the Qatar Financial Market Authority and the type of activities conducted by the company (for example, foreign investors are prohibited from investing in insurance companies, banks, and commercial agencies). A non-Qatari investor may own 49% of the share capital of companies that are listed on the Qatar stock exchange, upon the approval of the Ministry of Commerce and Industry; or more than 49% of the share capital of such companies, upon the approval of the Council of Ministers.

<u>Private Shareholding Company:</u>

The private shareholding company is a company, comprising of at least five shareholders. Such company may not offer its shares for public subscription. The minimum capital requirement for the company is QAR 2 million. Such a company shall be managed by an elected board of directors and may be converted into a public shareholding company upon the fulfillment of certain conditions. The liability of the shareholders shall be limited to their respective shareholding in the company's capital.

B. Foreign Investment

3. Are there any restrictions on foreign investors incorporating or acquiring the shares of a company in your jurisdiction?

Under Law No. 1 of 2019 ("**Foreign Investment Law**") it is permitted to establish a 100% foreign entity subject to the approval of the Foreign Investment Department at the Ministry of Commerce and Industry ("**MoCI**"). For incorporating a foreign investment entity that owns more than 49% of the shares, the applicant will need to complete a special form issued by the MoCI and submit the constitutional documents of the applicant, shareholder's/board resolution and a business plan. The same process applies for acquiring more than 49% shares in an established entity in Qatar, except for the submission of the business plan.

4. Are there any foreign exchange restrictions or conditions applicable to companies such as restrictions to foreign currency shareholder loans?

There are no foreign exchange restrictions or conditions.

5. Are there any specific considerations for employment of foreign employees in companies incorporated in your jurisdiction?

All employees are required to enter into an employment contract in Qatar with a local entity and obtain a residency permit. However, the Executive Regulation No. 25 of 2019 of the Law No. 21 of 2015 ("**Expats Law**") provides several visa categories for each applicant based on the nature of the visit. In our view, volunteers fall under the visa category of the visitor to attend a business meeting or mission (Article 42 of the Executive Regulation). Visas issued for business purposes shall have the following validity periods:

1- Single entry for a period of 30 days, or 60 days, as the case may be.

2- Multiple entry for a period of six months, provided that the maximum permitted length of stay for each entry is of 90 days.

3- Multiple entry for a period of one year, provided that the maximum permitted length of stay for each entry is of 90 days.

It will be at the discretion of the Immigration Department to determine the period of the visa.

C. Corporate Governance

6. What are the standard management structures (e.g., general assembly, board of directors, etc.) in a corporate entity governed in your jurisdiction and the key liability issues relating to these (e.g., liability of the board members and managers)?

The standard management structures include general assembly and director(s) based on the type of the company. For Limited Liability Companies, it is the general assembly. It may also have board of managers depending on the Articles of Association. For Public Shareholding Companies, it is mandatory to have a board of directors.

7. What are the audit requirements in corporate entities?

Each company must appoint an auditor, obtain a tax card and register at the Dhareeba portal.

D. Shareholder Rights

8. What are the privileges that can be granted to shareholders? In particular, is it possible to grant voting privileges to shareholders for appointment of board members?

In Qatar, shareholders typically have the following privileges:

i Approval of the manager's report on the business of the company for that year and its financial position;

ii Approval report of the company's auditors;

iii Approval of the balance sheet and profit and loss account;

iv The election of auditors for the next year and the fixing of such auditors' responsibilities and remuneration;

v Right to vote: Shareholders have the right to vote on important corporate matters, such as the election of directors and approval of corporate transactions.

vi Right to receive dividends: Shareholders have the right to receive a portion of the company's profits in the form of dividends.

vii Right to inspect company books: Shareholders have the right to inspect the company's financial records and books.

viii Right to participate in company meetings: Shareholders have the right to attend and participate in annual shareholder meetings.

ix However, each shareholder will have the right to vote based on his shareholding in the company.

9. Are there any specific statutory rights available to minority shareholders available in your jurisdiction?

No, there are no specific statutory rights for minority shareholders.

10. Is it possible to impose restrictions on share transfers under the corporate documents (e.g., articles of association or its equivalent in your jurisdiction) of a company incorporated in your jurisdiction?

Yes, articles of association may impose restrictions on share transfers.

11. Are there any specific concerns or other considerations regarding the composition, technical bankruptcy and other insolvency cases in your jurisdiction?

There are no specific concerns.

E. Acquisition

12. Which methods are commonly used to acquire a company, e.g., share transfer, asset transfer, etc.?

The common methods are share transfer and asset transfer.

13. What are the advantages and disadvantages of a share purchase as opposed to other methods?

There are no other methods for share purchase other than the share transfer method stated in our response above.

14. What are the approvals and consents typically required (e.g., corporate, regulatory, sector based and third-party approvals) for private acquisitions in your jurisdiction?

The steps and approvals for share transfer in a limited liability company are as follows:

i Obtaining tax clearance on the Share Purchase Agreement ("**SPA**") from the General Tax Department;

ii Obtaining approval on the SPA from the Ministry of Labor;

iii Obtaining approval on the SPA from the Commercial Registration Department;

iv Authenticating the SPA from the Ministry of Justice;

v Updating the commercial registration; and

vi Amending the articles of association to reflect the new shareholders.

15. What are the regulatory competition law requirements applicable to private acquisitions in your jurisdiction?

The law related to competition is Law No. 19 of 2006 ("**Anti-Competition Law**"). The criteria for the notification to the Competition Protection Department requirement is not an objective one, but this will depend on the corporate structure, before and after, and the impact of the sale on the market and the purchaser's market share.

16. Are there any specific rules applicable for acquisition of public companies in your jurisdiction?

Yes. The Qatar Financial Markets Authority ("**QFMA**") rules will apply to the acquisition of public shareholding companies.

17. Is there a requirement to disclose a deal, for instance to regulatory authorities? Is it possible to keep a deal confidential?

For public shareholding companies, it is required to disclose the deal to the QFMA. In accordance with Articles 14 and 15 of the Merger and Acquisition Rules issued by the QFMA (the "**Rules**"), the concerned parties must comply with the timeline of the merger transaction and if the offeror is unable to comply with the timeline of the transaction, the QFMA must be notified immediately to take the necessary action.

18. Can sellers be restricted from shopping around during a negotiation process? Is it possible to include break fee or other penalty clauses in acquisition documents to procure deal exclusivity?

Yes. These are contractual clauses that can be agreed upon among the parties.

19. What are the conditions precedent in a typical acquisition document? Is it common to have conditions to closing such as no material adverse change?

The parties may agree on the conditions that will govern the acquisition.

20. What are the typical warranties and limitations in acquisition documents? Is it common to obtain warranty insurance?

There is no requirement under the law and this can be agreed upon among the parties.

21. Is there a requirement to set a minimum pricing for shares of a target company in an acquisition?

No. However, the tax authority may not accept the sale consideration. In this case, the tax authority will ask for a third-party evaluation of the fair value of the sold shares. The capital gains tax will be calculated based on the fair value of the sold shares.

22. What types of acquisition financing are available for potential buyers in your jurisdiction? Can a company provide financial assistance to a potential buyer of shares in the target company?

Yes. There are several types of acquisition financing such as debt financing which is the most common form of financing for acquisitions in Qatar, and includes loans from banks, bonds, and other debt instruments.

23. What are the formalities and procedures for share transfers and how is a share transfer perfected?

The parties usually enter into a detailed share transfer agreement that will include all the details and conditions of the share transfer. In addition, the parties will enter a short form of a Share Transfer Agreement which will be submitted to the authorities in Qatar to complete the share transfer. The formalities and procedures are provided in our response to question 14 above.

24. Are there any incentives (such as tax exemptions) available for acquisitions in your jurisdiction?

No. Only acquisitions made between entities fully owned by Qataris are exempted from capital gains tax.

F. Enforceability

25. Can acquisition documents be executed in a foreign language?

Yes. However, the official Share Purchase Agreement that will be submitted to the authorities in Qatar must be in Arabic. The Share Purchase Agreement can be in dual (Arabic and any other language). Any document to be submitted to the authorities in Qatar must be in Arabic. In case of a dispute before the Qatari courts, all documents need to be translated into Arabic.

26. Can acquisition documents be governed by a foreign law?

Yes. However, the official Share Purchase Agreement that will be submitted to the authorities in Qatar must be governed by Qatari law.

27. Are arbitration clauses legally permissible or generally included in acquisition documents?

Yes. The parties have the right to refer the dispute to arbitration.

28. Are there any specific formalities for the execution of acquisition documents? Is it possible to remotely/digitally sign documents?

The Share Purchase Agreement has to be signed before the Documentation Department at the Ministry of Justice in Qatar. Document required from non-Qatari entities has to be notarized/apostilled and attested by the Ministry of Foreign Affairs and the embassy of Qatar abroad.

Any other documents can be signed remotely or by digital signature.

G. Trends and Projections

29. What are the main current trends in M&A in your jurisdiction?

The Qatari government has been focusing on diversifying its economy away from oil and gas, and towards other sectors such as tourism, real estate, and healthcare. This has increased M&A activity in these sectors. Furthermore, private equity firms have been showing an increased interest in Qatar, with several large deals being announced in recent years.

30. Are any significant development or change expected in the near future in relation to M&A in your jurisdiction?

We are not aware of any significant changes in the near future.

ROMANIA

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A. General

1. What is the main legal framework applicable to companies in your jurisdiction?

The main legal enactment governing companies in Romania is represented by the Companies Law No. 31/1990 (the "**Companies Law**").

2. What are the most common types of corporate entities (e.g., joint stock companies, limited liability companies, etc.) used in your jurisdiction? What are the main differences between them (including but not limited to with regard to the shareholders' liability)?

The most common types of corporate entities in Romania, due to the flexible rules governing their running, are:

- the limited liability companies (Romanian: *societăți cu răspundere limitată*) (the "**LLCs**") and
- the joint stock companies (Romanian: *societăți pe acțiuni*) (the "**JSCs**").

Both types of companies afford shareholders the limitation of liability to the value of their subscribed share capital.

As an exemption, the concept of "piercing of corporate veil" is regulated by the Companies Law in a very limited manner. Essentially, in case of voluntary dissolution and liquidation of the company (either LLC or JSC), shareholders' liability for unpaid debts of the company becomes unlimited if shareholders acted in a fraudulent manner detrimental to the creditors. Shareholders' liability may also be aggravated in case the company undergoes insolvency/ bankruptcy procedures, as per the special statutory rules.

LLCs may have up to 50 shareholders. LLCs with only one shareholder are permitted by the Companies Law, and such companies are governed by the same rules applicable to LLCs with two or more shareholders.

LLCs may have a share capital of at least RON 1 (approximately EUR 0,20) consisting in contributions in kind or cash. Contributions in receivables held towards third parties are not accepted for the purpose of setting up LLCs. The Companies

Law provides that 30% of the subscribed capital must be paid no later than 3 (three) months from the date of registration of the LLC, but before commencing any operations. The remaining balance of the subscribed share capital must be paid: (i) within 12 months, in case of cash contributions and (ii) within two years from the registration of the company, in case of contributions in kind.

JSCs must have at least two shareholders and a share capital of at least RON 90,000 (approximately EUR 18,500).

The share capital may be comprised of contributions in kind, in cash and/or in receivables (admitted only where the JSC is established by simultaneous subscription). Cash contributions are always mandatory upon registration. If the JSC is established by simultaneous subscription, at least 30% of the subscribed capital must be paid upon incorporation, while the remaining 70% must be paid: (i) within 12 months, in case of cash contributions and (ii) within two years from the registration of the company, in case of contributions in kind.

B. Foreign Investment

3. **Are there any restrictions on foreign investors incorporating or acquiring the shares of a company in your jurisdiction?**

As a general rule there are no restrictions applicable to foreign investments.

4. **Are there any foreign exchange restrictions or conditions applicable to companies such as restrictions to foreign currency shareholder loans?**

There are no special foreign exchange restrictions applicable to companies, however the general rules provided by NBR Regulation No. 4/2005 on foreign exchange regime must be observed (the "**Regulation No. 4/2005**").

Pursuant to Regulation No. 4/2005, in regard to transactions between residents, payments, receipts, transfers and any other such transactions arising from the sale of goods and provision of services between residents, irrespective of the legal relationship governing them, shall be made only in national currency (RON), with the exception of the transactions referred to in Annex 2 of Regulation No. 4/2005, which may also be carried out in foreign currency.

Payments, receipts, transfers and any other such operations between residents arising from remuneration for work performed, regardless of the legal relationship that regulates them, shall be made only in the national currency (RON).

All other operations between residents can be carried out freely, either in the national currency (RON) or in foreign currency. These operations include, but are not limited to, operations representing financial flows generated by the granting of loans, the creation of deposits, securities transactions and the distribution of dividends. The aforementioned operations and those referred to in Annex 2 of Regulation No. 4/2005 can be carried out in foreign currency only with the agreement of the parties.

In regard to transactions between residents and non-residents, current and capital foreign exchange operations, as provided for in Annex 1 of Regulation No, 4/2005 (which includes loans), can be carried out freely between residents and non-residents, in foreign currency and in national currency (RON).

5. **Are there any specific considerations for employment of foreign employees in companies incorporated in your jurisdiction?**

For this specific issue, it is important to distinguish between EU, EEA and Swiss nationals and non-EU, non-EEA and non-

Swiss nationals. Citizens of EU/EEA/Swiss Confederation and their family members benefit from simplified approval process, as they can work on the Romanian territory dependently/ independently under the same conditions as Romanian citizens (based on an individual employment agreement, assignment contract, etc.) and no work authorization must be obtained for them, pursuant to the provisions of applicable legal framework. However, they are required to obtain a certificate of registration/residence card. In this regard, they must submit to the territorial units of the General Inspectorate for Immigration in the county where they live, a number of documents, depending on the purpose of the stay in Romania, within the period prescribed by the law of 3 (three) months.

For non-EU, non-EEA and non-Swiss nationals, working in Romania is permitted only for those who obtain a visa and a working permit, unless they fall under the exceptions provided by the law. The main legal requirements for employing foreigners in Romania include obtaining a work permit, complying with specific employment conditions and obtaining a residence permit, as follows:

(a) Foreigners who wish to work in Romania must first obtain a work permit from the General Inspectorate for Immigration. Work permits are issued for a specific job position and are typically valid for a period of one year but can be renewed if the employment relationship continues. There are several categories of work permits, including temporary, permanent, and intra-company transfer permits.

    If employing a foreigner citizen, the company must prove, among others, that the vacant positions cannot be filled in by Romanian citizens, citizens of EU Member States/EEA/Swiss Confederation or permanent residents in Romania. Hence, approval is granted if the open position within the company cannot be filled in by a Romanian/EU/EEA individual or permanent resident in Romania.

    Moreover, the company must prove that the activities carried out on the Romanian territory are compatible with the job position for which it requests the employment of the foreign citizen, that it has not been finally convicted for a crime provided under the Labour Code or for an intentional crime against a person provided under the Criminal Code, that it has paid its contributions to the state budget regularly throughout the last quarter, it has not been sanctioned for undeclared work or illegal employment in the last 6 (six) months, and that the number of admitted workers stays did not reach the limits of the yearly contingency approved by government decision (the number of work permits issued every year is limited and determined by government decision; for the year 2024, a quota of 100,000 foreign workers newly admitted to the Romanian labour market is established by G.D. No. 1338/2023).

(b) Employers must comply with specific employment conditions when employing foreigners in Romania. These conditions include granting the same rights and benefits as Romanian employees, ensuring that the employment relationship is documented in writing by concluding and registering an individual employment agreement/secondment agreement, and ensuring that the foreign employee complies with the legal requirements.

    The foreign employees must, thus, fulfil all the legal requirements regarding their entry and staying on the Romanian territory, fulfil special conditions regarding professional qualifications, experience and authorization required by the employer according to the legal provisions (in case of highly qualified employees), prove that their state of health is such as to enable them to carry out the relevant activity, and that they have not been convicted for crimes that are incompatible with the activity they carry out or intend to carry out in Romania, as well as, effectively perform the activity for which they obtained the working permit.

(c) In addition to the work permit, foreigners must also obtain a residence permit. The residence permit is issued by the General Inspectorate for Immigration and is valid for the same period as the work permit. Foreigners must apply for the residence permit within 30 days of entering Romania.

Hiring non-EU, non-EEA or non-Swiss nationals without a working/secondment permit constitutes misdemeanor and is punished by a fine.

C. Corporate Governance

6. What are the standard management structures (e.g., general assembly, board of directors, etc.) in a corporate entity governed in your jurisdiction and the key liability issues relating to these (e.g., liability of the board members and managers)?

The governing body of the JSC is the General Meeting of Shareholders (the "**GMS**"). Depending on agenda, the GMS may be either ordinary (e.g., approval of annual financial statements, distribution of dividends, appointment or dismissal of directors or auditors, etc.) or extraordinary (e.g. increase/decrease of the share capital, changes in the company's legal form, mergers, spin-offs, as well as for any other matter which does not fall under the exclusive competence of the ordinary GMS).

The Companies Law provides for two types of management systems available for JSCs:

- the one-tier management system, where the effective management is entrusted to a board of directors (Romanian: consiliu de administraţie) which can, or in certain cases is obliged to, delegate management powers to several executives (Romanian: directori) and
- the two-tier management system, where the effective management of the company is ensured by an executive committee (Romanian: directorat) under the control of a supervisory board (Romanian: consiliu de supraveghere).

In practice, the majority of the Romanian joint stock companies prefer the one-tier management system.

The governing body of a limited liability company is the GMS without thesplit of powers between ordinary and extraordinary meetings. However, shareholders may establish through the articles of association the two types of GMS with different duties and voting requirements. The LLC is managed by one or several directors.

As a rule, directors are jointly liable towards the company for the following: (i) payments made by the shareholders; (ii) payment of dividends; (iii) existence and correct maintenance of company ledgers as required by law; (iv) appropriate enforcement of the resolutions of the GMS; (v) strict fulfilment of the duties imposed by the law and the articles of association.

If the company faces difficulties, the directors/managers must consider at least the following: (i) the interests of creditors, equity holders and other interested parties; (ii) the need to take reasonable and appropriate measures to avoid insolvency and to minimize losses suffered by creditors, employees, equity holders and other interested parties; and (iii) the need to avoid conduct, whether intentional or grossly negligent, that threatens the viability of the enterprise.

Also, the directors may be held criminally liable in certain cases.

Directors are liable towards the JSCs for the prejudices caused by the actions of the managers or of the hired staff when the damage would not have taken place if they had exercised the supervision imposed by the duties of their position. Moreover, directors will be jointly liable with their immediate predecessors if, having knowledge of the violations committed by their predecessors, they fail to disclose them to the in-house auditors or to the financial auditors, as the case may be. Also, in the case of JSCs managed by a number of directors, the liability for actions or omissions does not extend to directors who have had their opposition to such action/omission recorded in the registry of resolutions of the board of directors and who notified such opposition in writing to the in-house auditors or the internal auditors and the financial auditor.

7. What are the audit requirements in corporate entities?

Auditing of financial statements is mandatory for companies (irrespective whether JSC-type or LLC-type) who meet for a period of two consecutive years at least two of the following criteria:

- The aggregate value of the assets is at least RON 16,000,000 (approximately EUR 3.3 million)
- Net turnover amounts to RON 32,000,000 (approximately EUR 6.6 million) or
- The average number of employees within the financial year is 50.

The same obligation applies to the annual financial statements of medium-sized and large-sized companies, companies of public interest, as well as companies operated under the two-tier management system.

For companies who do not meet the above criteria, auditing requirements are more flexible, as shareholders may decide in GMS to contract external financial audit or appoint internal auditors.

D. Shareholder Rights

8. What are the privileges that can be granted to shareholders? In particular, is it possible to grant voting privileges to shareholders for appointment of board members?

JSCs can issue preferred shares which give right to preferential distribution of dividends. Shareholders of preferred shares can participate in the GMS, but they do not benefit of the voting rights. In case of delay in the payment of dividends, preferred shares shall acquire voting rights, starting from the due date of the obligation to pay dividends to be distributed during the following year or, if in the following year the GMS resolves that no dividends shall be distributed, starting from the date of publication of the respective resolution of the GMS, until the actual payment of the outstanding dividends.

Although the law does not contain specific rules in this respect and in principle the majority rule is applicable, it is possible to include in the shareholders' agreement or in the articles of association special rules regarding the appointment of board members or set forth a certain structure for the governing bodies of the company.

9. Are there any specific statutory rights available to minority shareholders available in your jurisdiction?

The minority shareholders in JSCs have the following main rights:

- The shareholders holding at least 5% of the share capital may request that a GMS be called, or that the agenda of an already-convened GMS be supplemented.
- Any shareholder may request the auditors to review any act or operation of the company.
- One or several shareholders holding, severally or jointly, at least 10% of the share capital may request the court to appoint one or several experts for analyzing certain operations in the management of the company and draft a report to be submitted to the board of directors, directorate and the supervisory council, respectively, as well as to the in-house auditors and the internal auditors of the company, as the case may be, for analysis and in order to propose adequate measures;
- In certain limited cases, the shareholders that did not vote in favor of one of the resolutions of the GMS have the right to withdraw from the company and request the purchase of their shares by the company.
- The shareholders representing, separately or jointly, at least 5% of the share capital, may file an action for damages, in their own name but on behalf of the company against the founders, directors or managers of the company for damages they caused the company.

Most of the above rules are equally applicable to LLCs, unless otherwise provided in the Companies Law (for example, the shareholders of an LLC holding ¼ of the share capital may request the call of the GMS).

10. Is it possible to impose restrictions on share transfers under the corporate documents (e.g., articles of association or its equivalent in your jurisdiction) of a company incorporated in your jurisdiction?

In JSCs, shares may be transferred freely. However, the shareholders may impose restrictions on the transfer of shares through the corporate documents of the company or shareholders agreements.

In LLCs, shares may be freely transferred among shareholders. The transfer to persons outside the company is only allowed if approved by the shareholders representing at least ¾ of the registered share capital, however the articles of association may provide otherwise.

Additional restrictions can be imposed for LLCs under the articles of association of the company or shareholder agreements.

11. Are there any specific concerns or other considerations regarding the composition, technical bankruptcy and other insolvency cases in your jurisdiction?

The Romanian legislation concerning the pre-insolvency procedures – restructuring agreements and composition – provide the possibility that the agreement drafted by the debtor can contain certain measures to help him recover from the state of financial difficulty amongst which is modifying the structure of the capital by way of increasing it through co-opting new shareholders or conversion of debt into shares. The proposed agreement should be approved by the creditors and confirmed by the syndic judge under certain conditions provided by law.

Also, in case of insolvency procedures, the following aspects should be taken into consideration:

- Once the insolvency procedure is opened, a special administrator should be appointed by the GMS; after the insolvency procedure is opened and the special administrator is appointed, the GMS suspends its activity and can be later convened by the judicial administrator, in the express cases provided by the Romanian insolvency law.
- During the insolvency procedure, until a reorganization plan is approved, the shares of the companies listed on the stock exchange are suspended from trading.
- There are extensive debates regarding the possibility to make transactions with the shares during the insolvency procedure.
- A reorganization plan can provide specific restructuring measures such as changes in the articles of incorporation, changes in the structure of the capital by way of increasing it through co-opting new shareholders or conversion of debt into shares, if the legal conditions are met.

E. Acquisition

12. Which methods are commonly used to acquire a company, e.g., share transfer, asset transfer, etc.?

The most commonly used methods to acquire a company are, indeed, share transfers and asset transfer deals. A special type of assets transfer is the business transfer structure, whereby a stand-alone business is transferred as a going concern,

13. What are the advantages and disadvantages of a share purchase as opposed to other methods?

The share deal is typically easier to implement than the asset deal.

In a share deal, there is no mandatory form for the transfer agreement, whereas in certain cases an asset deal involves certain execution formalities (for example, in a real estate purchase the agreement must be notarised by the parties and the appropriate registration must be performed in the land book register).

The share deal involves the direct acquisition of the target together with all its assets and liabilities, while the asset deal involves entering into contractual arrangements for the acquisition of the assets. As such, the parties can usually select which assets are to be bought and liabilities do not usually automatically transfer to the buyer.

The asset deals may involve further formalities which hindrance the timely completion of the deal, such as formal approval from contractual partners for the transfer of key agreements and the transfer of intangible assets/immovable property.

Depending on the selected structure, the taxation regime may be substantially different.

14. What are the approvals and consents typically required (e.g., corporate, regulatory, sector based and third-party approvals) for private acquisitions in your jurisdiction?

Depending on the type of deal and the provisions of the articles of association, a corporate approval such as board approval or GMS approval is required. In certain cases, the approval or notification of a third party (such as creditors with security over the asset, banks) or regulator (such as the Competition Council) may be required.

15. What are the regulatory competition law requirements applicable to private acquisitions in your jurisdiction?

In Romania, M&A transactions might require prior clearance from (a) the Romanian Competition Council (the “**RCC**”) under the merger control regime and/or (b) the Committee for the Examination of Foreign Direct Investments (the "**CEFDI**") under the mechanism for screening transactions with the aim to ensure the protection of state security.

a. Prior merger control of the RCC

A M&A transaction falls within the jurisdiction of the RCC if the following quantitative turnover thresholds are cumulatively met by reference to the financial year preceding the transaction:

i. The combined worldwide turnover of the parties concerned exceeds EUR 10,000,000 (*ten million euro*); and

ii. At least two of the parties concerned have a turnover in Romania exceeding EUR 4,000,000 (*four million euro*).

To be mentioned that the principles of computing the turnover thresholds are quite complex and should be assessed on a case-by-case basis. As a matter of principle, the following main rules (non-exhaustive list) apply:

i. The applicable EUR/RON exchange rate for the computation of the turnover thresholds is that communicated by the National Bank of Romania for the last business day of the year preceding the transaction.

ii. The Romanian turnover is represented by sales of products and/or services to Romanian customers irrespective of the nationality of the seller (a Romanian based company or a company headquartered outside Romania).

iii. The parties concerned are usually represented by:

- Each party holding control in the target post-transaction together with each of their respective groups;
- The target (company and/or business) and all companies/businesses controlled by the target (if any) and falling within the transaction scope.

Transactions requiring the prior RCC clearance may not be implemented in absence of the mandatory clearance decision (*standstill obligation*). Conversely, the RCC would impose administrative fines of up to 10% of the turnover achieved in the year preceding the issuance of the sanctioning decision by the party having the notification obligation (normally, the party gaining control post/transaction) for implementing the transaction in breach of the standstill principle.

For transactions where the quantitative thresholds reach those triggering the prior review competence of the European Commission, based on the one-stop-shop principle, the Commission would remove the competence of local competition authorities, inclusively, of the RCC.

Finally, mention should be made that the EU principles on merger control apply to a significant extent in Romania, as well.

b. Foreign direct investment screening

Transactions (1) qualified as (i) foreign direct and EU investments and (ii) new investments (jointly, FDIs) which (2) have as scope certain strategic areas of activity are subject to mandatory screening and authorization in Romania by the CEFDI before implementation (the procedure is handled through the RCC performing secretarial duties for the CEFDI). Conversely, an administrative fine of up to 10% in the year preceding the issuance of the sanctioning decision would be applied by the relevant authority for breach of the *standstill obligation*.

In theory, as an exception, FDIs not exceeding a value EUR 2,000,000 would not be subject to screening unless such, by nature or potential effects, by reference to the criteria set out in Article 4 of the EU FDI Regulation may have an impact on or present a risk to public security or public order. Hence, such transaction would require a self-assessment that could not be performed by the parties, rendering the threshold ineffective. Also, there is no clarity on the manner in which the threshold should be evaluated as norms elaborating upon the methodology for computing the contemplated threshold are pending.

<u>FDIs currently include:</u>

i. Foreign direct investments and EU investments:

Foreign direct investments are:

- investments of any nature carried out by a foreign investor (*see definition below*) with the aim of establishing or maintaining lasting and direct links between the foreign investor and the entrepreneur or the enterprise to whom these funds are made available for carrying out an economic activity in Romania including investments that allow an effective participation in the management or control of an enterprise that performs economic activities..
- A foreign direct investment is also carried out when there is a change in the ownership structure of a foreign legal person investor, if this change with regard to the legal person makes it possible to exercise control, directly or indirectly, by a: 1. natural person who is not a citizen of a member state of the European Union; 2. legal person whose registered office is not in a member state of the European Union; or 3. another legal entity, without legal personality, organized under the laws of a state that is not a member of the European Union.

A foreign direct investor is defined as 1. natural person, who is not a citizen of a Member State of the European Union, who has made or intends to make a direct foreign investment in Romania; 2. a legal person, whose registered office is not located in a Member State of the European Union, which has made or intends to make a foreign direct investment in Romania; 3. a legal person whose registered office is in a Member State of the European Union, which has made or intends to make a foreign direct investment in Romania, in which control is exercised directly or indirectly by: a natural person who is not a national of a Member State of the European Union, a legal person whose registered office is not in a Member State of the European Union or another legal entity, without legal personality, organized under the laws of a State which is not a Member State of the European Union; 4. a trustee of an entity without legal personality which has made or intends to make a direct foreign investment in Romania or a person in a similar position, if this person is not a citizen of the European Union, in the case of a natural person, or if this entity does not have its registered office in a Member State of the European Union, in the case of a legal person, or if this entity has been incorporated under the laws of a State which is not a Member State of the European Union;

- EU investments are defined as investment of any kind carried out by an investor from the European Union (see definition below) with the aim of establishing or maintaining lasting and direct links between the investor from the European Union and the entrepreneur or enterprise to whom these funds are intended for carrying out an economic activity in Romania, including investments that allow effective participation in the management or control of an enterprise carrying out an economic activity.

- An EU investor is defined as 1. natural person, who is a citizen of a member state of the European Union, who made or intends to make an investment in Romania; 2. legal person, whose registered office is in a member state of the European Union, which has made or intends to make an investment in Romania; 3. legal entity, whose registered office is in a member state of the European Union, which has made or intends to make an investment in Romania, in which control is directly or indirectly exercised by: a natural person who is a citizen of a member state of the European Union, a legal person whose registered office is in a member state of the European Union or another legal entity, without legal personality, organized under the laws of a state that is a member of the European Union; 4. fiduciary administrator of an entity without legal personality that has made or intends to make an investment in Romania or a person in a similar position, if he is a citizen of the European Union, in the case of a natural person, or if he is based social in a member state of the European Union, in the case of a legal entity, or if this entity was established under the laws of a state that is a member state of the European Union.
- To be noted that EU investors include also Romanian investors in the opinion of the authority as there is no discrimination between EU investors, including national individuals/entities.

ii. New investments are defined as:

- Initial investment in tangible and intangible assets related to the setting-up of a new enterprise, the expansion of the capacity of an existing enterprise, the diversification of an enterprise's production into products not previously manufactured, or a fundamental change in the overall production process of an existing enterprise. The setting up of a new enterprise is the creation of a new site for carrying out the activity for which funding is requested, technologically independent of other existing establishments. Expansion of the capacity of an existing enterprise is an increase in production capacity at the existing site due to an unfulfilled demand. Diversification of the production of an existing enterprise is the production of products or services not previously produced in that establishment. In the case of new investments, there is no difference made between EU or non-EU investors.

The relevant sectors include: (i) security of citizens and communities; (ii) security of borders; (iii) security of energy; (iv) security of transportation; (v) security of vital resource supply systems; (vi) security of critical infrastructure; (vii) security of IT (information systems) and communications systems; (viii) security of financial, fiscal, banking and insurance activities; (ix) security of manufacturing and traffic of arms, ammunition, explosives and toxic substances; (x) industrial security; (xi) protection against disasters; (xii) the protection of agriculture and the environment; and (xiii) the protection of privatizations of state owned companies or the management of such.

16. Are there any specific rules applicable for acquisition of public companies in your jurisdiction?

Yes, acquisitions of listed companies are governed in Romania by several laws and regulations, such as Law No. 24/2017 concerning the issuers of financial instruments and market operations, Law No. 126/2018 on financial instruments markets, Law No. 297/2004 on the capital market.

Public M&A deals are usually structured as public takeover bids (voluntary or mandatory) and are significantly more complex than private M&A deals.

A voluntary takeover bid is a public purchase offer, addressed to all holders of securities, for all their holdings, launched by a person who is not so obliged, with a view to acquiring more than 33% of the voting rights in the public company.

In case of a voluntary takeover bid, the bidder must obtain approval from the Romanian Financial Supervision Authority (the "**FSA**") for the preliminary announcement regarding the offer. After the FSA issues its approval, the bidder shall publish the preliminary announcement in newspapers and send it to the target company and to the relevant stock exchange market. Within 5 days, the board of directors of the target shall send to the FSA, the bidder and the stock exchange market a document highlighting its input on the offer which must contain certain specific information as provided by the law.

Within 30 days of publication of the preliminary announcement, the bidder submits to the FSA the documents for the approval of the offer and the FSA issues its decision regarding the offer within 10 business days. After the FSA approves the offer, the bidder may publish the offer announcement in the conditions set out in the law.

A public mandatory takeover bid is an offer made by a person who holds more than 33% of the voting rights of a public company and must therefore launch a public offering to all existing holders of securities. In principle, the same mechanism described above applies to mandatory takeover bids. Mandatory takeovers should be initiated within two months of exceeding the 33% shareholding threshold.

Also, there are several other special rules related to matters such as disclosure requirements and pricing mechanism, which should be observed.

17. Is there a requirement to disclose a deal, for instance to regulatory authorities? Is it possible to keep a deal confidential?

In principle, there are no requirements under the Romanian law to disclose a deal. However, certain transactions may also be governed by specific legislation, which could regulate the obligation to notify the authorities of the deal, such as merger control legislation.

Save for the scenarios above, it is possible to keep a deal confidential and usually the parties conclude a non-disclosure agreement before entering into negotiations.

18. Can sellers be restricted from shopping around during a negotiation process? Is it possible to include break fee or other penalty clauses in acquisition documents to procure deal exclusivity?

Yes, the seller and potential buyer may conclude an exclusivity agreement whereby the potential buyer is granted exclusivity to negotiate with the seller for a specific period of time. It is possible to include in the exclusivity agreement a penalty in case of breach of exclusivity.

19. What are the conditions precedent in a typical acquisition document? Is it common to have conditions to closing such as no material adverse change?

There are several conditions precedent which may be included in typical acquisition documents, such as: (i) the approval of the GMS for the sale of shares; (ii) the approval of or notification to a regulator (e.g., merger control clearance); (iii) any relevant third-party notification or consents. It is common to have conditions to closing such as no material adverse change.

20. What are the typical warranties and limitations in acquisition documents? Is it common to obtain warranty insurance?

In a share deal, the warranties usually relate to seller's ownership title to the shares, capacity to transfer the shares free of encumbrances, matters relating to the business of the target company, such as its legal existence, lack of debt, assets, employees, etc. In an asset deal, warranties typically relate to the seller's ownership title to the asset, and disputes and litigations concerning the asset. Limitations on warranties typically include limitations on damage, overall cap, time limits.

Still, it is not common to obtain warranty insurance.

21. Is there a requirement to set a minimum pricing for shares of a target company in an acquisition?

The parties may set the price of shares of a target company. However, the price of the shares should not be significantly lower than their market value, as the sale purchase agreement might be annullable.

22. What types of acquisition financing are available for potential buyers in your jurisdiction? Can a company provide financial assistance to a potential buyer of shares in the target company?

There are no specific regulatory restrictions for acquisition financing structures, other than the financial assistance restrictions applicable to JSC (as detailed below). On this basis, the most common acquisition structures used on the Romanian market are (i) LBO structures and other forms of leveraged acquisitions, including by way of bank debt, provided by local or international credit institutions to the buyers, in the form of secured acquisition loans or credit lines; (ii) financing through bonds issued to private or public investors; (iii) financing provided by private investors or investment funds, on a secured or unsecured basis (either as shareholder loans or as third party loans, subject to professional lending restrictions); and more recently (iv) equity crowdfunding.

The Companies Law expressly prohibits a JSC from advancing funds, extending loans or providing security for the purpose of the acquisition of its shares by a third party. The interdiction is however not applicable to (i) transactions performed by credit institutions and other financial institutions in their ordinary course of business, and (ii) transactions intended for the acquisition of shares by or for the company's employees, provided in both cases that such transactions do not cause the company's net asset worth to fall below the threshold of the cumulated value of the subscribed share capital and the reserves that cannot be distributed according to the law or under the articles of association.

Absent an express interdiction, in practice, it has been considered that an LLC may advance funds, extend loans, or provide security for the purpose of the acquisition of its shares by a third party.

23. What are the formalities and procedures for share transfers and how is a share transfer perfected?

The transfer of shares in JSCs is free and in case of shares issued in dematerialized form is performed by registration in the shareholders register, which shall be signed by the assignor and the assignee. In case of shares issued in material form, the transfer shall be performed by registration in the shareholders register and in the share certificate, signed by the assignor and the assignee. For JSCs, the registration of the transfer of shares in the trade registry is not mandatory.

In LLCs, shares may be freely transferred among shareholders. The transfer to persons outside the company is only allowed if approved by the shareholders representing at least ¾ of the registered share capital, however, the articles of association may provide otherwise. In case of LLCs, the transfer of shares becomes opposable towards third parties as from its registration with the Trade Registry.

24. Are there any incentives (such as tax exemptions) available for acquisitions in your jurisdiction?

To our knowledge, there are no state aid incentives specific for M&A transactions implemented in Romania. There may be various sectors that could benefit of support for development of investments, but such should be assessed on a case-by-case basis.

F. Enforceability

25. Can acquisition documents be executed in a foreign language?

Yes, the acquisition documents can be executed in a foreign language.

26. Can acquisition documents be governed by a foreign law?

Yes, subject to mandatory provisions of Romanian law.

27. Are arbitration clauses legally permissible or generally included in acquisition documents?

Yes, arbitration clauses are lawful and may be included in the acquisition documents. It is quite common for acquisition documents to include arbitration clauses.

28. Are there any specific formalities for the execution of acquisition documents? Is it possible to remotely/digitally sign documents?

In principle, there are no specific formalities for the execution of acquisition documents. The acquisition documents may be signed with the simple wet-ink signature of the parties. The parties may sign the acquisition documents in counterparts. The law may provide for special formalities in certain cases, for example, a sale agreement over an immovable asset must be signed by the parties in front of a notary public.

Pursuant to Law No. 455/2001 on electronic signatures, a document to which an extended electronic signature has been incorporated, attached, or logically associated, based on a qualified certificate which has not been suspended or revoked at the time and which is generated by means of a secure electronic signature creation device, is assimilated, as regards its conditions and effects, to a document signed with wet-ink. As such, it is possible to digitally sign the documents, save for the cases when the document must be concluded in a specific form.

G. Trends and Projections

29. What are the main current trends in M&A in your jurisdiction?

Although the Romanian M&A market recorded a slight decrease last year in the overall number of transactions. The market maintained its value. Real estate has gained the title of the most active sector by deal count replacing technology from the top position. The overall numbers reflect a continued interest of Romanian investors to execute cross-border transactions.

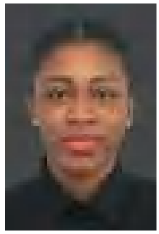
30. Are any significant development or change expected in the near future in relation to M&A in your jurisdiction?

One can expect an increase in the number of transactions coming to the Romanian M&A market this year. The energy and technology sectors are expected to be amongst the most dynamic sectors in the market.

SENEGAL

GENI & KEBE





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A. General

1. What is the main legal framework applicable to companies in your jurisdiction?

In Senegal, companies are mainly governed by the following:

- Organization for the Harmonization of Business Law in Africa ("**OHADA**") Company Act ("**The Company Act**"),
- OHADA Uniform Act on General Commercial Law,
- OHADA Insolvency Act,
- Penal Code of Senegal,
- Tax Code,
- Finance Act.

2. What are the most common types of corporate entities (e.g., joint stock companies, limited liability companies, etc.) used in your jurisdiction? What are the main differences between them (including but not limited to with regard to the shareholders' liability)?

The common types of corporate entities used in Senegal are Joint stock companies ("**JSC**") and Limited liability companies ("**LLC**").

The main differences between them are as follows:

	Joint stock companies	Limited Liability Companies
Minimum Share capital	- XOF 10,000,000 if the Company does not launch public offering. - XOF 100,000,000 if the Company launches public offering	The law does not provide for a minimum share capital But the usual LLC share capital is XOF 1,000,000
Shareholders' liability	Liable for the debts of the company only up to the number of their contributions and whose rights are represented by shares.	Liable for the debts of the company only up to the number of their contributions and whose rights are represented by shares.
Minimum share paid capital	XOF 10,000,000 circa Euro 15,244. At least ¼ of the capital must be released at the time of the incorporation.	XOF 100,000 circa Euro 152
Management	Board of Directors, General Director	General Manager
Auditors	Mandatory	Not mandatory *The appointment of at least one auditor is required if the company meets at least two of the following conditions: if the total balance sheet exceeds XOF 125,000,000, if the annual turnover exceeds XOF 250,000,000.

B. Foreign Investment

3. Are there any restrictions on foreign investors incorporating or acquiring the shares of a company in your jurisdiction?

Generally, incorporating or acquiring the shares of a local company by foreigners is free of restrictions.

However, in some specific sectors such as oil & gas and mining, the law requires a minimum of local ownership.

4. Are there any foreign exchange restrictions or conditions applicable to companies such as restrictions to foreign currency shareholder loans?

There are no specific restrictions for currency issues, especially for currency issues regarding shareholder loans.

As for foreign exchanges in general, the Change legislation provides that foreign exchange transactions, capital flows (issuance of transfers and/or receipt of funds), and settlements of any kind between a West African Economic and Monetary Union ("**WAEMU**") Member State and a foreign country or between a resident (individuals who have their main center of interest in a WAEMU Member State, public servants assigned abroad, and foreign legal entities established in a WAEMU member state) and a non-resident may only be carried out through the Central Bank of West African States, national post office, authorized intermediary (any credit institution (including banks) established on the territory of a WAEMU Member State and having received the status of an authorized intermediary, by approval of the Minister in charge of Finance) or an authorized manual exchange agent (Article 2 of Rule N°09/2010/CM UEMOA/ relating to the external financial relations of the member states of the WAEMU).

However, such legislation also provides that payments to foreign countries in respect of capital transactions, other than the following capital operations, must be the subject of an application for foreign exchange authorization, submitted to the Minister in charge of Finance.

- the transfer of amounts required for the contractual amortization of debts and the repayment of short-term loans granted to finance commercial and industrial operations commercial and industrial operations;
- the transfer of income from the liquidation of assets or the sale of foreign securities by non-residents;
- settlements required for either foreign exchange derivative transactions or commodity derivative transactions commodities (Article 7 of Rule N°09/2010/CM UEMOA/ relating to the external financial relations of the member states of the WAEMU).

5. Are there any specific considerations for employment of foreign employees in companies incorporated in your jurisdiction?

It is required for the expatriate worker to hold a work permit. However, nationals of Economic Community of West African States (ECOWAS) member countries are exempt from this procedure.

The expatriate contract must necessarily be a fixed-term contract and must be submitted to the Director General of Labor and Social Security for approval prior to its execution.

C. Corporate Governance

6. What are the standard management structures (e.g., general assembly, board of directors, etc.) in a corporate entity governed in your jurisdiction and the key liability issues relating to these (e.g., liability of the board members and managers)?

There is no standard management structure under our jurisdiction, the Corporate Governance depends on the type of corporate entities.

The types of management of a JSC are:

- Board of Directors with a Chairman and a General Manager
- Board of Directors with a CEO and a Deputy General Manager
- General Administrator with or without a deputy

LLCs are managed by one or more Managers.

	MANAGEMENT	SHAREHOLDERS
Joint stock companies	CIVIL LIABILITIES Any damage suffered by a third party as a result of the cancellation of the constitutive General Assembly. - Any damage caused either by the failure to mention a mandatory provision in the articles or by the omission or irregular performance of a formality prescribed for the incorporation of the company. PENAL LIABILITIES Issuance of shares before registration or at any time when registration is obtained by fraud, or the company is irregularly incorporated. Distribution of fictitious dividends. Publication or presentation of financial statements that do not give a true and fair view of the transactions, financial position, and assets and liabilities. Abuse of Company assets. Failure to file financial statements with Trade Register within one month of approval. Obstruction of participation in an assembly. Offence of issuing shares or cutting off shares. Failure to draw up the minutes of general meetings in the form required by the Uniform Act. - Failure to appoint auditors or to convene them to the AGMs. Obstruction to the exercise of the functions of the auditors. Issue of securities without prior publicity. Submission to the notary or the depositary of a list of shareholders or subscription and payment forms mentioning fictitious subscriptions or payments of funds which have not been definitively placed at the disposal of the company. Failure to convene the meeting within 4 months or to file and publish the dissolution of the company, when the equity falls below half of the capital.	CIVIL LIABILITIES - Any damage caused either by the failure to mention a mandatory provision in the articles or by the omission or irregular performance of a formality prescribed for the incorporation of the company. PENAL LIABILITIES - Obstruction of participation in an assembly

	MANAGEMENT	SHAREHOLDERS
	CIVIL LIABILITIES - Any infringements of the legislative or regulatory provisions applicable to limited liability companies, breaches of the articles of association or misconduct in their management. PENAL LIABILITIES - Distribution of fictitious dividends. - Publication or presentation of financial statements that do not give a true and fair view of the transactions, financial position, and assets and liabilities. - Failure to file financial statements with Trade Register within one month of approval. - Obstruction of participation in an assembly. - Failure to draw up the minutes of general meetings in the form required by the Uniform Act. - Failure to convene the meeting within 4 months or to file and publish the dissolution of the company when the equity falls below half of the capital.	CIVIL LIABILITIES
Limited Liability Companies		Any damage caused either by the failure to mention a mandatory provision in the articles or by the omission or irregular performance of a formality prescribed for the incorporation of the company. PENAL LIABILITIES - Obstruction of participation in an assembly

7. What are the audit requirements in corporate entities?

Public Limited Companies that do not make public offerings are required to appoint at least 2 (two) auditors (one auditor and an alternate auditor).

For those making public offerings, they should appoint at least 4 (four) auditors (2 (two) auditors and 2 (two) alternate auditors).

When auditors are appointed in the Articles of Association or by the constitutive general meeting the duration of their mandate shall be 2 (two) financial years.

When auditors are appointed by the ordinary general meeting, the duration is 6 (six) financial years.

For LLCs, only those that meet 2(two) of the 3 (three) following conditions are required to appoint an auditor at the end of their fiscal year:

- Balance sheet total of more than 125 million CFA Franq;
- Annual turnover of more than 250 million CFA Franq;
- Permanent workforce of more than 50 people.

Auditors may be appointed and or replaced during a general assembly, with the votes of shareholders holding shares corresponding to more than half of the share capital.

D. Shareholder Rights

8. What are the privileges that can be granted to shareholders? In particular, is it possible to grant voting privileges to shareholders for appointment of board members?

The Company Act provides for the creation of preferential shares, with special rights of any kind, on a temporary or permanent basis. Such preferential shares do not grant voting privileges for the appointment of board members, especially by they can inter alia grant double voting rights, in accordance with Article 778-1 of the Company Act.

9. Are there any specific statutory rights available to minority shareholders available in your jurisdiction?

The Company grant to minority shareholders the following rights:

- **The right of information**: They must be informed about the life course of the company and be provided with corporate documents such as minutes, regulated agreements concluded by the company, financial statements, and any other document provided for by the articles of association;
- **The right to vote**: They must participate in General Meetings and vote;
- **The right to alert**: As per Article 157 of the Company Act, they are allowed to trigger an alert procedure by asking written questions to the company's directors about any fact that could jeopardize the company's continuity.

The violation of these minority shareholders' rights can give rise to a litigation action for abuse of the majority.

10. Is it possible to impose restrictions on share transfers under the corporate documents (e.g., articles of association or its equivalent in your jurisdiction) of a company incorporated in your jurisdiction?

Yes, Article 319 of the Company Act provides that the Article of Association may freely organize the terms of shares and the transfer conditions either between the shareholders or to the third parties.

Also, pursuant to Article 2-1 of the Company Act, the shareholders of a

Company may enter into agreements aside from the Article of Association i.e., shareholders agreement, to organize access to the share capital.

11. Are there any specific concerns or other considerations regarding the composition, technical bankruptcy, and other insolvency cases in your jurisdiction?

Under OHADA law, pursuant to Article 57 of the OHADA Insolvency Act, when a company in bankruptcy is subject to a winding-up or liquidation of assets, it may only transfer its shares, equity securities, or securities giving access to the capital with the authorization of the bankruptcy judge and under the conditions fixed by the bankruptcy judge. Any transfer made in violation of such provisions incurs nullity.

E. Acquisition

12. Which methods are commonly used to acquire a company, e.g., share transfer, asset transfer, etc.?

The common methods to acquire a company in Senegal are share transfer and mergers.

13. What are the advantages and disadvantages of a share purchase as opposed to other methods?

Compared to other acquisition methods, such as asset purchase and merger, share purchase is a straightforward process that involves the transfer of ownership from one shareholder to another, thus a less-time consuming and cost-effective way of acquiring, limiting the buyer's involvement in the company's liabilities.

However, in contrast to mergers or sales of assets which take place after the decision of the control bodies of the target companies, the transfer of shares only comes from the will of the owner whose right to transfer the shares can be restricted by the restrictions provided by the articles of association or the shareholders' agreements i.e., approval or pre-emption clauses.

14. What are the approvals and consents typically required (e.g., corporate, regulatory, sector-based and third-party approvals) for private acquisitions in your jurisdiction?

Corporate perspective

- Capital companies: The shares are in principle freely transferable. However, the articles of association or other corporate documents of the company may provide for limitations, under Articles 318 and 764 of the Company Act.
- Partnerships: Transfer requires the unanimous consent of the shareholders in accordance with Articles 274 and 296 of the Company Act.

Regulatory or sector-based approvals: In principle, share transfer does not require approvals. However, certain sector rules such as insurance and mining provide for authorization by the relevant ministries.

15. What are the regulatory competition law requirements applicable to private acquisitions in your jurisdiction?

As per Article 4.1 of Rule No. 2/2002/CM/WAEMU relating to anti-competitive practices within the WAEMU, in the WAEMU zone, mergers that create or strengthen a dominant position, held by one or more firms, as a result of which effective competition is significantly impeded within the Common Market, are prohibited.

This includes, in particular

- The merger between two or more previously independent undertakings;

- Any operation by which, one or more persons (legal entities or individuals), who already control one or more companies, acquire direct or indirect control of all or part of, whether by way of equity participation or purchase of assets, contract or otherwise, as per Article 4.3 of Rule No. 2/2002/CM/WAEMU relating to anti-competitive practices within the WAEMU.

16. Are there any specific rules applicable for acquisition of public companies in your jurisdiction?

Under Senegalese law, there are two types of public companies, which are national companies and companies with a public majority shareholding.

National companies are private capital companies where the capital is fully subscribed by the State or other public law entities. Pursuant to Article 9 of Act No. 2022-08 of April 19, 2022, relating to the para-public sector, the management of the State's portfolio and the control of legal entities governed by private law and supported by the public authorities, the private sector does not have access to the ownership of these companies.

As for the acquisition of Companies with a public majority shareholding, the law provides especially that they must have more than 50% of direct or indirect participation of the State or other public entities. The minimum participation of private persons is not explicitly provided but we can assume that the private shareholding cannot exceed 49%, in accordance with Article 10 of Act No. 2022-08 of April 19, 2022, relating to the para-public sector, the management of the State's portfolio and the control of legal entities governed by private law and supported by the public authorities.

There are no specific rules relating to the process of acquisition of Companies with a public majority shareholding thus it is governed by the provisions of the Company Act as common private companies.

However, each public company is created by a law which may provide for specific rules regarding the ownership of the company to be incorporated.

17. Is there a requirement to disclose a deal, for instance to regulatory authorities? Is it possible to keep a deal confidential?

In general, it is possible to keep a transaction confidential. However, in sectors where the law requires a declaration or authorization of acquisition operations, it will be required to disclose the deal.

Also, pursuant to Article 57 of the Finance Act of July 05, 2021 / Article 633.1 of the Tax Code, it is mandatory for all the companies in our jurisdiction to file an Ultimate Beneficial Owner (UBO) Register. Such register must be updated in case of a share transfer. Such requirement may limit the confidentiality of a deal.

18. Can sellers be restricted from shopping around during a negotiation process? Is it possible to include break fee or other penalty clauses in acquisition documents to procure deal exclusivity?

Nothing prevents parties to agree on such restrictions or break fees. They can freely enter into an agreement that procures the exclusivity of the deal to one or another and provides for penalties in case of a breach.

19. What are the conditions precedent in a typical acquisition document? Is it common to have conditions to closing such as no material adverse change?

In general, the condition precedent is the satisfaction of the Due Diligence made on the target company.

20. What are the typical warranties and limitations in acquisition documents? Is it common to obtain warranty insurance?

General protection mechanisms in acquisition documents are:

- Indemnity clauses in the event of default after closing;
- Insurance to cover risks;
- The buyer depositing the purchase price in an escrow account for a certain time to ensure a proper closing;
- Termination clause in the acquisition document, in the event of default after the closing.

However, the parties may freely agree on other warranties as the above list is not exhaustive.

21. Is there a requirement to set a minimum pricing for shares of a target company in an acquisition?

The Company Act provides for minimum pricing for shares in certain companies such as LLCs.

22. What types of acquisition financing are available for potential buyers in your jurisdiction? Can a company provide financial assistance to a potential buyer of shares in the target company?

Potential buyers looking to acquire a company can typically obtain acquisition financing through a combination of debt and equity financing.

23. What are the formalities and procedures for share transfers and how is a share transfer perfected?

The transfer of shares must be recorded in writing.

It is effective with regard to the company when one of the following formalities are completed

- Notice of the transfer to the company by a bailiff or by any means allowing the recipient to acknowledge receipt;
- Approval of the transfer by the company in a notarized document;
- Filling of an original copy of the transfer deed at the registered office in return for a certificate of such deposit issued by the manager.

As per Articles 275, 297, 317, 763-1 of the Company Act, a share transfer is effective with regard to third parties when one of the above formalities is completed and the Articles of Association have been amended and published in the Trade Register.

24. Are there any incentives (such as tax exemptions) available for acquisitions in your jurisdiction?

Capital gains (except those realized on goods) resulting from the allocation of shares or shares following the merger of JSCs and LLCs are exempt from corporate income tax, in accordance with Article 20 of the Tax Code.

F. Enforceability

25. Can acquisition documents be executed in a foreign language?

Acquisition documents cannot be executed in a foreign language. In practice, drafts in foreign languages are translated by a certified translator for their execution.

26. Can acquisition documents be governed by a foreign law?

In principle, acquisition documents that are to be executed and registered in Senegal are governed by OHADA Law and the local tax legislation.

27. Are arbitration clauses legally permissible or generally included in acquisition documents?

Yes, arbitration clauses are permissible and often included in acquisition documents.

28. Are there any specific formalities for the execution of acquisition documents? Is it possible to remotely/digitally sign documents?

Here are the key formalities that must be done for the execution of the acquisition:

- Registration of the share transfer agreement to the Tax Authorities;
- Notification of the transfer of shares to the target company;
- Mention the share transfer in the company's register of registered shares if any.

  Yes, it is possible to digitally sign documents under our legislation.

G. Trends and Projections

29. What are the main current trends in M&A in your jurisdiction?

Based on our experience as well as insight into our clients' current deals, mergers tend to slow. As for straightforward acquisitions, they are more commonly performed in the mining and energy sectors.

30. Are any significant development or change expected in the near future in relation to M&A in your jurisdiction?

We are not aware of any such intentions.

SERBIA

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A. General

1. What is the main legal framework applicable to companies in your jurisdiction?

The main legal framework is Law on Companies, but the relevant regulations are also Law on Takeovers of Joint Stock Companies, Competition Law and Law on Capital Market.

2. What are the most common types of corporate entities (e.g., joint stock companies, limited liability companies, etc.) used in your jurisdiction? What are the main differences between them (including but not limited to with regard to the shareholders' liability)?

The most common type of corporate entity is limited liability company ("**LLC**"), while the second place belongs to joint stock companies. Regarding the limitation of liability, similar rules are applicable on both corporate entities. However, please find below some main differences:

Limited liability company:

- Minimum share capital amounts to RSD 100 (ca. EUR 1);
- Less complex legal form;
- Simpler incorporation procedure;
- Shares in LLC are not securities and financial instruments

Joint stock companies:

- Minimum share capital amounts to RSD 3,000,000 (ca. EUR 25,000)
- More complex legal form;
- More complex incorporation procedure;
- Shares in joint stock companies are securities and financial instruments;
- In some situations, represents a mandatory legal form (e.g., in case of banks).

B. Foreign Investment

3. Are there any restrictions on foreign investors incorporating or acquiring the shares of a company in your jurisdiction?

No. Every individual and legal entity can incorporate a company and/or acquire shares in other companies in Serbia.

4. Are there any foreign exchange restrictions or conditions applicable to companies such as restrictions to foreign currency shareholder loans?

No.

5. Are there any specific considerations for employment of foreign employees in companies incorporated in your jurisdiction?

Foreign employees shall obtain residence and work permits in order to establish employment in Serbia.

C. Corporate Governance

6. What are the standard management structures (e.g., general assembly, board of directors, etc.) in a corporate entity governed in your jurisdiction and the key liability issues relating to these (e.g., liability of the board members and managers)?

The management of the company may be organized through a one-tier or two-tier management system. In case of one-tier management system, the company's bodies are general meetings and 1 (one) or several directors, i.e., a board of directors. In two-tier management system, management structure presents general meeting, 1 (one) or several executive directors, i.e., the executive board and supervisory board. In most cases, the management of the company is organized through a one-tier system, but in some situations, the law prescribes two-tier management system as mandatory (e.g., in case of insurance companies).

When it comes to liability issues, the main rule is that the company itself is responsible for all obligations while the company's asset is separate from the shareholders' assets. However, the Law on Companies prescribes exception in case of shareholders and legal representatives who abuse the rule of limited liability. In that situation, the shareholder/legal representative will be responsible for the obligations of the company with all of his/her personal assets.

7. What are the audit requirements in corporate entities?

Audit of financial statements is a verification process of financial statements, as well as the data and methods used in the preparation of financial statements. In this way, an independent professional opinion is given on whether the financial reports give a true and objective presentation of the financial state and results of the company's business. This procedure is regulated by several acts, but the most important are Audit Law and Accounting Law.

D. Shareholder Rights

8. What are the privileges that can be granted to shareholders? In particular, is it possible to grant voting privileges to shareholders for appointment of board members?

It is possible to grant some voting privileges to shareholders, along with other rights such as right to pay dividends, right to participate in distribution of the liquidation surplus or bankruptcy estate, pre-emption right to acquire common stocks, etc.

9. Are there any specific statutory rights available to minority shareholders available in your jurisdiction?

Regardless of the number of shares, all shareholders are treated in the same way under equal circumstances, which is also applicable to minority shareholders. However, in order to protect shareholder rights, shareholder has the possibility to submit the following lawsuits to the court:

(i) lawsuit to claim compensation for the damage shareholder possibly sustained due to the violation of special duties by persons who have such duties in the company;

(ii) lawsuit to challenge the resolutions of the general meeting;

(iii) shareholders who own at least 20% of shares in the share capital can file a lawsuit against the company for the dissolution of the company;

(iv) a dissenting shareholder can claim payment of the difference up to the full value of his/her shares with a lawsuit filed against the company, in the case of a share purchase procedure carried out in one of the ways provided for by law;

(v) and other rights.

10. Is it possible to impose restrictions on share transfers under the corporate documents (e.g., articles of association or its equivalent in your jurisdiction) of a company incorporated in your jurisdiction?

Yes, it is possible. In practice, this situation is usually resolved by Shareholders' Agreement, contracting tag-along and drag-along right.

11. Are there any specific concerns or other considerations regarding the composition, technical bankruptcy and other insolvency cases in your jurisdiction?

No.

E. Acquisition

12. Which methods are commonly used to acquire a company, e.g., share transfer, asset transfer, etc.?

Share transfer is the most commonly used method.

13. What are the advantages and disadvantages of a share purchase as opposed to other methods?

Share purchase is a simpler process and has a lot of advantages, such as continuation of contracts with all partners, as well as with the employees of the company. On the other hand, this procedure also carries more risks regarding obligations of the company. However, this is mitigated with adequate warranties and also with different types of reports such as a due diligence report.

14. What are the approvals and consents typically required (e.g., corporate, regulatory, sector based and third-party approvals) for private acquisitions in your jurisdiction?

The most typical approvals are (i) approvals of the remaining shareholders (in case of disposal of assets of high value), (ii) approval from National Bank of Serbia, in case of share transfer in banks and insurance companies and (iii) competition approval from Serbian Competition Agency.

15. What are the regulatory competition law requirements applicable to private acquisitions in your jurisdiction?

According to the Competition Law, the obligation to report the concentration to the Serbian Competition Agency arises in the following situations: (i) the combined global turnover of the parties exceeds EUR 100 million and at least 1 (one) party's Serbian turnover exceeds EUR 10 million or (ii) the combined Serbian turnover of the parties exceeds EUR 20 million and at least 2 (two) parties each have a Serbian turnover of more than EUR 1 million.

16. Are there any specific rules applicable for acquisition of public companies in your jurisdiction?

Yes. Specific rule concerns the publication of an offer to the company's shareholders for the purchase of all remaining voting shares in that company. This obligation exists for a person who acquired 25% or more voting shares in that company. In accordance with the Law on Takeovers of Joint Stock Companies, the publication of the offer exists in additional cases as well, while the Law also prescribes exceptions to this rule.

17. Is there a requirement to disclose a deal, for instance to regulatory authorities? Is it possible to keep a deal confidential?

Yes, this requirement can come from authorities such as Tax Administration, Serbian Competition Agency and Serbian Business Registration Agency.

18. Can sellers be restricted from shopping around during a negotiation process? Is it possible to include break fee or other penalty clauses in acquisition documents to procure deal exclusivity?

Yes, this restriction can be agreed on between the parties.

19. What are the conditions precedent in a typical acquisition document? Is it common to have conditions to closing such as no material adverse change?

Conditions to closing depend on certain cases and may include the following: paid tax obligations, salaries, paid debts to creditors etc.

20. What are the typical warranties and limitations in acquisition documents? Is it common to obtain warranty insurance?

The typical warranties are warranties on ownership of shares, warranties on good standing of the company, warranties related to the employment, business operations of the company etc, while limitations are most often related to the duration of the guarantee and the limitation of liability. Obtainment of warranty insurance is not common.

21. Is there a requirement to set a minimum pricing for shares of a target company in an acquisition?

No.

22. What types of acquisition financing are available for potential buyers in your jurisdiction? Can a company provide financial assistance to a potential buyer of shares in the target company?

The most standard type of financing is loans.

23. What are the formalities and procedures for share transfers and how is a share transfer perfected?

The share transfer in limited liability companies includes the conclusion of the Share Transfer Agreement and registration of change of ownership structure before Serbian Business Registration Agency. In the case of public joint-stock companies, the transfer is carried out on the stock exchange, with the help of a broker, as well as before Serbian Central Securities Depository and Clearing House. The share transfer procedure in non-public joint-stock companies is carried out only before Central Securities Depository and Clearing House and also requires the participation of a broker.

24. Are there any incentives (such as tax exemptions) available for acquisitions in your jurisdiction?

No, as we are familiar with.

F. Enforceability

25. Can acquisition documents be executed in a foreign language?

The documents must be in Serbian, but a bilingual form is also allowed.

26. Can acquisition documents be governed by a foreign law?

Yes.

27. Are arbitration clauses legally permissible or generally included in acquisition documents?

Arbitration clauses are legally permissible and usually included in acquisition documents.

28. Are there any specific formalities for the execution of acquisition documents? Is it possible to remotely/digitally sign documents?

Serbian law allows qualified e-signatures. However, certain documents which need to be submitted to the competent authorities must be notarized (such as Articles of Association and Share Transfer Agreement).

G. Trends and Projections

29. What are the main current trends in M&A in your jurisdiction?

There is a lot of M&A activity in Serbia, due to the increase in the number of foreign investors who are interested in doing business in Serbia. According to our experience, this procedure is most often carried out in the IT industry. We emphasize that the stock market is not developed in our country. This is why the largest number of transactions are carried out in limited liability companies.

30. Are any significant development or change expected in the near future in relation to M&A in your jurisdiction?

We expect an increase in M&A takeovers in the near future.

SLOVAKIA

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A. General

1. What is the main legal framework applicable to companies in your jurisdiction?

Slovakia has a statute-based civil law system. The jurisprudence produced by the general courts is not binding beyond the parties to that lawsuit, but the interpretation of the law contained in the rulings of the Constitutional Court and the Supreme Court have significant persuasive value in the lower courts. Company law is codified in statute by Act No. 513/1991 Coll. (the "**Commercial Code**"). Furthermore, with the transposition of EU Directive 2017/1132 relating to certain aspects of company law by means of Act No. 309/2023 Coll. (the "**Merger Act**"), mergers and spin-offs have also been codified in Slovak law. The Merger Act has substantially taken effect on March 1, 2024.

The new Merger Act provides for more flexibility in corporate transformations and makes available cross-border transformations, such as spin-offs or cross-border changes of legal form, which were not available prior to adoption of the Merger Act.

2. What are the most common types of corporate entities (e.g., joint stock companies, limited liability companies, etc.) used in your jurisdiction? What are the main differences between them (including but not limited to with regard to the shareholders' liability)?

The most common types of capital-generating corporations used for the pursuit of business in Slovakia are limited liability companies (*spoločnosť s ručením obmedzeným*) ("**SRO**") and private companies limited by shares (*akciová spoločnosť*) ("**AS**"). There are also other types of business entities, including simple joint stock companies, partnerships, limited partnerships and forms of European legal entities such as the societas europaea, However, these are uncommon in practice.

The SRO is a type of business entity owned by between 1 (one) and 50 shareholders. The company does not issue shares and each shareholder owns a share in the company's registered capital, each referred to as the "ownership interest". The minimum registered capital of an SRO is EUR 5,000 and the minimum ownership interest is EUR 750. The SRO has a rather simple corporate governance with 1 (one) or more executive directors. There is no requirement to create a board of directors or supervisory board. The legal regulation of the SRO implied in the Commercial Code does not support frameworks such as priority stock or negotiability of ownership interests, although ownership interests can be transferred (subject to certain restrictions) and priority dividends can be agreed contractually in the articles of association and/or in a Shareholders' Agreement ("**SHA**").

One specific feature of the rules applicable to SROs is the "chaining restriction". This stems from the Slovak transposition of the EU Companies Directives and, at present, is somewhat unique within the EU. The rule provides that where an SRO has a single shareholder which itself is an SRO or an equivalent foreign entity (e.g. a *Gesellschaft mit beschränkter haftung* or another foreign equivalent), then the latter shareholder must itself have more than 1 (one) shareholder. In practice, this restriction means that an SRO owned by another SRO (or its foreign equivalent) must have more than 1 (one) shareholder or else its sole shareholder must have more than 1 (one) shareholder. The consequences of not complying with this restriction vary according to circumstances but may include the mandatory dissolution of the company or the title to the company being declared void.

The AS can be owned by an unlimited number of shareholders and can be incorporated with a minimum registered capital of EUR 25,000. An AS must form a board of directors (although the board of directors can be composed of a single chairman) and a supervisory board. The governance body of the AS is its board of directors, but a single chairman of the board of directors may also be appointed to oversee the company.

While the corporate governance of SROs and Ass are substantially similar in their level of complexity, the governance of an AS does entail additional complexities in certain areas, most notably in the area of financing, where restrictions on financial assistance and the requirement of additional corporate approvals apply.

As far as shareholder liability is concerned, while the shareholders of an AS are generally not liable for the company's liabilities, the shareholders of an SRO are liable for the company's liabilities up to their unpaid contribution to the company's registered capital.

On January 1, 2018, a new shareholder liability framework came into effect, allowing the piercing of the "corporate veil" of a company (including an SRO or AS) where a direct or indirect controlling shareholder has significantly contributed to the insolvency of that company. In those situations, the controlling shareholder would be liable to the company's shareholders up to the value of their insolvency claims which could not be paid from the insolvency estate. However, this framework has not been used in practice since its implementation.

B. Foreign Investment

3. Are there any restrictions on foreign investors incorporating or acquiring the shares of a company in your jurisdiction?

In principle, Slovakia is open to foreign investment and there are no specific restrictions on foreign investors incorporating or acquiring shares in a company. Certain rules apply with respect to the nationality of the company's directors, in some cases requiring a director to have residency in Slovakia.

On March 1, 2023, Act No. 497/2022 on the Screening of Foreign Investments (the "**FDI Regime**") took effect, introducing a complex framework for the review, assessment and clearance of foreign direct investment in Slovakia. Slovakia had a provisional FDI Regime in place between 2020 and 2022, but it was rather limited and the new FDI Regime for the first time introduced a regime similar to other EU countries.

The FDI Regime applies to non-EU investors (both natural as well as legal persons) acquiring targets with their registered office in the Slovak Republic. Targets without legal personality (such as branch offices) also fall within the scope of the FDI Regime. Under certain circumstances, the FDI Regime also applies to certain financing transactions, notably where a security interest is created over the material assets of an eligible target.

The FDI Regime recognises 2 (two) types of filing: (i) mandatory, applicable to targets operating in certain industries or otherwise qualifying as "critical foreign investment" and (ii) voluntary, which is not required before the closing of a transaction, but gives the investor peace of mind that their transaction will not be scrutinised after closing.

The thresholds triggering the FDI Regime are (i) the acquisition of 25% direct or indirect control or (ii) the acquisition of 10% direct or indirect control when the transaction qualifies as a critical foreign investment.

The FDI Regime stipulates a range of sanctions for closing a transaction without clearance and for other violations. Financial sanctions may be levied up to the value of the foreign investment itself (i.e., the purchase price), or up to 2% of the foreign investor's aggregate net turnover generated in the last accounting period (the FDI Regime allows the sanctioning authority to look through the turnovers of the investors' parent and subsidiary entities and pick the highest turnover). The imposition of a fine will not prevent the Ministry of Economy from ordering the reversal of the transaction.

In its judgment in Case C-106/22 (Xella Magyarország Építőanyagipari Kft.), the Court of Justice of the European Union ("**CJEU**") has ruled, among others, that provisions of the Treaty on the Functioning of the European Union ("**TFEU**") on freedom of establishment preclude such foreign investment filtering mechanisms of Member States by means of which a resident company which is a member of a group of companies established in several Member States controlled by non-EU undertaking, may be prohibited from acquiring ownership of another resident company. Because the Slovak FDI screening regime is, too, based on such a premise which the CJEU describes as incompatible with the TFEU, it was expected that the CJEU's judgment would have an effect on Member States', including Slovakia's, ability to effectively screen FDI. However, no substantial changes of the Slovak FDI screening regime were introduced so far.

4. **Are there any foreign exchange restrictions or conditions applicable to companies such as restrictions to foreign currency shareholder loans?**

A company's registered capital must be denominated in euros. However, there are generally no restrictions on foreign currency shareholder loans. Certain restrictions may apply in limited emergency circumstances declared by the government.

5. Are there any specific considerations for employment of foreign employees in companies incorporated in your jurisdiction?

EU citizens can be employed in the Slovak Republic without having to obtain a work or other permit.

The employment of non-EU citizens (third-country nationals) requires specific requirements to be met and the obtaining of work and residence permits. In general, a third-country national may be employed in Slovakia if he or she (i) has an EU "blue card" and (ii) secures temporary residence for employment purposes (which requires confirmation that the job vacancy cannot be filled by an existing resident) or, alternatively, if he or she obtains both a work permit and a temporary residence permit for employment purposes. Before a work permit is issued, the employer must demonstrate that there is no suitable Slovak or EU candidate for the job, and the employer in Slovakia must advertise the position locally.

The executive directors of a foreign company who are citizens of non-OECD countries must obtain a residence permit in Slovakia in order to be appointed as director.

C. Corporate Governance

6. What are the standard management structures (e.g., general assembly, board of directors, etc.) in a corporate entity governed in your jurisdiction and the key liability issues relating to these (e.g., liability of the board members and managers)?

The main management structures in an SRO include the general meeting and the executive directors. In an AS, the management structures include the general meeting, the board of directors and a mandatory supervisory board. In an SRO, supervisory board is optional. In some cases, the creation of a supervisory board in an SRO is mandated by statute (e.g. it is mandatory for licensed consumer credit providers).

In both an AS and SRO, the most common role of the general meeting is to approve the financial statements and pass resolution on the distribution of profits, the appointment and removal of directors and other matters implied by statute or provided by the company's articles of association.

An SRO has no formal board of directors, but the company can have 1 (one) or more executive directors. The executive directors decide on matters of the company's day-to-day operations by simple majority, but no formalities are prescribed by statute for their deliberations. The default position of law is that in case of 2 (two) or more executive directors, each executive director can sign on behalf of the company independently. This can be changed to joint signing, but any other restrictions on a director's agency (e.g., value thresholds or types of agenda) are unenforceable against third parties.

An AS, on the other hand, is required to have a mandatory board of directors with 1 (one) or more members. Similar rules apply as those applicable to directors in an SRO, albeit there are greater formalities required in the deliberations of the board of directors.

As far as director liability is concerned, similar general rules apply to managing directors in an SRO and board members in an AS. In general, directors have the duty to act with professional care, to obtain sufficient information in order to make informed decisions, and to avoid conflicts of interest. The more specific responsibilities of directors include, among other things, the duties to maintain bookkeeping and to draw up financial statements in line with law and the applicable standards. Any directors who breach their duties can be liable for damages to the company, its shareholders and, in some cases, the company's creditors.

There is no law or doctrine making any compliance or regulatory breach automatically attributable to the company's directors. However, some case law and judicial practice shows that directors may be generally liable, including criminally liable, for various operational violations. In some cases, statutes imply that administrative liability is borne by the directors in addition to the administrative liability of the company. This includes the administrative liability of directors for employment law breaches, which can result in directors being fined a percentage of their salary.

In addition, directors have a special set of liabilities in the realm of insolvency. Directors have the duty to monitor the company's solvency and, when the company finds itself insolvent under an applicable insolvency test, they must file a timely petition of bankruptcy. Failure to file for bankruptcy in a timely manner may give rise to liability of the director towards the creditors, which is enforceable in insolvency proceedings. In addition to liability, the statute provides for a penalty of EUR 12,500 for any director who fails to file for insolvency in a timely manner.

There is limited possibility to release a director from liability and, in general, a company cannot release a director from liability upfront. Some risks can be, and typically are, mitigated by Directors & Officers Liability Insurance (D&O).

7. What are the audit requirements in corporate entities?

The requirements for a company to have its financial statements audited applies where at least 2 (two) of the following conditions are met on the date on which the financial statements are drawn up and in the immediately preceding financial year:

(1) the total amount of assets exceeded EUR 4,000,000;

(2) the net turnover exceeded EUR 8,000,000; or

(3) the average number of employees in 1 (one) accounting period exceeded 50, or the entity has securities listed on a regulated market of an EU Member State.

D. Shareholder Rights

8. What are the privileges that can be granted to shareholders? In particular, it is possible to grant voting privileges to shareholders for appointment of board members?

With respect to SROs, shareholders enjoy fairly broad liberty to deviate from the provisions implied by statute. For instance, an SRO's shareholders can attach dividend distribution rights to their ownership interests that are different to those implied by their share of the company's registered capital. The articles of association can prevent shareholders from transferring their ownership interest outside the existing shareholding without the general meeting's consent or from transferring their ownership interest at all. Right of first refusal can also be attached to an ownership interest. However, it is not possible to exclude certain shareholder rights that are attached to an ownership interest, such as the right to vote on the appointment of directors. Such restrictions are typically agreed contractually in an SHA.

With respect to Ass, the articles of association may specify that a specific type of share will be issued with priority rights regarding dividends (priority shares). The total face value of these priority shares cannot exceed half of the company's total registered capital. The articles of association may also stipulate that priority shares will be issued without the right to vote at general meetings. Nevertheless, the owners of these shares retain all other shareholder rights. In an AS, therefore, it is also not possible to grant voting privileges to specific shareholders when it comes to appointing board members.

9. Are there any specific statutory rights available to minority shareholders available in your jurisdiction?

Slovak law specifically recognises minority shareholder rights in an AS. A shareholder must not exercise its rights to the detriment of the rights and legitimate interests of other shareholders, and the company must treat all shareholders equally under the same conditions.

In the context of an AS, shareholders who hold shares with an aggregate face value of least 5% of the company's registered capital are awarded certain protections, including the right to (a) request the convening of an extraordinary general meeting for the purpose of discussing the matters proposed by them, (b) require that certain matters be included in the agenda of the general meeting, (c) require the supervisory board to review the actions of the board of directors, (d) require the company to recoup from shareholders benefits which the company had provided to them in violation of the Commercial Code, or (e) demand that the company's supervisory board pursue the company's directors for liability.

With respect to an SRO, while there is no formal framework for the protection of minority shareholders, each shareholder has the right to file a petition with the court to invalidate any resolution of the company's general meeting that is contrary to the law or the company's articles.

10. Is it possible to impose restrictions on share transfers under the corporate documents (e.g., articles of association or its equivalent in your jurisdiction) of a company incorporated in your jurisdiction?

With respect to an SRO, ownership interests are generally transferable if the company's articles of association allow it. In such an event, shareholders are free to agree in the company's articles of association that the transfer of an ownership interest may or may not be subject to the prior consent of the general meeting. Statute dictates that an ownership interest cannot be transferred where the company is being wound-up or is subject to insolvency or restructuring proceedings or if civil enforcement proceedings are pending in Slovakia.

With respect to an AS, the articles of association may limit, but not exclude, the transferability of shares. If the articles of association make the transferability of registered shares conditional on the company's consent, they must also set out the reasons for which the company may refuse its consent and the period in which the company must decide whether to consent to the transfer and to notify the shareholder of such decision. The decision on whether to consent to a transfer of shares is made by the board of directors, but this authority can be vested with another company's body in the company's by-laws. The transferability of listed shares cannot be restricted.

11. Are there any specific concerns or other considerations regarding the composition, technical bankruptcy and other insolvency cases in your jurisdiction?

Insolvency proceedings in Slovakia are primarily regulated by Act No. 7/2005 Coll. on bankruptcy and restructuring, as amended ("**Insolvency Code**"). The Insolvency Code sets out procedures for various forms of insolvency, including bankruptcy and restructuring proceedings.

The Insolvency Code provides for a rather broad directors' liability, which we discuss under Question 6. A framework is also in place whereby a shareholder can be found liable for the insolvency of a subsidiary, which in specific circumstances allows the piercing of corporate veil, as we discuss under Question 2.

In addition, Slovak law is quite strict when it comes to insolvency claims of affiliated entities. Generally speaking, a receivable which at any point in time since its origination belonged to an entity directly or indirectly linked with the company through a stake of 5% or more in equity or voting rights (thus including direct and indirect parent entities, subsidiaries and affiliates) is considered to be subordinated, and will automatically rank junior to all other creditors. Any security interest over the company's assets securing such a subordinated receivable will be set aside in the insolvency or restructuring proceedings.

Furthermore, from the moment a company becomes insolvent (i.e., when the directors learn or ought to have learned that the company falls foul of an applicable insolvency test), the directors become liable to satisfy all of the company's liabilities as if the company were already in insolvency proceedings (i.e., *pari passu* among equally ranking creditors). Breach of this duty may result in civil and criminal liability on the part of directors.

E. Acquisition

12. Which methods are commonly used to acquire a company, e.g., share transfer, asset transfer, etc.?

The most typical methods of acquiring control over a company or its substantial assets are (i) acquisition of its shares or (ii) transfer of an enterprise (or a part thereof) as a going concern. Other traditional methods such as mergers are also available, although they are less commonly used.

The Merger Act took effect on 1 March 2023 and, in addition to previously existing corporate transformations such as merger or demerger, it introduced a new forms of corporate transformation, the domestic and cross-border corporate spin-off. Unlike transfer of enterprise, corporate spin-off allows the cherry-picking of assets and liabilities, while preserving a partial legal succession on the part of the acquirer. This option opened route to previously unavailable corporate reorganizations. Among other things, the new corporate spin-off framework allows for the transfer of state subsidies, an option which was previously otherwise not available.

13. What are the advantages and disadvantages of a share purchase as opposed to other methods?

From the perspective of Slovak law, the main advantages of a share transfer over an asset transfer (going concern) are as follows:

- Less complexity. A share transfer is more straightforward and requires less documentation and post-closing actions. The acquirer acquires shares in the entire company with all its assets and liabilities. In the context of an asset transfer, additional documents (acts recording the transfer of the company's assets and employees) and formalities with various registries (e.g., land registry), are required to complete the transfer of title;
- No operational impediment. Acquiring shares in a company typically requires no additional steps for the company to continue operating on a day-to-day basis. A transfer of assets, on the other hand, will not automatically transfer

public law authorisations, licences, registrations and other formalities which are required to operate a business from a legal and practical perspective. The acquirer of assets as a going concern will have to set up the transferred business with the required business licenses, operational permits and licences, VAT and EORI registrations, and various other permits and licences that will allow the business to operate. By a similar token, any transfer of assets as a going concern will require notification to be given to the company's business partners, who in turn can petition the court to carve them out of the transfer;

- Employee consultation is not required. The transfer of shares in a company will not generally trigger the provisions of the Labour Code (Act No. 311/2001 Coll.) concerning the transfer of an undertaking and generally will not generally trigger a seller's or buyer's obligation to consult employees. On the other hand, the transfer of a business as a going concern does trigger such transfer of undertaking rules, resulting in added complexity and extended timelines and potentially giving the employees the right to terminate their employment with additional severance pay.

For the above reasons, an asset transfer as a going concern remains the less frequent option of acquiring a business. However, it does retain some advantage over a share acquisition. For instance, while a transfer of assets as a going concern does not allow for the transfer of public law licences, permits and authorizations, it also does not allow for the transfer of public law liabilities. Therefore, where diligence reveals there to be substantial public law liabilities or irregularities, such as in tax matters, structuring the transaction as a transfer of assets as a going concern may be the preferred option. The newly available framework of corporate spin-off seems to be a good alternative to transfer of assets as a going concern because, in particular, it supports cherry-picking of assets and liabilities. The main advantage of transfer of assets as a going concern remains the relatively low transaction cost and shorter timeframe for implementation compared to corporate spin-off.

14. What are the approvals and consents typically required (e.g., corporate, regulatory, sector based and third-party approvals) for private acquisitions in your jurisdiction?

In terms of regulatory approvals, the most typical approvals required are merger control clearance issued by the Slovak Competition Authority or the European Commission, and FDI clearance issued by the Ministry of Economy. In addition, various sectoral regulations apply with respect to acquiring stake in regulated entities, such as in financial services where, depending on the target, either pre-closing clearance by or post-closing notification to the National Bank of Slovakia may be required.

In terms of corporate approvals, the consent of the target's general meeting is typically required for a shareholder to sell an interest in the company.

In addition, additional complexities may arise from any change of control provisions included in the target's critical contracts, as well as from any potential external financing or public subsidies provided to the target, in which the consent of the respective lenders and/or security agent, and the relevant public authority, as the case may be, will typically be required.

15. What are the regulatory competition law requirements applicable to private acquisitions in your jurisdiction?

In addition to the EU Merger Regulation – which lays down the thresholds and rules applicable to the control by the European Commission of certain transactions – the Slovak merger control rules laid down in Act No. 187/2021 Coll. on the protection of competition, as amended, also apply. A transaction is subject to mandatory review by the Slovak Competition Authority if the following criteria are met:

a) he combined aggregate turnover of the undertakings concerned is at least EUR 46,000,000 for the accounting period preceding the concentration in the Slovak Republic and at least 2 (two) of the undertakings concerned generated a turnover of at least EUR 14,000,000 each in the Slovak Republic for the accounting period preceding the concentration, or

b) for the accounting period preceding the concentration:

1. in the case of a merger or an amalgamation of 2 (two) or more independent undertakings, the aggregate turnover generated in the Slovak Republic by at least 1 (one) of the undertakings concerned is at least EUR 14,000,000 and, at the same time, the worldwide aggregate turnover generated by another undertaking concerned is at least EUR 46,000,000, or

2. in the case of an acquisition of direct or indirect control over an undertaking or undertakings or parts thereof, the aggregate turnover generated in the Slovak Republic by at least 1 (one) of the undertakings over which, or over part of which, the control will be acquired is at least EUR 14,000,000 and, at the same time, the worldwide aggregate turnover generated by another undertaking concerned is at least EUR 46,000,000.

In addition, pre-transaction and pre-closing exchanges of information should observe all competition law constraints. In some specific industries, such as banking, the exchange of information through due diligence may also require prior regulatory approval.

16. Are there any specific rules applicable for acquisition of public companies in your jurisdiction?

Where, as a result of a share acquisition by a public company listed on a stock exchange in Slovakia, the acquirer of those shares reaches or falls below the shareholding thresholds of 5%, 10%, 15%, 20%, 25%, 30%, 50% or 70%, the acquirer must notify the company (issuer) accordingly.

In addition, mandatory takeover bids may apply if the acquiror acquires a qualified holding in the listed company.

17. Is there a requirement to disclose a deal, for instance to regulatory authorities? Is it possible to keep a deal confidential?

There is no general legal requirement to disclose a deal. However, there are various regulatory avenues resulting in disclosure to regulatory authorities. Where merger control or mandatory FDI filing is required, the transaction will need to be disclosed to the competent authority after signing and before closing. Sectoral regulations may require disclosure and sometimes also approval by a competent authority, notably in the field of financial institutions such as banks, insurance companies, consumer credit providers, payment services providers or financial brokers.

In addition, the shareholder structure of all SROs is registered with the Commercial Registry and, therefore, a direct acquisition of an SRO will find disclosure in a publicly accessible online database. The Ultimate Beneficial Ownership (“**UBO**”) of all companies is also registered in various databases and is to some degree publicly available, Therefore, where the UBO changes as a result of a transaction, publicity often follows. If the target does business with the government or otherwise receives public funds or operates in some specific regulated industries, its UBOs must be registered and maintained with a special online Public Sector Partner Registry, which creates an additional avenue for publicity.

18. Can sellers be restricted from shopping around during a negotiation process? Is it possible to include break fee or other penalty clauses in acquisition documents to procure deal exclusivity?

Exclusivity can be granted and frequently is granted by the seller for a limited period of time. It is possible to secure exclusivity through a penalty or breakage fee, which would typically be agreed in a term sheet or a side letter. If the breakage fee is structured as a penalty, the court has the discretionary right to reduce such contractual penalty under Slovak law.

19. What are the conditions precedent in a typical acquisition document? Is it common to have conditions to closing such as no material adverse change?

Typical conditions precedent include (i) the conditions precedent usually prompted by due diligence outcomes and (ii) the conditions precedent typically found in most transactions.

In our experience, the most typical transaction-specific conditions precedent include:

- Contractual partners' consent as required under a material agreement;
- Resolving material due diligence findings, to the extent they can be resolved (e.g. a chaining issue);
- To the extent that due diligence reveals external financing, any steps required by the Finance Documents, such as the consent of Lenders/Security Agent, and/or entering into Security Confirmation Agreement.

However, we are increasingly seeing that the transaction-specific risks revealed through due diligence are being addressed through Warranty and Indemnity Insurance ("**W&I**").

With respect to conditions precedent more generally, in our experience the conditions precedent in most transactions typically include at least the following:

- Obtaining the required corporate consents;
- Obtaining the required regulatory consents (e.g., merger control, FDI and/or any other sectoral regulatory consent);
- Completion of due diligence to buyer's reasonable satisfaction;
- Representations and warranties being true and complete at signing and at closing;
- Resignation of directors on closing, and release of the company.

In our experience, a material adverse change clause might typically be included where the transaction anticipates appreciable time between signing and closing. However, we are not frequently seeing MAC clauses in transactions.

20. What are the typical warranties and limitations in acquisition documents? Is it common to obtain warranty insurance?

In terms of warranties, we are typically seeing both seller and target warranties, although the typical set of seller warranties (e.g., capacity, corporate approvals, etc.)

would likely be rather difficult to enforce under Slovak law in the event of a breach.

In terms of target warranties, these most commonly include:

- Good corporate standing;
- Valid title to shares free of encumbrance;
- Valid title to material assets free of encumbrance;
- Validity and no breach of material contracts;
- Validity and material compliance of licences and permits;
- Employment matters and GDPR;
- Intellectual property rights (notably no infringement);
- Litigation;
- Tax issues.

Typical limitations include:

- Data room disclosures (disclosures solely by disclosure letter are less frequent);
- *De minimis* thresholds (tipping baskets are becoming typical);
- Time limitations to bringing claims (typically, the statutory limitations period for tax warranties, and limitation periods of between 12 and 36 months for all other warranties);
- Liability caps (typically 10-15% of the purchase price, except for certain liabilities such as tax);
- No double recovery clauses.

We are seeing W&I insurance with an increasing frequency, although still in fewer than 20% of transactions. It is, however, a growing trend and brokers and underwriters are active on the market to raise awareness of their products.

21. Is there a requirement to set a minimum pricing for shares of a target company in an acquisition?

There is no requirement for minimum pricing of shares in the context of private transactions. In an intra-group context, the applicable tax rules may require a transfer pricing assessment.

22. What types of acquisition financing are available for potential buyers in your jurisdiction? Can a company provide financial assistance to a potential buyer of shares in the target company?

In our experience, we are most frequently seeing cash and somewhat less frequently equity consideration. In case of leveraged acquisitions, we are most typically seeing traditional syndicated financing. Earn-outs are frequently seen on transactions.

Financial assistance is unrestricted in SROs. As at the date of this publication, financial assistance is prohibited with respect to AS, and that includes providing security over a company's shares. There is currently no whitewash procedure, but new whitewash rules have been adopted and will enter into effect on March 1, 2024.

23. What are the formalities and procedures for share transfers and how is a share transfer perfected?

In the context of an SRO, in addition to identifying the parties and the ownership interest(s) being transferred, any written ownership interest transfer agreement must, if the acquirer is not an existing shareholder, adhere to the company's articles of association and must bear the notarised (and legalised or apostilled, if applicable) signatures of both the transferor and the acquirer. Appropriate corporate consents must be also obtained (please refer to Question 10 for more detail). The ownership interest transfer agreement may be governed by foreign law and/or be drawn up in a language other than Slovak. However, following the transfer of the ownership interest, the new shareholder must be registered with the Slovak Commercial Registry. For that reason, it is common practice to execute, on closing, a short-form multilingual (in Slovak and possibly another language) ownership interest transfer agreement which will serve as the basis for the local registration. Because the Slovak-law requirements on the notarisation of signatures applies, for the sake of enforceability the prevailing practice is for both the master SPA and the short form SPA to carry notarised signatures.

In addition. for the transfer of ownership interest to be enforceable against the company, the company must acknowledge receipt of the ownership interest transfer agreement. Confirmation to this effect is typically included as a schedule to the agreement.

With respect to transfers of shares in an AS, the formal requirements depend on the type of shares. In addition to other formalities, any share certificate transfer requires endorsement and an update of the shareholders' register maintained by the Central Depository of Securities. For transfers of book-entry shares, the shares must be transferred between the transferor and the transferee securities accounts kept by the Central Depository of Securities.

24. Are there any incentives (such as tax exemptions) available for acquisitions in your jurisdiction?

Transaction as such are not subject to tax or stamp duty. However, the impact on corporate income tax will depend on various factors and should be assessed on a case-by-case basis. Participation exemption applies under certain circumstances.

F. Enforceability

25. Can acquisition documents be executed in a foreign language?

Acquisition documents can be executed in a foreign language. However, as discussed under Question 23 local formalities will require the translation of certain documents into Slovak. For that reason, it is recommended to have at least (i) the shareholder resolution and (ii) the short-form SPA in a bilingual format, with the Slovak version governing. Depending on other closing actions, additional documents in Slovak may be required (e.g. director's resignation letter and/or the new director's appointment documents). In the absence of an original Slovak version, translations by a sworn translator registered to practice in Slovakia will be required for the post-closing registrations.

As far as enforcement is concerned, the same as above substantially applies. Where an action is pursued before a Slovak court and the original documents were not drawn up in Slovak, sworn translations will be required.

26. Can acquisition documents be governed by a foreign law?

Acquisition documents can be governed by a foreign law but need to comply with the minimum requirements of Slovak law. Please refer to Question 23 for more details.

27. Are arbitration clauses legally permissible or generally included in acquisition documents?

In a transactional context, arbitration clauses are permissible, and arbitration is often used as a dispute resolution mechanism. In the context of Slovak law governed transaction documents, it is recommended to specifically consider the dispute resolution mechanism in each case. Based on public sources, there have been only limited instances of disputes arising from international M&A transactions being brought before the Slovak courts, which in turn means that Slovak judges do not have substantial experience in hearing disputes arising from international M&A transactions. From those limited instances, the Slovak courts would seem to favour a somewhat formalistic approach to interpreting frameworks which are standard in international transaction practice (e.g. representations and warranties, disclosures, limitation of liability, etc.). Therefore, an arbitration clause is often considered with a view to mitigating the risk of an unforeseeable court decision.

28. Are there any specific formalities for the execution of acquisition documents? Is it possible to remotely/digitally sign documents?

For transfers of ownership interests in an SRO, the signatures of both the transferor and the transferee appearing on the ownership interest transfer agreement must be notarised. Depending on the jurisdiction of the notary and the governing law of the contract, this may require a wet-ink signature, or a digital signature may suffice. A Slovak-law governed document or a document notarised by a Slovak notary will require a wet-ink signature.

As far as other documents are concerned (e.g., corporate consents), a qualified electronic signature (QES) is sufficient.

G. Trends and Projections

29. What are the main current trends in M&A in your jurisdiction?

In terms of trendsetting legal developments and their impact on the transaction market, 2 (two) major changes in the past year have had impact on making transactions in Slovakia: (i) the introduction of the new FDI Regime and (ii) the Merger Act, which will enter into effect on March 1, 2024. Some commentators suggest that the Merger Act will act as a catalyst for the transactional market and change the way transactions are done.

Also, in 2022, minor changes to the Commercial Code had important impacts on deal-making. Before July 17, 2022, the transfer of a majority ownership interest in an SRO only took effect upon registration with the Commercial Registry, which created additional transactional complexities, notably with respect to purchase price payment and escrow. From July 17, 2022, the transfer of an ownership interest takes effect upon the signing of the ownership interest transfer agreement (unless the parties agree otherwise), which has removed the complexity and facilitated the closing of transactions.

In addition, as discussed under Question 20, we are experiencing an increasing volume of W&I insurance in transactions.

30. Are any significant development or change expected in the near future in relation to M&A in your jurisdiction?

Please refer to Question 29 above.

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A. General

1. What is the main legal framework applicable to companies in your jurisdiction?

The Companies Act represents the main legal framework for companies in Slovenia. Other relevant regulations cover different aspects of M&A. Takeovers of public companies are regulated by the Takeovers Act, regulation of the capital markets is provided in the Markets in Financial Instruments Act and Ljubljana Stock Exchange Rules. The Slovenian M&A framework is also formed by the Prevention of Restriction of Competition Act, Investment Promotion Act, the Employment Relationship Act, the Code of Obligations, the Book-Entry Securities Act, the Law of Property Code, Register of Companies Act, Decree on the registration of companies and other legal entities in the register of companies, etc.

2. What are the most common types of corporate entities (e.g., joint stock companies, limited liability companies, etc.) used in your jurisdiction? What are the main differences between them (including but not limited to with regard to the shareholders' liability)?

The most common types of corporate entities in Slovenia are limited liability companies and joint stock companies. The limited liability company is more common of the 2 (two) and is made up of capital contributions by the shareholders which are divided into business shares in proportion to the value of their capital contributions. A joint stock company is a corporation in which the share capital is divided into shares (stocks). Both types of corporate entities (i) are their own legal entities (ii) obtain this status upon court registration and (iii) are liable with all of their assets, whereas the shareholders have limited liability for the company's obligations. Only in certain cases provided in the Companies Act are the shareholders liable for the company's obligations (lifting the corporate veil). The Companies Act also provides for a minimum share capital amount, which is different for limited liability companies (EUR 7,500) and joint stock companies (EUR 25,000). The 2 (two) types of corporate entities are different also in operation and management structure.

B. Foreign Investment

3. Are there any restrictions on foreign investors incorporating or acquiring the shares of a company in your jurisdiction?

There are no general restrictions on foreign investors incorporating or acquiring the shares of a Slovenian company, however, certain specific restrictions may apply, such as:

- restrictions under the Prevention of Money Laundering and Terrorist Financing Act,
- restrictions in the case of acquisition of real estate in Slovenia by non-EU companies (asset deals),
- sector-specific regulations (such as insurance, banking, media and fund management) may impose additional conditions, such as the need to obtain authorisations from the competent authority.

In addition, certain restrictions have been imposed on companies and individuals domiciled in the Russian Federation (EU sanctions regime against the Russian Federation).

In any case, transactions (any investment by which a foreign investor, meaning a non-EU investor, acquires at least 10% of the share capital or voting rights in a Slovenian company) concerning certain strategic industrial sectors must be notified to the Ministry of the Economy, Tourism and Sport. After the notification, a notification committee established by the said Ministry issues an opinion in a preliminary procedure and can also initiate a review procedure in relation to the concrete notification.

4. Are there any foreign exchange restrictions or conditions applicable to companies such as restrictions to foreign currency shareholder loans?

No.

5. Are there any specific considerations for employment of foreign employees in companies incorporated in your jurisdiction?

Foreign employees employed in a Slovenian company are subject to the same legislation as the Slovenian employees. However, foreign employees, meaning non-EU/EEA citizens, must first obtain a single residence and work permit to legally work and stay in Slovenia.

C. Corporate Governance

6. What are the standard management structures (e.g., general assembly, board of directors, etc.) in a corporate entity governed in your jurisdiction and the key liability issues relating to these (e.g., liability of the board members and managers)?

Joint stock company

- A joint stock company may choose a two-tier management system by appointing a management board and a supervisory board or a one-tier management system by appointing a board of directors. Both tier management systems also have a general meeting of shareholders.
- The composition and the number of members of the management or

supervisory bodies is laid down by the Companies Act and the articles of association (statute). A management or supervisory body are composed of at least 3 (three) members, unless otherwise provided. If a management or supervisory body has several members, 1 (one) of them is appointed chair.

- The management board directs the business operations of the company independently and at its own liability, it also represents the company and acts on its behalf. If the management board has more than 1 (one) member, the members represent the company jointly and adopt decisions unanimously unless otherwise provided in the articles of association.
- The supervisory board oversees the management of a company's affairs.
- The board of directors, which is only in one-tier management systems, performs the functions of both the management board and the supervisory board. It manages a company, supervises its operations, represents the company and acts on its behalf.
- In performing their duties on behalf of the company, members of the management or supervisory body must act with the diligence of a conscientious and honest businessperson and safeguard the trade secrets of the company. Members of a management or supervisory body are not obliged to compensate the company for damage if the act by which damage was caused to the company is based on a lawful general meeting resolution. The liability for damages of the members of the management is not excluded even though the supervisory board or the board of directors approved the act. Members of a management or supervisory body are jointly and severally liable to the company for damage arising from the breach of their duties unless they can demonstrate that they fulfilled their duties honestly and conscientiously.

Limited liability company

- The standard management structure for a limited liability company with several shareholders consists of the director(s) and the general meeting of shareholders.
- In a limited liability company, there are 1 (one) or more directors who manage the company's affairs and represent it on their own responsibility.
- Shareholders adopt resolutions at a general meeting.
- A limited liability company may also appoint a supervisory board who oversees the management of a company's affairs.
- Regarding the liability of the directors, *mutatis mutandis* the same applies as with respect to joint stock company (last item above).

7. What are the audit requirements in corporate entities?

All business entities registered in the Slovenian Business Register must submit an annual report to the Agency of the Republic of Slovenia for Public Legal Records and Related Services (AJPES). However, the size of the company is important in terms of the scope of the annual report.

Micro and small companies (based on criteria defined in the Companies Act) are required to submit data only once for the following purposes: for statistics, publication, and tax purposes. Annual accounts for micro and small companies should include a balance sheet, statement of profit and loss and notes to the financial statements. Medium-sized and large companies must submit the data for statistical purposes and publication purposes separately and their annual account should include balance sheets, profit and loss statement, statement of cash flows, statement of capital movements, statements of other comprehensive income, appendices with explanations to the statement, and the business report.

A company with its registered office in the Republic of Slovenia which is the parent company of 1 (one) or more companies with their registered offices in the Republic of Slovenia or outside the Republic of Slovenia (subsidiaries) must also prepare a consolidated annual report if the parent company or 1 (one) of its subsidiaries is organized as a limited liability company, as a dual-control company or as another similar legal form under the law of the country of the company's registered office. The annual reports of large and medium-sized capital companies and dual capital companies shall be audited by an auditor in the manner and under the conditions laid down by the law governing auditing.

The recent amendment to the Companies Act also requires certain types of companies to disclose information on environmental, social and governance (ESG) factors and to prepare a sustainability report. In addition, certain companies are required to publicly disclose income tax information.

A listed company must publish and file its annual report with the Securities Market Agency and the Ljubljana Stock Exchange within 4 (four) months following the end of the financial year. It shall also publish and file with the same authorities its half-year report for the first 6 (six) months of its financial year as soon as possible, but no later than within 2 (two) months after the end of this period.

D. Shareholder Rights

8. What are the privileges that can be granted to shareholders? In particular, is it possible to grant voting privileges to shareholders for appointment of board members?

Shareholders have in general the right to receive dividends (if distributed), the right to be informed, the right to voting rights and the right of disposal of their shares. The voting rights of shareholders are exercised in accordance with the proportion of share capital that their shares represent. Depending on whether the joint stock companies are one or two-tier management system, there is difference in appointment of board members. In two-tier joint stock companies, the supervisory board appoints the members of the management board. In one-tier joint stock companies, the shareholders appoint the board of directors. Similarly, this applies to a limited liability company. If the limited liability company has a supervisory board, the supervisory board appoints the director(s); if the company does not have a supervisory board, the shareholders appoint the director(s).

9. Are there any specific statutory rights available to minority shareholders available in your jurisdiction?

Under Slovenian jurisdiction, every shareholder in a joint stock company and a limited liability company has certain rights, such as the right to information, the right to vote, the right to equal treatment of all shareholders and similar. Minority shareholder whose shareholding represent at least one tenth of the share capital, rights include also rights relating to:

- convening of the general meeting, the agenda and the conduct of the meeting;
- judicial installation or removal of the company's corporate bodies;

- preservation and enforcement of the company's claims;
- request for special audits or investigations; and
- winding-up of the company.

10. Is it possible to impose restrictions on share transfers under the corporate documents (e.g., articles of association or its equivalent in your jurisdiction) of a company incorporated in your jurisdiction?

Pursuant to the Companies Act, in case of share transfer in a limited liability company, shareholders have pre-emptive rights, unless the articles of association provide otherwise. In the articles of association, it is possible to exclude pre-emptive rights or impose further restrictions such as consent of a majority or all the shareholders etc. In joint stock companies, shares are freely transferable, unless otherwise provided by law (Takeovers Act), however, it is also possible to impose restrictions on share transfer (pre-emption right or approval of the management board for such transfer) in the articles of association (statue).

11. Are there any specific concerns or other considerations regarding the composition, technical bankruptcy and other insolvency cases in your jurisdiction?

The Insolvency Act sets out obligations of the management upon insolvency or risk of insolvency. The management and other bodies of a company should keep under constant review developments that could jeopardize the continued existence of the company. Upon the insolvency of a company, the management is required to initiate insolvency proceedings within 1 (one) month of the occurred insolvency.

E. Acquisition

12. Which methods are commonly used to acquire a company, e.g., share transfer, asset transfer, etc.?

The most common method is a share deal.

13. What are the advantages and disadvantages of a share purchase as opposed to other methods?

The main advantage of a share purchase is that the entire target entity is purchased, with all its rights and obligations. On the other hand, an asset purchase needs to be planned carefully, so that all relevant rights and obligations are included in the sale. In an asset acquisition, in some cases a purchaser might be held jointly and severally liable for debts relating to the assets, which means that the purchaser of the assets may be held liable, in addition to the seller, for all liabilities relating to the assets, including those that have already arisen before the transaction. If an asset deal includes real estate, there may be specific requirements or limitations for non-EU companies. Asset deals also usually tend to take a longer time to be concluded than share deals as each right and each contract must be assigned (and approval of the other contracting party must be obtained) as it does not automatically transfer, unlike a share deal, where the entire shareholding and all its rights are transferred.

14. What are the approvals and consents typically required (e.g., corporate, regulatory, sector based and third-party approvals) for private acquisitions in your jurisdiction?

For private acquisitions, the Companies Act provides for a default statutory pre-emptive right of the existing shareholders in a limited liability company. However, additional set of rights, consents and approvals might be provided in the articles of association. Furthermore, depending on the business activity of the company, different regulatory, foreign direct investment ("**FDI**") and merger approvals might be required. Furthermore sector-specific regulations (e.g., insurance, banking, media and fund management) may impose additional conditions, such as the need to obtain authorisations from the competent authority.

15. What are the regulatory competition law requirements applicable to private acquisitions in your jurisdiction?

The obligation to notify the concentration to the Slovenian Competition Protection Agency occurs when two conditions - legal and economic - are met at the same time.

- The legal condition is met if more permanent change of control over the company is acquired, which is the result of:
  - the merger of 2 (two) or more previously independent undertakings or parts of undertakings, or
  - the acquisition of direct or indirect control over the whole or parts of one or more undertakings by 1 (one) or more natural persons who already control at least 1 (one) undertaking, or by 1 (one) or more undertakings who acquire control through the purchase of securities, assets, by contract or otherwise, or
  - establishment of a joint venture, which performs all the functions of an independent company with a longer duration, by 2 (two) or more independent companies (i.e., full-function joint venture).
- The economic condition is met if:
  - the total annual turnover of participants in the concentration together with other undertakings in the group in the previous financial year on the market of the Republic of Slovenia exceeded EUR 35,000,000, and at the same time
  - the annual turnover of the acquired undertaking together with other undertakings in the group exceeded EUR 1,000,000 in the previous financial year on the market of the Republic of Slovenia.

The Agency may also assess concentrations which do not meet the thresholds referred to above if the undertakings concerned, together with the other undertakings in the group, have a market share in the relevant market in the Republic of Slovenia of more than 60%.

16. Are there any specific rules applicable for acquisition of public companies in your jurisdiction?

Yes. The Takeovers Act applies:

- if the offeree company is a listed company and its shares with voting rights are admitted to trading on a regulated market or
- if the offeree company is a joint stock company whose shares are not admitted to trading on a regulated market if such company has:
  - at least 250 shareholders on the last day prior to the year relevant in the assessment of the application of the Takeovers Act, or
  - more than four million euros of total equity as shown in its most recent annual report published in compliance with the Takeovers Act governing companies.

The Takeovers Act lays down the terms, conditions and procedures relating to takeover bids. A takeover is a situation in which the offeror alone or together with persons acting in concert with him or her achieves the takeover threshold. The takeover threshold in the offeree company is one third (1/3) of the voting rights in such company.

17. Is there a requirement to disclose a deal, for instance to regulatory authorities? Is it possible to keep a deal confidential?

As a rule, disclosure of transaction documents in full is not required. A requirement to disclose a deal arises in certain cases, for example when the acquisition triggers the obligation to notify a FDI, or to obtain merger clearance. Furthermore, in relation to joint stock companies to which the Takeovers Act applies they are required to follow the provisions on the publicity of offers and the share purchase process itself.

18. Can sellers be restricted from shopping around during a negotiation process? Is it possible to include break fee or other penalty clauses in acquisition documents to procure deal exclusivity?

Generally, negotiations between the parties must proceed in good faith. Negotiations prior to the conclusion of a contract are not binding and may be terminated by either of the parties whenever the party so desires. However, a party that has negotiated without the intent to conclude a contract is liable for any damage incurred by the other party. Furthermore, a party that negotiated with the intent to conclude a contract but abandons the intent without justifiable grounds, thus inflicting damage on the other party, is also liable for such damage.

With an exclusivity agreement between the parties, it is possible to contractually restrict the seller from shopping around during the negotiation process. The parties can agree to certain penalties or remedies in case of a breach of the exclusivity agreement.

19. What are the conditions precedent in a typical acquisition document? Is it common to have conditions to closing such as no material adverse change?

In practice it is very common to include conditions precedent in acquisition documents and there are no specific restrictions. Often conditions precedent includes obtaining consents and approvals from governmental authorities (e.g., obtaining merger or FDI clearance) or third parties (e.g., obtaining the consents of the creditor in cases where its loan agreements include change of control provisions). In some transactions, the sellers may agree to commit to specific agreements prior to the sale of the shares, with the conclusion of these agreements being set out as a condition precedent to closing. It is also common to include "no material adverse change" clause.

20. What are the typical warranties and limitations in acquisition documents? Is it common to obtain warranty insurance?

Warranties and indemnities are usually drafted by the buyer based on due diligence, or the information received. Warranties cover different areas, such as corporate, finance, tax, labour, material agreements, litigation, data protection, regulatory and similar. Indemnities depend on the specific due diligence findings. The seller's liability can be limited in terms of monetary value if they acted without gross negligence and intent. It is also common to agree on the de minimis and basket provisions. Over the last few years, warranty insurance is common in cases of transactions of higher value.

21. Is there a requirement to set a minimum pricing for shares of a target company in an acquisition?

Yes, but only for joint stock companies to which the Takeovers Act applies.

A takeover offer must be made in relation to all securities in the target and the offer price (i) must be the same for all the securities in the target company/all the securities in the target company falling into a certain class, and (ii) may not be lower than the highest price paid for the same securities by the offeror in the period of 12 months prior to the announcement of such bid. Furthermore, if within 1 (one) year of the expiry of the time allowed for the acceptance of a successful takeover bid the offeror purchases securities at a price higher than the offer price, the offeror is obliged to pay the accepting party the difference in price, in cash, within 8 (eight) days following such acquisition. Similarly, if a takeover is followed by a squeeze-out within 3 (three) months, the cash compensation to be paid to the minority shareholders must be at least equal to the price per share paid to the shareholders during the takeover bid.

22. What types of acquisition financing are available for potential buyers in your jurisdiction? Can a company provide financial assistance to a potential buyer of shares in the target company?

Acquisition financing in Slovenia is usually provided by banks or other financial institutions.

The Companies Act provides 2 (two) different sets of rules regarding acquisition financing and legal transactions between a company and its shareholder. The provisions governing limited liability companies are less restrictive compared to the provisions related to joint stock companies. Financial assistance of a joint stock company for the acquisition of its own shares is prohibited, except for exemptions provided in the Companies Act. It is also prohibited to receive financial assistance through fictitious transactions between the joint stock company and its shareholders. In the case of limited liability companies, it is a well-established rule that it is not permissible to pay out to the members those assets which are necessary to preserve the share capital and the tied-up reserves. The legal requirement to preserve capital applies not only to share capital but also to (i) capital reserves and (ii) legal reserves, i.e., to all the company's tied-up capital.

23. What are the formalities and procedures for share transfers and how is a share transfer perfected?

The share transfer agreement by which a business share in a limited liability company is validly completed and perfected must be concluded in the form of a notarial deed, followed by a registration of the new shareholder in the court register for the shareholders to fully exercise their rights. Additionally, if there are more shareholders in the company, the other shareholders have according to the law a pre-emptive right, meaning that the selling shareholder must notify the other shareholders about the intended sale and offer the business shares to the other shareholders first. In the articles of association, a limited liability company can also impose consent of a majority or all the shareholders and the conditions for the consent.

Acquiring shares in a joint-stock company and gaining legal ownership of those shares is subject to the transfer of shares in the central registry of dematerialised securities. Ownership of the shares is conferred upon the buyer after the registration of the transfer in this registry. Additionally, acquiring shares in joint stock company might be regulated by the Takeovers Act or not.

24. Are there any incentives (such as tax exemptions) available for acquisitions in your jurisdiction?

In Slovenia, there is no stamp duty or share transfer tax levied upon acquiring shares. There are several other tax beneficial treatments available for investor in accordance with the Slovenian tax legislation framework.

- Slovenian tax law provides tax neutrality for reorganizations such as mergers, divisions, and exchanges of shares. This means that no capital gains tax is charged provided the transaction meets specific criteria and is also notified to the tax authorities.
- Acquiring a company with carried-forward tax losses can be beneficial. The losses may, to a certain extent, offset the future profits of the merged entity. However, there are restrictions on the use of such losses, especially if there is a significant change in the business activity or ownership structure of the loss-making company.
- Interest expenses related to the acquisition financing can be deductible, but they are subject to certain limitations. Anti-abuse rules and interest barrier rules (safe-harbour rule, arm's length requirements and thin capitalization rule) might apply, limiting the amount of interest that can be deducted in a given year.
- Participation exemption: dividends and comparable income received by a Slovenian taxpayer are typically 95% tax-exempt, provided that the distributing entity was subject to Slovenian corporate income tax or a similar profits tax. However, exceptions apply if the dividends come from the distributor's untaxed reserves or if the distributor is tax resident in a country that:
    1. is not a member of the European Union,
    2. has a corporate tax rate below 12.5%, and
    3. appears on a list published by the Ministry of Finance.
- Interest, royalties, and certain service fees paid to foreign entities are generally subject to withholding tax. However, exemptions or reduced rates might apply, especially if the recipient resides in a country that has a valid Double Tax Treaty with Slovenia.
- Value Added Tax ("**VAT**"): typically, the sale of shares is exempt from VAT in Slovenia. However, some M&A transactions may be structured in a way that they fall within the scope of VAT (especially asset deals).

F. Enforceability

25. Can acquisition documents be executed in a foreign language?

Slovenian law recognizes the principle of freedom of contract and as a rule, a specific form or language is not required. Some agreements are specifically required to be in writing and a notarial deed is also required in case of share transfer in the limited liability company. The notary may draw up a document in a foreign language, but only if he/she is certified as a court interpreter.

However, foreign language documents which are required for official registrations, such as a share transfer agreement must be concluded in the Slovenian language or translated into Slovenian language by a certified translator.

26. Can acquisition documents be governed by a foreign law?

Yes (in case of limited liability company, they must be concluded in a form of a notarial deed in order to be used for registration purposes).

27. Are arbitration clauses legally permissible or generally included in acquisition documents?

Arbitration clauses are legally permissible and are generally included in acquisition documents.

28. Are there any specific formalities for the execution of acquisition documents? Is it possible to remotely/digitally sign documents?

As a rule, there are no specific formal requirements for the validity of documents, however, acquisition documents are subject to stricter formalities, for example share transfer agreements for limited liability companies must be executed in a form of a notarial deed, while some other related documentation must be notarized. The evidential value of a certified secure electronic signature is equivalent to a handwritten signature.

Following the amendments, the Notariat Act now also allows for the signature of notarial deeds in electronic form with a qualified electronic signature in a direct secure video link with the notary. The validity of the qualified electronic signatures is verified by the notary by means of a certified validation process.

After the verification of the validity of the qualified electronic signatures has been completed, the notary shall electronically sign the document with his/her qualified electronic signature, secure it with a qualified electronic seal and affix a qualified electronic time stamp. However, is should be pointed out that this is a new amendment and has not yet been introduced in practice.

G. Trends and Projections

29. What are the main current trends in M&A in your jurisdiction?

A current trend in M&A in Slovenia has been a higher number of privately negotiated deals without auction processes. The M&A activity has increased due to many deals related to succession in companies established in the 1990s, where current owners are looking for partial or full exits from their companies.

30. Are any significant development or change expected in the near future in relation to M&A in your jurisdiction?

Currently, we don't expect any significant changes in this respect.

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A. General

1. What is the main legal framework applicable to companies in your jurisdiction?

Private companies are primarily governed by the Korean Commercial Code (the "**KCC**"). In addition to the KCC, listed companies are also governed by the Financial Investment Services and Capital Markets Act (the "**Capital Markets Act**").

2. What are the most common types of corporate entities (e.g., joint stock companies, limited liability companies, etc.) used in your jurisdiction? What are the main differences between them (including but not limited to with regard to the shareholders' liability)?

The two most common types of legal entities under the KCC are:

- the *chusik hoesa* (commonly described as a "joint-stock company") and
- the *yuhan hoesa* (commonly described as a "limited company").

The *chusik hoesa* is the typical form of incorporation, with limited liability for its shareholders. Shareholders of the *chusik hoesa* are only liable up to an amount equal to their share subscription and do not bear any personal liability for the debts of the company. *The chusik hoesa* is typically appropriate for a large enterprise that will need substantial capital. For example, the *chusik hoesa* is the only type of legal entity eligible to list its shares on the Korea Stock Exchange or that may issue corporate bonds. A board of directors is required for a *chusik hoesa* (except where the company's paid-in capital is less than Korean Won ("**KRW**") 1 billion and only one or two directors are appointed).

The *yuhan hoesa* is the form of a closely - held limited liability company, which can be described as a mixture of a joint-stock company and a partnership. Like a joint-stock company, the liability of each member of a *yuhan hoesa* is limited to the amount of such member's contribution to the company. In the case of a *yuhan hoesa*, the personal relationship among the members is taken more into account with respect to incorporation procedures, organization, management and, other matters. A *yuhan hoesa* is typically appropriate for small or medium-sized businesses owned by a small number of individuals or entities. Unlike a *chusik hoesa*, a board and a statutory auditor are not required for a *yuhan hoesa*, although one can be created at the option of the members.

We note that foreign investors have increasingly utilised the *yuhan hoesa* structure over the last few decades mainly because of potential tax advantages in their home countries. In addition, a *yuhan hoesa* allows greater flexibility in terms of corporate governance compared to a *chusik hoesa* because it has fewer requirements under the KCC.

B. Foreign Investment

3. Are there any restrictions on foreign investors incorporating or acquiring the shares of a company in your jurisdiction?

In general, there are few restrictions on foreign investment in Korea. Some sectors and businesses, such as public administration and diplomatic affairs are closed entirely to foreign investment; others, such as power generation, are open to foreign investment as long as the investment meets certain conditions under the Foreign Investment Promotion Act (the "**FIPA**").

In addition to the foreign investment report, investments in certain industries may require approval from the relevant oversight body. For example, under the FIPA, if a foreign investor intends to acquire shares of a defence industry company, it must obtain prior permission from the Ministry of Trade, Industry and Energy ("**MOTIE**").

Other approvals and their procedural requirements may be specified in the laws and regulations governing the industry in question, e.g., MOTIE's approval is required for a foreign company to operate passenger or cargo air transport services, while approval from the Financial Services Commission (the "**FSC**") is needed for a foreign bank to establish or close branches or engage in the banking business in Korea.

4. Are there any foreign exchange restrictions or conditions applicable to companies such as restrictions to foreign currency shareholder loans?

The Foreign Exchange Transactions Act sets forth reporting obligations in relation to transactions between residents and non-residents, transactions between residents in which the amount is denominated in a foreign currency or which involve securities in a foreign currency, and transactions between non-residents in which the amount is denominated in KRW or which involve securities in KRW.

For example, in the case of foreign currency shareholder loans, it is generally the case that (i) a domestic company borrowing from a foreign company may have an obligation to report to the designated bank for foreign-exchange transactions or to the Ministry of Economy and Finance depending on the amount of the loan; and (ii) a domestic company lending to a foreign company may have an obligation to report to the designated bank for foreign-exchange transactions and to the Bank of Korea depending on its equity in the foreign company.

5. Are there any specific considerations for employment of foreign employees in companies incorporated in your jurisdiction?

When a foreign company seconds an employee to a Korean subsidiary, the employee can enter into Korea by obtaining at the Korean embassy a corporate investor visa (D-8), if the employee is going to work at a Korean company that qualifies as a foreign investment company under the FIPA as an indispensable professional specialist; and an intra-company transferee visa (D-7) if the employee has worked at the main office overseas for at least one year and is going to work at a Korean subsidiary that is not a foreign investment company, a branch office, or supervising office as an indispensable professional specialist.

C. Corporate Governance

6. What are the standard management structures (e.g., general assembly, board of directors, etc.) in a corporate entity governed in your jurisdiction and the key liability issues relating to these (e.g., liability of the board members and managers)?

In the case of a *chusik hoesa*, the most common form of legal entity in Korea, a board is required (except where the company's paid-in capital is less than KRW 1 billion and only one or two directors are appointed). Other than certain matters stipulated by law or in the articles of incorporation that must be determined at the general meeting of shareholders, the board may determine the most important corporate policies and management matters except for regular day-to-day business matters which are decided by the representative director (which is akin to a CEO). Unless otherwise provided in the articles of incorporation, all actions and resolutions of the board may be adopted by the affirmative vote of a majority of the directors attending a properly convened board meeting.

Under the KCC, directors have two duties to the company: (i) the duty of care and (ii) the duty of loyalty. Though the term "fiduciary duty" does not appear in the KCC, it is generally accepted in Korea that the two duties under the KCC form a general fiduciary duty of directors to the company.

If a director has intentionally or negligently violated a law or the articles of incorporation or has neglected his/her duties, he/she shall be jointly and severally liable for damages to the company. If any act in violation of any statute or the articles of incorporation or neglect of duties occurred in accordance with a resolution of the board of directors, the directors who consented to such resolution shall be jointly and severally liable, and directors who participated in such resolution and whose dissenting opinion was not entered into the minutes shall be presumed to have consented to such resolution. It is also possible for a director to incur civil liability to third parties (such as creditors) arising out of the performance of his or her duties if the director was engaged in gross negligence or intentional misconduct.

In addition to civil liability, directors can be held criminally liable if they have breached their fiduciary duty and caused damages to the company.

Generally, Korean courts will apply what is essentially the "business judgment rule". In other words, courts will not hold a director liable for a decision so long as the decision was: (i) made in good faith, after reasonable and sufficient investigation; (ii) not notably unreasonable; and (iii) made within the scope of the director's authority.

7. What are the audit requirements in corporate entities?

According to the Act on External Audit of Stock Companies, (i) a listed company, (ii) a company that is intending to become a listed company in the relevant or following business year, and (iii) a company whose assets, liabilities, the total number of employees, and revenue in the immediately preceding business year meet certain thresholds are subject to an accounting audit by an independent, external auditor after preparing the financial statements.

D. Shareholder Rights

8. What are the privileges that can be granted to shareholders? In particular, is it possible to grant voting privileges to shareholders for appointment of board members?

Some of the key rights of shareholders of a *chusik hoesa* include the following:

Voting rights at the shareholders' meeting: A shareholder is entitled to one vote per share at the shareholders' meeting. Dismissal of a director or auditor, amendments to the articles of incorporation, business transfer, capital reduction, and dissolution of the company requires a special resolution at the shareholders' meeting. The conditions for passing the resolution are (i) for an ordinary resolution, a simple majority of votes by shareholders present and at least a quarter of issued shares, and (ii) for a special resolution, at least two-thirds of votes by shareholders present and at least a third of the issued shares.

Appraisal right of dissenting shareholders: If a shareholder dissents to a comprehensive share exchange or transfer, business transfer, or merger resolution, a shareholder may register dissent within a certain period of time and oblige the company to repurchase shares at fair market value.

9. Are there any specific statutory rights available to minority shareholders available in your jurisdiction?

Under the KCC, minority shareholders who own at least 1% of issued shares have (i) the right to enjoin illegal actions by the directors (for listed companies, generally 0.05% held for more than 6 months), (ii) the right to start derivative suits against the directors (for listed companies, 0.01% held for more than 6 months), and (iii) the right to start multiple derivate actions against directors (for listed companies, 0.5% for more than 6 months).

Further, minority shareholders who own at least 3% of issued shares have (i) the right to request the convocation of a general meeting of shareholders (for listed companies, 1.5% for more than 6 months), (ii) the right to make shareholders' meeting proposals (for listed companies, generally 1% held for more than 6 months), (iii) the right to request removal of directors, auditors, a liquidator (for listed companies, generally 0.5% held for more than 6 months), and (iv) right to inspect books of account (for listed companies, generally 0.1% held for more than 6 months)

10. Is it possible to impose restrictions on share transfers under the corporate documents (e.g., articles of association or its equivalent in your jurisdiction) of a company incorporated in your jurisdiction?

In principle, the KCC protects the freedom to transfer shares, but for unlisted companies, the articles of incorporation may restrict such freedom by providing that a share transfer requires the approval of the board of directors. For a company with such a provision in the articles of incorporation, a share transfer without board approval will be null and void against the company (but may still be valid between the parties). A listed company cannot restrict share transfers.

11. Are there any specific concerns or other considerations regarding the composition, technical bankruptcy and other insolvency cases in your jurisdiction?

Under Korean insolvency law and practice, rehabilitation is generally favoured over liquidation. Further, the law and the court practice tend to be slightly debtor-friendly than other jurisdictions.

The court may replace the existing management of an insolvent company under reorganization with one or more receivers, but it usually appoints the existing management of the insolvent company as the receiver unless creditors strongly object based on justifiable reasons such as the existing management's moral hazard.

E. Acquisition

12. Which methods are commonly used to acquire a company, e.g., share transfer, asset transfer, etc.?

Acquisitions and disposals of companies, businesses, or assets are generally structured as a share transfer, an asset transfer, or a business transfer. A vertical spin-off of a business division or assets to create a subsidiary and subsequent sale of such a subsidiary are also used from time to time. Mergers are available under Korean law but are less common. In particular, triangular mergers and reverse triangular mergers were introduced in 2012, but they are not yet widely used, likely because major players in the Korean M&A industry are less familiar with such structures.

13. What are the advantages and disadvantages of a share purchase as opposed to other methods?

When compared to business transfers and asset transfers, share transfers have the following advantages:

- Because only shares are transferred while the company maintains its legal persona, the separate process involving the transfer of assets and business relations relating to the target's business need not be undertaken. As a result, the process is simpler and less time is taken for share transfers than for business or asset transfers.
- Because its legal persona is maintained, the likelihood that third-party consents or approvals related to licenses, permits, and contracts will pose a problem is low, unless the statute concerning the particular license or permit includes a separate regulation or the contract contains a change-of-control provision.

However, when compared to business transfers and asset transfers, share transfers have the disadvantage that the target companies' liabilities (including off-balance-sheet liabilities and contingent liabilities) are not carved-out, as may be the case with a business transfer or an asset transfer transaction.

14. What are the approvals and consents typically required (e.g., corporate, regulatory, sector based and third-party approvals) for private acquisitions in your jurisdiction?

Under the Monopoly Regulation and Fair-Trade Act ("**MRFTA**"), in principle, a business combination report (*i.e.*, a merger filing) must be filed if a party with total assets or sales of KRW 300 billion or more enters into a "combination transaction" (including merger, share transfer or business transfer) with another party with total assets or sales of KRW 30 billion or more. As a general matter, the business combination report must be filed with, and cleared by the Korean Fair Trade Commission (the "**KFTC**") within 30 days of the closing, except that, if the transaction involves a party with total assets or sales of KRW 2 trillion or more (together with its affiliates), such business combination report must be filed and cleared before the closing.

In addition, the acquisition of controlling shares in certain financial companies (*e.g.*, banks, securities companies, asset management companies, and insurance companies) will require regulatory approval from the FSC prior to the closing of the transaction.

15. What are the regulatory competition law requirements applicable to private acquisitions in your jurisdiction?

The MRFTA governs antitrust issues, with the KFTC as the governmental authority enforcing the rules and regulations thereunder. To the extent that the relevant transaction poses any antitrust concerns or threats within the Korean market, the KFTC will have the discretion to impose conditions or restrictions in respect of such transactions.

16. Are there any specific rules applicable for acquisition of public companies in your jurisdiction?

The main regulatory framework governing listed companies consists of the KCC and the Capital Markets Act.

The FSC has established a set of rules called the Regulations on Securities Issuance and Disclosure which require, among others, the disclosure of certain changes in the shareholding of a listed company and compliance with other specific regulations pertaining to listed companies in connection with the issuance of shares and other corporate actions such as a merger, spin-off or business transfer.

The Korea Exchange ("**KRX**") has also established various regulations that set out detailed rules in connection with mandatory disclosure of important corporate events and established listing and delisting requirements that apply to the KOSPI market and the KOSDAQ market. KOSPI, which stands for Korea Composite Stock Price Index, is the Dow Jones/S&P 500 equivalent of Korea, and KOSDAQ, which stands for Korean Securities Dealers Automated Quotations, is a trading board of the KRX. These KRX regulations include the Market Listing Regulations and the Disclosure Regulations that have been established by the KRX separately for each of the KOSPI and KOSDAQ markets.

17. Is there a requirement to disclose a deal, for instance to regulatory authorities? Is it possible to keep a deal confidential?

If the acquirer is a Korean-listed company and the acquisition is considered material, the acquirer is required to publicly disclose the transaction and include the transaction agreements in the disclosure. Sensitive information may be redacted from such agreements. Similar public disclosure requirements apply to the target company if such a target company is a Korean-listed company.

For unlisted companies, it is easier to keep a transaction confidential, but the transaction will need to be disclosed at some point if the target or one of the parties is a listed company.

18. Can sellers be restricted from shopping around during a negotiation process? Is it possible to include break fee or other penalty clauses in acquisition documents to procure deal exclusivity?

It is possible to include break fees or another contractual penalty clause to enforce deal exclusivity.

In the absence of a specific contractual mechanism, there is a general duty to negotiate in good faith. Korean courts have ruled that a party may be liable to the other party even before the execution of the contract (pre-contractual liability), in case the injured party had reasonable expectations during the course of negotiation that a contract will be signed, acted in reliance on such expectations, and was harmed by the other party's refusal to sign without reasonable cause.

We note that this would be an exceptional situation, and parties will be generally free to shop around in the absence of an exclusivity clause.

19. What are the conditions precedent in a typical acquisition document? Is it common to have conditions to closing such as no material adverse change?

Customary conditions precedents include accuracy of representations and warranties, fulfilment of covenants, absence of litigation or order against the transaction, absence of material adverse change, and obtainment of the requisite regulatory approvals.

A buyer may also seek to include a number of other closing conditions, such as the no-contravention appointment of individuals nominated by the buyer as directors, execution of ancillary agreements, or cure of any outstanding issues identified during due diligence.

20. What are the typical warranties and limitations in acquisition documents? Is it common to obtain warranty insurance?

In Korea, typical representations and warranties relating to seller/purchaser include organization and corporate power, authorization of transaction/agreement, no-contravention, and no governmental approval. Typical representations and warranties relating to the company include organization and corporate power, capitalization, no-contravention, financial statements, compliance with laws, and material contracts.

Warranty insurance policy covering representation, warranty, and indemnity claims is becoming more and more common in Korea, especially when the seller is an individual or is a fund vehicle expected to be liquidated after the transaction.

21. Is there a requirement to set a minimum pricing for shares of a target company in an acquisition?

There is no requirement to set a minimum price for shares. That said, directors' fiduciary duties, the MRFTA, and tax issues set a parameter on pricing, which would force an arm's length basis pricing.

22. What types of acquisition financing are available for potential buyers in your jurisdiction? Can a company provide financial assistance to a potential buyer of shares in the target company?

Acquisitions are typically financed through the buyer's own cash, issuance of bonds by the buyer, and/or borrowing from a financial institution (acquisition financing). In acquisition financing, the buyer typically provides the shares or assets that it is acquiring as collateral for such financing. It is notable that, in Korea, the buyer may not use the target company's assets as collateral for acquisition financing (as a form of a leveraged buyout), as such practice may constitute a breach of fiduciary duty by directors of the target company.

23. What are the formalities and procedures for share transfers and how is a share transfer perfected?

Generally, the transaction is perfected with the transfer of physical share certificates and the recording of the transfer on the shareholder registry. If the company in question is a listed company, the share transfer will occur through the electronic book keeping system.

24. Are there any incentives (such as tax exemptions) available for acquisitions in your jurisdiction?

While it is not an incentive for acquisitions in general, in the case of a merger that satisfied certain conditions (including, among others, that the merged corporation maintains most of its business and employees), there are tax benefits, namely that the taxation of capital gains will be deferred until the parties sell the shares of the merged entity.

F. Enforceability

25. Can acquisition documents be executed in a foreign language?

Yes, acquisition documents can be executed in a foreign language, and it is quite common to execute documents in English when one of the parties is foreign.

26. Can acquisition documents be governed by a foreign law?

Yes, acquisition documents can be governed under a foreign law, while we note that it is more common to have Korean law as the governing law in M&A documentation concerning Korean targets.

27. Are arbitration clauses legally permissible or generally included in acquisition documents?

Arbitration clauses are legally permitted and common in practice. Cross-border deals often include arbitration clauses which may be in Korea or other forums (often Hong Kong, Singapore, Paris, or other foreign venues).

28. Are there any specific formalities for the execution of acquisition documents? Is it possible to remotely/digitally sign documents?

No specific formalities exist for executing documents. Parties may use a signature or a seal, and remote/digital signatures are valid and enforceable as well.

G. Trends and Projections

29. What are the main current trends in M&A in your jurisdiction?

The Korean M&A market, in line with global trends, is experiencing a significant downturn due to interest rate pressures and USD 49.6 billion, as compared to USD 92.7 billion in 2021 (a 46.4% decrease overall increase in uncertainty, including the war in Ukraine. According to Deal Logic, the total Korean domestic M&A volume for 2022 was estimated to be USD 49.6 billion, as compared to USD 92.7 billion in 2021 (a 46.4% decrease).

Due to this downturn, there is a significant over-supply in the Korean domestic M&A market. There are a number of significant unsold targets and unfinished IPOs from 2022, while domestic strategic and financial investors are signaling that they will curtail their activities at least during the first half of 2023, in view of the general economic uncertainty. This may present market opportunities for overseas investors.

30. Are any significant development or change expected in the near future in relation to M&A in your jurisdiction?

A notable development is the planned implementation of the mandatory tender offer (announced in December 2022 by the FSC and slated for regulatory adoption by 2024), which requires the acquirer of the shares of a listed company to acquire a certain proportion of shares through a tender offer when a certain shareholding threshold in the target is crossed. There was some criticism that retail investors in Korea are not adequately protected, especially when the acquirer cuts a deal only with the controlling shareholder to acquire the minimum controlling shares, and not purchase shares from the retail shareholders, and the new proposal seeks to remedy this issue.

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A. General

1. What is the main legal framework applicable to companies in your jurisdiction?

Switzerland is a civil law system and organized as a federal state with the state powers being shared between the federal state (Confederation), the cantons and the communes. The primary source of law is the legislation of the Confederation, the cantons and the communes. Case law is not binding but is of great significance for the interpretation and application of the statutory law. The federal laws govern most of the civil, commercial and criminal matters, whereby the laws of the cantons and communes may determine the implementation of these federal laws. Public matters (including taxes) are governed by both federal laws as well as cantonal and communal laws.

The establishment and organization of non-listed and listed Swiss companies as well as share and asset deals are generally governed by the federal Swiss Code of Obligations. Mergers, splits and asset transfers (with exceptions) are subject to the Swiss Federal Merger Act. Transactions concerning shares in listed Swiss companies are typically subject to the Swiss Code of Obligations (if no other governing law was chosen by the parties) and, regarding the act of disposal, to the Swiss Federal Act on Intermediated Securities. Transactions in shares of listed Swiss companies may also be subject to the Swiss Federal Financial Market Infrastructure Act, the Swiss Financial Market Infrastructure Ordinance, the FINMA Financial Market Infrastructure Ordinance and the Takeover Ordinance of the Swiss Takeover Board (e.g., regarding disclosure of significant shareholdings, public offers, insider trading). The Swiss Code of Obligations is quite flexible allowing innovative deal structures and tailored agreements between the parties to a transaction.

2. What are the most common types of corporate entities (e.g., joint stock companies, limited liability companies, etc.) used in your jurisdiction? What are the main differences between them (including but not limited to with regard to the shareholders' liability)?

The most common types of corporate entities used in Switzerland are the corporation (in German: *Aktiengesellschaft*; in French: *la société anonyme*) and the limited liability company (in German: *Gesellschaft mit beschränkter Haftung*; in French: *la société à responsabilité limitée*). There are further types of corporate entities which are, however, rarely used due to their peculiarities (e.g., regarding liability, membership rights, distribution of retained earnings). The main differences between the Swiss corporation and the Swiss limited liability company are as follows:

Aspect	Corporation	Limited Liability Company
Capital	▪ Minimum amount: CHF 100,000 (or equivalent in foreign currency) ▪ Minimum paid-in amount: CHF 50,000 (or equivalent in foreign currency) ▪ Maximum amount: not applicable ▪ Nominal amount: greater than zero	▪ Minimum amount: CHF 20,000 (or equivalent in foreign currency) ▪ Minimum paid-in amount: CHF 20,000 (or equivalent in foreign currency) ▪ Maximum amount: not applicable ▪ Nominal amount: greater than zero
Types and Forms of Shares / Quotas	▪ Types: registered shares and, subject to certain requirements, bearer shares ▪ Forms: uncertificated securities, instrument to order, ledger-based securities, intermediated securities	▪ Types: registered quota ▪ Forms: registered securities, certificate of proof
Transfer of Shares / Quotas	▪ Form: based on type and form of share ▪ Approval: no unless the articles of association require an approval from the board of directors	▪ Form: written (wet-ink) assignment agreement (obligation to transfer is not bound to form requirement but act of transfer) ▪ Approval: approval of quotaholders' meeting required unless the articles of association waive such approval requirement
Liability of Shareholders / Quotaholders	▪ Liability of shareholder limited to the full payment (in cash or as contribution in kind) of the issue price of the shares	▪ Liability of quotaholder limited to the full payment (in cash or as contribution in kind) of the issue price of the quotas ▪ However, articles of association may provide for obligations to make additional financial or material contributions
Publicness of Shareholders / Quotaholders	▪ Identity of shareholders not known to the public ▪ In principle, shareholders have no right to access the share register and be informed about the identity of other shareholders and their shareholdings	▪ Identity of quotaholders together with their quotaholding is published in the relevant commercial register ▪ Transfers of quotas must also be registered with the relevant commercial register
Flexibility of Company Form	▪ Higher than limited liability company	▪ Lower than corporation
Eligibility for Listing on a Stock Exchange	▪ Yes	▪ No

B. Foreign Investment

3. Are there any restrictions on foreign investors incorporating or acquiring the shares of a company in your jurisdiction?

To date, Switzerland is a foreign-investment-friendly jurisdiction with no specific foreign investment regime stipulating limitations and/or prohibiting certain investments, subject to limitations with regard to investments into real estate. However, certain companies active in regulated industries (e.g., aviation, banking, insurance, nuclear energy, telecommunication, and radio as well as TV) require federal and, in certain cases, cantonal governmental permits. The issuance of such permits may depend on the nationality or domicile of a foreign investor though foreign nationality or domicile is not *per se* considered a limiting factor.

Furthermore, the Swiss parliament instructed the Swiss Federal Council in March 2020 to prepare a draft foreign investment regulation, which has been published on 15 December 2023. The proposed Swiss Federal Act on the Examination of Foreign Investments shall prevent takeovers of domestic companies by foreign investors if these takeovers endanger or threaten public order or security in Switzerland. Based on the draft regulations, the foreign investment regime is likely to be applied to companies being active in the following sectors: goods or intangible assets relevant to the military, security authorities or space programs, electricity (power grids, power plants), gas pipelines, water supply, IT systems and services (if security-relevant), healthcare, transportation, communication infrastructure, financial market infrastructures and banking. We expect that the proposed Swiss Federal Act on the Examination of Foreign Investments will not come into force prior to 1 January 2026.

Investments into Swiss real estate by foreign investors, whether individuals or legal entities, is subject to a governmental authorization (so-called Lex Koller regime). The Lex Koller regime is applicable regardless of whether the real estate is directly or indirectly (through a legal entity holding the real estate) acquired. However, the Lex Koller regime does not apply, and no governmental authorization must be obtained if the real estate serves as a permanent establishment of a commercial, manufacturing or other business carried out in a commercial manner, the conduct of a crafts business or liberal professions. Thus, a foreign investor intending to acquire a company owning Swiss real estate must assess whether the Lex Koller regime is applicable or the aforementioned exemption applies.

4. Are there any foreign exchange restrictions or conditions applicable to companies such as restrictions to foreign currency shareholder loans?

There are no foreign exchange restrictions or conditions applicable to Swiss companies, including restrictions on foreign currency shareholder loans. In addition, the share capital of Swiss corporations and Swiss limited liability companies may be denominated in EUR, GBP, USD or JPY.

5. Are there any specific considerations for employment of foreign employees in companies incorporated in your jurisdiction?

A Swiss company may employ foreign employees based in foreign jurisdictions. Special considerations must be given to the respective foreign laws and regulations. If a Swiss company decides to hire foreign employees (other than employees being nationals of the European Union (EU), whereby special rules apply to Croatians, or of member countries of the European Free Trade Association (EFTA)) and have them come to work (whether for a short or long period) in Switzerland, the Swiss company must apply for a work permit for its employee. The Swiss company must prove that the hiring serves the economic interests of Switzerland and that it was not able to find the required personnel on either the Swiss hiring market or the hiring market of the European Union or the European Free Trade Association.

C. Corporate Governance

6. What are the standard management structures (e.g., general assembly, board of directors, etc.) in a corporate entity governed in your jurisdiction and the key liability issues relating to these (e.g., liability of the board members and managers)?

The standard corporate bodies of a Swiss corporation or Swiss limited liability company are as follows:

The members of the board of directors and all persons involved in the management or liquidation of a Swiss corporation are liable both to the Swiss corporation and to the individual shareholders and creditors of the Swiss corporation for any damage caused by their intentional or negligent breach of their duties. Any person who has the authority to delegate the performance of a task to another person is liable for any damage caused by the latter, unless the delegating person can prove that it exercised due care regarding the selection, instruction, and supervision of the delegate. Furthermore, Swiss courts apply the business judgment rule and restrain themselves from assessing decisions if (i) the decision qualifies as a business decision (as opposed to legal decisions), (ii) the deciding body or person was not subject to a conflict of interest, (iii) the decision was made based on appropriate information, and (iv) the deciding body or person acted in good faith and in the honest belief that the decision is in the best interest of the company. In case the business judgment rule applies, Swiss courts will only assess whether the decision is justifiable in substance. If the requirements for the application of the business judgment rule are not met, Swiss courts will review the decision in detail. The same liability regime applies to the management of a Swiss limited liability company.

Aspect	Corporation	Limited Liability Company
Highest corporate body	▪ General meeting of shareholders (sometimes also referred to as general assembly of shareholders) ▪ General meeting of shareholders has certain non-transferable duties, including, amongst others, the election of the members of the board of directors and the auditors (if required), approval of changes in the share capital, and the approval of the financial statements, and the approval of dividend distributions	▪ General meeting of quotaholders (sometimes also referred to as general assembly of quotaholders) ▪ General meeting of quotaholders has certain non-transferable duties (that are more extensive than those of the general meeting of shareholders of a Swiss corporation), including, amongst others, the election of the auditors (if required), approval of changes in the quota capital, the approval of the financial statements, and the approval of dividend distributions, and the determination of the compensation of the management
Highest operative body	▪ Board of directors, which consists of individuals elected by the general meeting of shareholders ▪ Board of directors has certain non-transferable and inalienable duties and is tasked with the day-to-day management if not transferred to a management body based on organizational regulations ▪ In medium and large Swiss corporations, it is customary for the board of directors to delegate the day-to-day management to a management body	▪ Management, which by default consists of all the quotaholders (no election required) ▪ Management has certain non-transferable and inalienable duties and is tasked with the day-to-day management, if not transferred to third parties
Audit body	▪ Independent auditors, which are elected by the general meeting of shareholders if required by law, chosen by the general meeting of shareholders or, in certain instances, required by certain shareholders	▪ Independent auditors, which are elected by the general meeting of quotaholders if required by law, chosen by the general meeting of quotaholders or, in certain instances, required by certain quotaholders

7. What are the audit requirements in corporate entities?

If and to which extent an audit is required regarding a Swiss corporation or a Swiss limited liability depends on certain thresholds as follows:

Type of Audit	Thresholds	Content of Audit
Ordinary audit	▪ Public companies: – with listed equity securities; – having bonds outstanding; – contributing at least 20% of the assets or turnover to the consolidated accounts of a company having listed equity securities or bonds outstanding. ▪ Companies that exceed two of the following thresholds in two successive financial years: – balance sheet of total CHF 20 Mio.; – turnover of CHF 40 Mio.; – 250 full-time positions on annual average. ▪ Companies that are required to prepare consolidated financial statements. ▪ If one or more shareholders holding at least 10% of the share capital request an ordinary audit. ▪ If the articles of association stipulate the obligation to carry out an ordinary audit. ▪ If the general meeting of shareholders / quotaholders decides to carry out an ordinary audit.	The auditor assesses whether: ▪ the annual accounts and, if applicable, consolidated accounts comply with the statutory provisions, the articles of association and the chosen set of financial reporting standards; ▪ the motion made by the board of directors to the general meeting of shareholders / quotaholders on the allocation of the balance sheet profit complies with the statutory provisions and the articles of association; ▪ there is an internal system of control; ▪ in case of listed companies: the remuneration report complies with the statutory rules and the articles of association.
Limited audit	▪ If no ordinary audit is required, except all shareholders have approved the waiver of the limited audit, provided, that the company has no more than 10 full-time positions on annual average.	The auditor assesses whether circumstances exist which indicate that: ▪ the annual accounts do not comply with the statutory provisions or the articles of association; and ▪ the motion made by the board of directors to the general meeting of shareholders / quotaholders on the allocation of the balance sheet profit does not comply with the statutory provisions and the articles of association. The audit is limited to conducting interviews, analytical audit activities and appropriate detailed inspections.
No audit	▪ If no ordinary audit is required and all shareholders have approved the waiver of the limited audit (requiring that the company has no more than 10 full-time positions on annual average).	▪ n/a

D. Shareholder Rights

8. What are the privileges that can be granted to shareholders? In particular, is it possible to grant voting privileges to shareholders for appointment of board members?

As concerns the Swiss corporation, the principle of equal treatment is applicable. Thus, the room for privileges for individual shareholders is limited. However, it is possible to grant privileges to one or more share classes. These privileges are limited to (i) voting rights (there is no possibility to stipulate individual veto rights), (ii) dividend preferences and (iii) liquidation preferences. Shares granting these privileges are called voting shares (re voting rights) and preference shares (re dividend and liquidation preferences).

As regards the voting rights, the articles of association may determine voting rights according to the number of shares held by each shareholder, irrespective of the nominal value, so that each share is entitled to one vote (which is customary). Voting shares have a lower nominal value than ordinary shares. However, the nominal value cannot be ten times lower than the value of ordinary shares. Further, in certain cases the voting shares are treated equally as the ordinary shares (i.e., re-election of auditors, appointment of experts to audit the company's business management, instigation of a special investigation, launching a liability action). Example: A shareholder acquires voting shares with a nominal value of CHF 1.00 for CHF 1,000. Thus, the shareholder has 1,000 votes. Another shareholder acquiring ordinary shares with a nominal value of CHF 10 for CHF 1,000 has only 100 votes.

The shareholders may agree on further privileges to be set out in a shareholders' agreement. The shareholders' agreement may, for example, provide the right to one or more shareholders to nominate one or more members of the board of directors, which the other shareholders agree to elect. However, these privileges cannot be incorporated into the corporate documents of a Swiss corporation (e.g., articles of association, organizational regulations).

The same rules are applicable to a Swiss limited liability company.

9. Are there any specific statutory rights available to minority shareholders available in your jurisdiction?

Shareholders who alone or together hold at least (i) 5% of the share capital or the votes of a listed corporation, or (ii) hold at least 10% of the share capital or the votes of a non-listed corporation are entitled to require the calling of a general meeting of shareholders. The articles of association may lower these thresholds. If the board of directors does not call a general meeting of shareholders within 60 days, the shareholder(s) may request a court to order the calling of a general meeting of shareholders.

Shareholders who alone or together hold at least (i) 0.5% of the share capital or the votes of a listed corporation, or (ii) hold at least 5% of the share capital or the votes of a non-listed corporation are entitled to request that items be placed on the agenda of a general meeting of shareholders and be included in the invitation to a general meeting of shareholders. If the board of directors refuses to accept such requests, the shareholders may request a court to order the board of directors to act accordingly.

Furthermore, in a non-listed corporation, shareholders who alone or together represent at least 10% of the share capital or the votes may request the board of directors in writing to provide information on company matters. The board of directors must provide the information within four months.

Finally, company ledgers and files may be inspected by shareholders who alone or together represent at least 5% of the share capital or the votes. The board of directors must permit inspection within four months of receiving the request.

10. Is it possible to impose restrictions on share transfers under the corporate documents (e.g., articles of association or its equivalent in your jurisdiction) of a company incorporated in your jurisdiction?

As concerns a Swiss corporation, the articles of association may stipulate that the transfer of registered shares is subject to the approval of the board of directors. However, denial of the approval is limited to the following cases: (i) good cause as set out in the articles of association, (ii) the company offers to acquire the shares for the company's own account, for the account of the other shareholders or of third parties at their real value, or (iii) the acquirer fails to declare expressly that it has acquired the shares in its own name and for its own account. The Swiss Code of Obligations stipulates that provisions governing the composition of the shareholder group which are designed to safeguard the pursuit of the company's objects or its economic independence are deemed to constitute good cause.

The resolution of the general meeting of shareholders limiting the transfer of registered shares as outlined above requires at least two-third of the votes represented and a majority of the nominal value of the shares represented.

As concerns a Swiss limited liability company, the transfer of quotas requires by default the consent of the general meeting of quotaholders, which may refuse consent without stating its reasons. The articles of association may deviate from this default rule and, for example, waive the consent requirement or state the reasons justifying a denial. The abolition or restriction of the consent requirement requires a resolution of the general meeting of quotaholders to be passed by a majority of at least two thirds of the votes represented and an absolute majority of the entire nominal capital entitled to vote.

11. Are there any specific concerns or other considerations regarding the composition, technical bankruptcy and other insolvency cases in your jurisdiction?

There are three stages of financial distress: (i) insolvency, (ii) capital loss, and (iii) over-indebtedness.

Insolvency: The board of directors of a corporation or the management of a limited liability company must monitor the solvency of the company. If the company threatens to become insolvent, the board of directors or the management must take measures to ensure its solvency. If necessary, it must submit an application for a debt-restructuring moratorium.

Capital loss: If the last annual financial statements show that the assets less liabilities no longer cover half of the sum of (i) the share capital, (ii) the statutory capital reserve not repayable to the shareholders or quotaholders and (iii) the statutory retained earnings, the board of directors (corporation) or the management (limited liability company) shall take measures to eliminate the capital loss. If the company has no auditors, the most recent annual financial statements must be subjected to a limited audit by a licensed auditor before they are approved by the general meeting of shareholders or quotaholders (except if the board submits an application for a debt-restructuring moratorium).

Over-indebtedness: If there are reasonable grounds for a concern that the company's liabilities are no longer covered by its assets, the board of directors (corporation) or the management (limited liability company) shall immediately prepare interim financial statements at going concern value and at realizable value (certain exceptions may apply). The interim financial statements must be audited by a licensed auditor. If the company is overindebted according to the two interim financial statements, the board of directors or the management must notify the court. The court will open bankruptcy proceedings or suspend the decision on bankruptcy if there are indications of an immediate restructuring or the conclusion of a debt restructuring agreement.

No notification of the court is required if:

- if company's creditors subordinate their claims to all other creditors to the extent of the over-indebtedness and defer their claims, provided that the subordination covers the amount owed and the interest claims for the duration of the over-indebtedness; or
- as long as there is a reasonable prospect that the over-indebtedness can be remedied within a reasonable period of time, but no later than 90 days after the audited interim financial statements are available, and that the creditors' claims are not additionally jeopardized.

E. Acquisition

12. Which methods are commonly used to acquire a company, e.g., share transfer, asset transfer, etc.?

The method chosen to acquire a company depends on various considerations, including, without limitation, whether (i) the sellers can generate a tax-free capital gain, (ii) the sellers shall continue to be invested in the buying entity, (iii) the whole or only a part of the business shall be acquired, (iv) the risks associated with the target company, and/or (v) the purchase price shall be paid in cash or shares.

In principle, the following three methods to acquire a business exist: (i) share transfer, (ii) asset transfer, or (iii) merger. In some cases, a carve-out of the targeted business is carried out by the sellers and the shares of the carved-out entity are transferred to the buyer. The acquisition of listed companies is mainly done through a transfer. Seldomly, the acquisition of listed companies is carried out through a merger (typically a merger by absorption).

13. What are the advantages and disadvantages of a share purchase as opposed to other methods?

Share (quota) deals are typically more straightforward than asset deals given that they are less complex than asset deals (see below). In addition, in case of a share deal, Swiss resident individuals not qualifying as professional securities traders may generate a tax-free capital gain (see question 24). Furthermore, sellers of shares or quotas are no longer liable to third parties regarding liabilities and obligations of the company.

In contrast, asset deals are more complex. They can either be carried out based on singular succession, which requires that each counterparty of an agreement with, or a claim against, the target agrees to the asset transfer, or based on universal succession. In the latter case, however, the target is jointly and severally liable with the buyer for the debts incurred prior to the transfer of assets for a period of three years. Furthermore, Swiss resident individuals cannot generate a tax-free capital gain given that the target typically distributes the purchase price as dividend, which is subject to withholding and income tax. Finally, asset deals may be interesting if the buyer does not want to take over certain risks existing within the target company.

A merger is another possible acquisition method. However, this typically requires a Swiss acquisition company as cross-border mergers may be difficult to implement. Further, shareholders of the transferring company (target) have a right to share or membership rights in the acquiring company (buyer). However, the merger agreement may stipulate that the shareholders of the target are only paid a compensation, which requires, however, the approval of at least 90% of the shareholders of the target entitled to vote.

14. What are the approvals and consents typically required (e.g., corporate, regulatory, sector based and third-party approvals) for private acquisitions in your jurisdiction?

The approvals and consents required are heavily dependent on the individual transaction. However, the following approvals and consents are customary:

- Corporate approvals: (i) approval of the transfer of shares by the board of directors (if any) or the transfer of quotas by the general meeting of quotaholders (if not waived), and (ii) approval of the general meeting of shareholders or the general meeting of quotaholders in case of an asset transfer which results in the transfer of essential operating resources required for the continued operation of the company.
- Regulatory: (i) approval of the Swiss Competition Commission (subject to reaching certain thresholds), (ii) approval of the relevant cantonal authority if the target owns a real estate or the assets to be transferred include a real estate which does not qualify as permanent establishment (see question 3), (iii) approval of the Swiss Financial Market Supervisory Authority FINMA for the acquisition of financial institutes and insurance companies or the Swiss Federal Office of Public Health for the acquisition of health insurance companies, (iv) approval of the Swiss Takeover Board in takeover situations.
- Third-party consents: (i) in case of a share transfer third-party consents are only required if third-parties and the target agreed to a change of control clause, and (ii) in case of asset transfers, the consent of third-parties with which the target has an ongoing contractual relationship is required unless the asset transfer is carried out on the basis of the Swiss Merger Act by way of universal succession and not based on the Swiss Code of Obligations based on singular succession (i.e., individual transfer of each contract).

15. What are the regulatory competition law requirements applicable to private acquisitions in your jurisdiction?

In general, the thresholds triggering the scrutiny of the Swiss Competition Commission with regard to M&A transactions are rather high compared to other jurisdictions:

M&A transactions must be notified to the Swiss Competition Commission prior to their implementation if in the financial year preceding the M&A transaction, (i) the involved companies generated a turnover of at least CHF 2 billion worldwide or a turnover in Switzerland of at least CHF 500 Mio. and (ii) if at least two of the involved companies each generated a turnover in Switzerland of at least CHF 100 Mio.

However, and notwithstanding the above, the notification of the Swiss Competition Commission is mandatory if one of the involved companies has been qualified by a final and non-appealable decision as holding a dominant position in a market in Switzerland and if the M&A

transaction concerns such market or an adjacent market, an upstream market or a downstream market thereof.

16. Are there any specific rules applicable for acquisition of public companies in your jurisdiction?

The acquisition of shares in public companies listed on a Swiss stock exchange is subject to the Swiss Federal Market Infrastructure Act, the Swiss Financial Market Infrastructure Ordinance and the FINMA Financial Market Infrastructure Ordinance (e.g. regarding disclosure obligations). Public (voluntary as well as mandatory) takeovers of public companies domiciled in Switzerland or domiciled abroad but whose equity securities are primarily listed on a Swiss stock exchange are also subject to the aforementioned laws and regulations in addition to the Takeover Ordinance of the Swiss Takeover Board. Furthermore, the rules and directives of the relevant stock exchange have to be taken into account as well (e.g., rules on ad-hoc publicity or management transactions).

17. Is there a requirement to disclose a deal, for instance to regulatory authorities? Is it possible to keep a deal confidential?

Whether a deal has to be disclosed to regulatory authorities depends on the individual case. In certain instances, the deal may have to be disclosed to (i) the Swiss Competition Commission (see question 15), (ii) the Swiss Financial Market Supervisory Authority (regarding banks and insurance companies), as well as (iii) the relevant cantonal authority if the transfer of real estate is subject to an approval requirement (see question 3). Finally, if quotas are being transferred, the deal must be disclosed to the relevant commercial register and the documents filed with the commercial register will be publicly accessible. However, there are methods not to disclose all the deal details (e.g., purchase price, liability rules etc.).

18. Can sellers be restricted from shopping around during a negotiation process? Is it possible to include break fee or other penalty clauses in acquisition documents to procure deal exclusivity?

In general, parties benefit from the principle of the freedom of contract. Hence, they are free to enter into or terminate negotiations at any time without any liability and without having to give a reason for such termination. However, parties who do not act in good faith cannot benefit from the principle of the freedom of contract. Parties to a negotiation are obliged to seriously negotiate and to disclose their intentions (e.g., continuing the negotiation although a party already knows that it is no longer interested in the transaction or giving the impression that the relevant corporate body has approved the transaction although this is not the case is a violation of the good faith principle). A party which violates the good faith principle may be subject to fidelity liability (based on the principle of the *culpa in contrahendo*). However, cases brought against a party based on fidelity liability are extremely rare. If a respective claim would be successful, the party subject to fidelity liability would have to cover the damages incurred by the other party and hold the other party harmless as if the negotiations had not been carried out.

Given that a claim based on fidelity liability is rare and rather difficult to prove, parties may agree on break fees and other penalty clauses to procure deal exclusivity. The amount of the break fees and other penalties could be decreased by a court. Finally, in the context of the acquisition of public companies, special rules have to be considered regarding (reverse) break fees.

19. What are the conditions precedent in a typical acquisition document? Is it common to have conditions to closing such as no material adverse change?

Conditions precedent are typically highly dependent on the individual case. It is, however, customary to include the condition that all necessary approvals (if any) by any governmental authorities or third parties with respect to the transactions contemplated by the acquisition document have been granted without any restrictions. The inclusion of material adverse change clauses is only customary with regard to larger private transactions and public takeover transaction.

20. What are the typical warranties and limitations in acquisition documents? Is it common to obtain warranty insurance?

Typical warranties and limitations in the context of share and quota transaction cover the following matters: seller's authority, title to shares, corporate existence, no breach due to transaction, financial information, assets, real property, tax matters, material contracts, IP rights, social security matters, employment matters, compliance, insurance, litigation and investigations, data protection, and broker fees. Additional representations and warranties may be required based on the individual case (e.g., regarding environmental matters, sanctions, cartels, ESG etc.).

In mid- and large-sized transactions it is customary to obtain warranty and indemnity insurances. Typically, the buyer would take out the insurance which provides the buyer with the advantage to be able to directly raise a claim against the insurer without having to approach the sellers.

21. Is there a requirement to set a minimum pricing for shares of a target company in an acquisition?

In case of the acquisition of shares or quotas of non-listed Swiss companies, there is no requirement to set a minimum price.

In case of mandatory offers and change of control offers regarding listed companies, the minimum price rules apply. The minimum price must be at least equal to the higher of the following two amounts (i) the stock exchange price or (ii) the highest price paid by the offeror for equity securities of the target company in the last twelve months.

22. What types of acquisition financing are available for potential buyers in your jurisdiction? Can a company provide financial assistance to a potential buyer of shares in the target company?

The type of acquisition financing chosen depends on the individual case. The buyer may choose (i) leveraged buyouts including the issuance of high-yield notes or the placement of term-loans, (ii) debt arrangements including working capital facilities, (iii) bridge financing or (iv) domestic bank financing.

Swiss law does not stipulate specific rules on the provision of financial assistance. However, there are certain corporate law and tax law limitations which must be taken into consideration. In general, the Swiss target must provide financial assistance based on at arm's lengths conditions (i.e., with interest and collaterals) and the purpose as set out in the target's articles of association must allow financial assistance. If the financial assistance is not provided at arm's length terms, the Swiss target may only grant a guarantee or provide financing upstream or cross-stream if (i) the target has enough freely distributable equity, and (ii) the relevant corporate approvals, and if required, an auditors' report, were obtained.

23. What are the formalities and procedures for share transfers and how is a share transfer perfected?

The procedure to transfer a share or quota depends on the form of the issued shares (uncertificated securities, instruments to order, ledger-based securities, intermediated securities) or the issued quota (registered securities, certificate of proof):

Form of Share / Quota	Transfer Procedure
Uncertificated securities (shares and quotas (also if a certificate of proof was issued))	▪ Assignment declaration executed by wet ink signature
Instruments to order (share) or registered securities (quota)	Transfer of the possession of the instrument and: ▪ in case of instruments to order, an endorsement; ▪ in case of registered securities, a written declaration, which must not be made on the instrument itself.
Ledger-based securities (share only)	▪ The transfer is subject to the provisions set out in the registration agreement.
Intermediated securities (share only)	A disposition of intermediated securities may be effected by: ▪ an instruction from the account holder to its custodian to transfer the intermediated securities; and ▪ a credit of the intermediated securities to the acquirer's securities account.

The transfer may require the approval of the board of directors (in case of shares) or of the general meeting of quotaholders (in case of quotas) (see question 10). Furthermore, the transfer of quotas must be registered with the relevant commercial register. However, the commercial register entry has no constitutive effect (i.e., the transfer is effective regardless of the registration in the commercial register).

24. Are there any incentives (such as tax exemptions) available for acquisitions in your jurisdiction?

There are no general incentives available for M&A transactions in Switzerland. However, Swiss resident individuals selling shares or quotas and who do not qualify as professional securities traders may benefit from a tax-free capital gain, which makes Switzerland very attractive for sellers.

F. Enforceability

25. Can acquisition documents be executed in a foreign language?

Yes, acquisition documents can be executed in a foreign language. Switzerland has four official languages: German, French, Italian, Romansh. If a term cannot be properly translated into a foreign language (e.g., English), it is common to indicate the term in one of Switzerland's four official languages in brackets to help interpreting the contract.

26. Can acquisition documents be governed by a foreign law?

In principle, acquisition documents can be governed by foreign law. This applies to a share purchase agreement, quota purchase agreement, asset transfer agreement and the merger agreement. The possibility to choose the law governing the act of disposal (i.e., the act effecting the transfer of the shares or assets) may be limited or, in case of mandatorily applicable corporate law processes, excluded (e.g., re mergers, splits, asset transfers according to the Swiss Merger Act, public takeovers). Regardless of the above, it is customary and recommended that acquisition documents regarding M&A activities in Switzerland are governed by statutory Swiss law, which is quite flexible.

27. Are arbitration clauses legally permissible or generally included in acquisition documents?

Yes, arbitration clauses are legally permissible. There are no official statistics as to the frequency of arbitration clauses used in M&A transaction documents. In domestic M&A transactions, it is not very common to include arbitration clauses. However, in international M&A transactions, it is rather customary to agree on an arbitration clause.

28. Are there any specific formalities for the execution of acquisition documents? Is it possible to remotely/digitally sign documents?

The specific formalities depend on the type of the acquisition. Share purchase agreements, if governed by Swiss law, do not need to be executed in wet ink and can be executed remotely/digitally. However, the assignment declaration to effect the transfer of the shares must be executed in wet ink or by a qualified electronic signature (i.e., an electronic signature using an officially recognized provider; Adobe or DocuSign are not officially recognized providers). In contrast, the quota purchase agreement and the assignment declaration to effect the transfer of quotas must both be executed in wet ink or by qualified electronic signature. Furthermore, the merger agreement must also be executed in wet ink or by qualified electronic signature. In addition, further formalities may have to be adhered to depending on the individual case (e.g., the resolutions of the general meeting of shareholders regarding a merger must be notarized; real estate purchase agreement must be notarized).

G. Trends and Projections

29. What are the main current trends in M&A in your jurisdiction?

We are cautiously optimistic about the M&A activities in Switzerland in 2025. Switzerland's economy is still quite stable with low inflation rates. However, deal financing will be a challenge and will impact the valuations and potentially the deal structures (e.g., putting more weight on deferred payments, earn-outs and seller's loans). Furthermore, actions by the Trump administration may adversely affect foreign investment into Switzerland. We expect that strategic players will dominate the M&A landscape and that 2025 will still be a buyer market. Furthermore, we expect that mid-market deals will be more strongly represented than large cap deals and that there will be again a strong need for restructuring activities.

Public M&A activities are expected to continue to be low. Foreign companies, particularly Chinese companies, showed increased interest in listing global depository receipts (GDRs). We expect additional listing of global depository receipts, but do not anticipate large volumes.

Finally, we expect extended due diligence procedures, addressing in particular compliance with the tightened Swiss data protection regulations and ESG standards. If and to what extent AI will shape M&A due diligence remains to be seen.

30. Are any significant development or change expected in the near future in relation to M&A in your jurisdiction?

As of the date of this publication, we do not expect any significant changes or developments of the legal and regulatory environment in Switzerland with regard to M&A transactions, subject to the potential introduction of a foreign investment regime as noted under chapter B above. In addition, we expect that environmental, social and governance (ESG) aspects may gain importance in the context of M&A transactions, including, without limitation, with respect to the due diligence, reporting obligations and/or further obligations to be set out in shareholders' agreements and investment agreements.

TAJIKISTAN

GRATA

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A. General

1. What is the main legal framework applicable to companies in your jurisdiction?

The most relevant legal acts for companies in Tajikistan include: (i) the Civil Code, (ii) the Tax Code, (iii) the Registration of Legal Entities and Individual Entrepreneurs Act, (iv) the Competition Protection Act, (v) the Limited Liability Companies Act, and (vi) the Joint Stock Companies Act.

Besides the aforementioned laws, there are several other regulations that may apply, depending on the specific business activities a company undertakes within Tajikistan."

Additionally, after reviewing the information in our guide section and the current legal framework, we have not identified any significant updates or developments that need to be added to the guide.

2. What are the most common types of corporate entities (e.g., joint stock companies, limited liability companies, etc.) used in your jurisdiction? What are the main differences between them (including but not limited to with regard to the shareholders' liability)?

A branch office or limited liability company is the most popular and widely used type of corporate entity form. Mostly, foreign parties choose to register a branch or a limited liability company if it aligns with their intended activity. The only distinction relates to the taxation of profits.

B. Foreign Investment

3. Are there any restrictions on foreign investors incorporating or acquiring the shares of a company in your jurisdiction?

There are no legal limitations on foreign investors forming a company or purchasing shares of a company. Although that hasn't happened in our practice, it is possible that there are some unwritten restrictions that weren't made known to the public, and only made known when relevant party approaches the authorities.

4. Are there any foreign exchange restrictions or conditions applicable to companies such as restrictions to foreign currency shareholder loans?

Restrictions only apply to domestic loans; such loans must be in national currency. There are no restrictions on foreign loans.

5. Are there any specific considerations for employment of foreign employees in companies incorporated in your jurisdiction?

Yes. The companies are required to obtain a license (which entails having in-house lawyer), and comply with specified quota, which is determined annually at the start of second quarter while the employees are required to obtain work permits.

C. Corporate Governance

6. What are the standard management structures (e.g., general assembly, board of directors, etc.) in a corporate entity governed in your jurisdiction and the key liability issues relating to these (e.g., liability of the board members and managers)?

While joint stock firms with more than fifty shareholders must have a board of directors, limited liability companies and joint stock companies with less than fifty owners are free to pick their management structures. Therefore, a CEO-only organization is the most common type of management structure.

7. What are the audit requirements in corporate entities?

The audit is not mandatory. An audit can be carried out at the request of participants for the limited liability company or shareholders for the joint stock companies.

D. Shareholder Rights

8. What are the privileges that can be granted to shareholders? In particular, is it possible to grant voting privileges to shareholders for appointment of board members?

A limited liability company's highest governing body is the general meeting of participants. The general meeting of participants has sole authority over the appointment of the board of directors. In addition to their statutory rights, the general meeting of participants' competence may also be expanded in accordance with internal documents in other areas (charter, by-laws, foundation agreement, etc.).

9. Are there any specific statutory rights available to minority shareholders available in your jurisdiction?

There are currently no special statutory rights available to minorities in Tajikistan, in contrast to the majority of international states that have given minority shareholders special legal protections.

10. Is it possible to impose restrictions on share transfers under the corporate documents (e.g., articles of association or its equivalent in your jurisdiction) of a company incorporated in your jurisdiction?

In general, a participant of a limited liability company has the legal right to withdraw at any moment, without the approval of other participants. The withdrawal term declaration may be determined by the constituent documents since it is not explicitly stated by law.

If a participant decides to withdraw, the share will be transferred to the company as soon as a withdrawal application is submitted. In addition, the company is required to pay the participant the actual value of the share, as determined by accounting data for the year in which the application was submitted, or, with the participant's consent, to provide property in kind of the same value. In the event that the contribution to the company's authorized capital is not fully paid, the actual value of the part of the participant's share, proportionate to the paid part of the authorized capital, is also due.

11. Are there any specific concerns or other considerations regarding the composition, technical bankruptcy and other insolvency cases in your jurisdiction?

Technical bankruptcy is not defined under the current laws. The debtor's formal bankruptcy (insolvency) is announced at the general meeting of creditors, or it is resolved in court. Apart from this, there are no other significant issues or matters to be thought about in relation to the aforementioned; nonetheless, each situation should be considered separately due to the various factors and elements involved.

E. Acquisition

12. Which methods are commonly used to acquire a company, e.g., share transfer, asset transfer, etc.?

The most commonly used method to acquire a company is through share purchase.

13. What are the advantages and disadvantages of a share purchase as opposed to other methods?

Gaining ownership of the business and reaping the rewards of participation, including the possibility of dividends, simplicity of share transfer, and statutory ownership rights, is the main benefit of buying shares. Other strategies entail buying assets that don't give you direct control over the business, which restricts your options and the advantages of being a shareholder.

A share purchase has some limits and/or conditions that must be met as a drawback. A change in the shareholding structure, for instance, necessitates the company to go through the so-called "re-registration" process, which could take several months and necessitates communicating with the state authorities. If thresholds are met, obtaining an approval from governmental agencies is necessary for a share purchase.

14. What are the approvals and consents typically required (e.g., corporate, regulatory, sector based and third-party approvals) for private acquisitions in your jurisdiction?

For general sector, corporate (approval of appropriate body (if required by company bylaws)) and competitive (if triggered), and for finance in addition to competitive (if triggered) approval of the National Bank of Tajikistan is required.

15. What are the regulatory competition law requirements applicable to private acquisitions in your jurisdiction?

There are two triggers:

1. If the total book value of the acquirer is USD 685,640 in 2025, The amounts have changed due to the fact that in 2025 the settlement figure has increased from 72 to 75 TJS (this is approximately from USD 6.58 to USD 6.86). The acquirer is required to notify the Antitrust Service within 15 days following the transaction; and

2. If the total book value of the acquirer is USD 1,371,279 in 2025. The amounts have changed due to the fact that in 2025 the settlement figure has increased from 72 to 75 TJS (this is approximately from USD 6.58 to USD 6.86). The acquirer is required to apply for preliminary consent from the Antitrust Service.

While reviewing the documents if the notification requirement is triggered, there is a possibility that the Antitrust Service may deem that the transaction requires its preliminary consent rather than just notification. Likewise, in some cases, Antitrust Service may require the provision of additional documents and information.

16. Are there any specific rules applicable for acquisition of public companies in your jurisdiction?

There are certain regulations that apply to public firms (if they are open joint stock companies that are listed) regarding the listing of shares and the subsequent sale and/or purchase of those shares via the stock market. The stock exchange market, however, is still in its infancy, therefore there is still considerable room for development and problems that need to be resolved. The Central Asian Stock Exchange (local stock exchange), where public firms are normally listed, has its own set of rules and regulations governing how it runs and how listed companies handle share trading.

17. Is there a requirement to disclose a deal, for instance to regulatory authorities? Is it possible to keep a deal confidential?

If competition law requirements are triggered, the deal must be disclosed to the antitrust services, other than that, there are no requirements to disclose the deal to third parties.

18. Can sellers be restricted from shopping around during a negotiation process? Is it possible to include break fee or other penalty clauses in acquisition documents to procure deal exclusivity?

The parties are free to choose the terms of the agreement if it complies with the provisions of the country whose law was the law was chosen as the governing law.

19. What are the conditions precedent in a typical acquisition document? Is it common to have conditions to closing such as no material adverse change?

A full list of the conditions precedent ("**CP**") used in a typical acquisition document cannot be created due to a number of elements and circumstances. Typically, it relies on the industry, the target company's activity range, its assets, and other factors. CPs regarding the following are most likely to be included by a firm ready to move forward with the purchase of a target company:

(i) Regulatory approvals (if required); (ii) Third-party consents (such as those of the target company's current creditors); (iii) Target company due diligence (including legal, financial, and/or tax); (iv) Representations, warranties, and covenants (common negative covenants might not be enforceable in Tajikistan due to conflict with the statutory provisions of the law); and (v) Other CPs as determined by a prospective buyer.

Conditions for closing, including the absence of any major adverse change, are frequently included. The majority of the CPs listed above are not usually included in local transactions because not all of them can be enforced under Tajik law. Nonetheless, such CPs are frequently utilized in transactions involving local parties that are controlled by foreign law.

20. What are the typical warranties and limitations in acquisition documents? Is it common to obtain warranty insurance?

It is typical to contain warranties and restrictions relating to the change in control, the lack of any liens or other claims secured by the assets, and the absence of any current or pending litigation. Other guarantees and limits may exist, but not all of them may be used or enforced in accordance with Tajik laws. Due to the fact that some of the shareholders' rights are statutory in nature and cannot be negated by any contractual restrictions, common negative covenants that would prevent shareholders from choosing whether to alienate shares to other parties cannot be implemented.

We have not encountered the use of insurance; the more common alternative is to have a guarantor.

21. Is there a requirement to set a minimum pricing for shares of a target company in an acquisition?

By law, no. However, if the price is too low, this may draw unwanted attention from the tax authorities, therefore, the price must not be lower than the market price for similar companies.

22. What types of acquisition financing are available for potential buyers in your jurisdiction? Can a company provide financial assistance to a potential buyer of shares in the target company?

These types of financing are not practiced in Tajikistan. Acquisition transpires through direct purchase of the shares via share purchase agreement.

23. What are the formalities and procedures for share transfers and how is a share transfer perfected?

A share purchase agreement must be finalized in writing and signed with wet ink. A power of attorney (from the alienated and/or receiving party) may be used to appoint representatives.

The new shareholder is required to submit a filing with the regulatory body following the completion of the transaction in order to introduce the necessary changes to the register to reflect the change in shareholder.

24. Are there any incentives (such as tax exemptions) available for acquisitions in your jurisdiction?

No. There are no incentives.

F. Enforceability

25. Can acquisition documents be executed in a foreign language?

Yes. But recommended practice is to have documents bilingual (foreign language and Tajik language), as the documents have to be translated into Tajik language and translation notary certified for them to be considered by the state authorities.

26. Can acquisition documents be governed by a foreign law?

Yes. Acquisition documents can be governed by a foreign law.

27. Are arbitration clauses legally permissible or generally included in acquisition documents?

Arbitration clauses are legally permissible, binding and generally included in agreements with foreign parties.

28. Are there any specific formalities for the execution of acquisition documents? Is it possible to remotely/digitally sign documents?

There are no specific formalities other than those mentioned above. The documents can be signed remotely, but it has to be signed in wet ink and not e-signature (e.g., docusign), since currently, e-signature is not as widely recognized by the state bodies.

G. Trends and Projections

29. What are the main current trends in M&A in your jurisdiction?

The government has made significant strides in the privatization of state-owned assets and inviting foreign investors to become joint owners with the government ever since the dissolution of the Soviet Union.

Due to the richness of various natural resources in Tajikistan, there has been substantial advancement in the mining industry, with several mining businesses being invested into by foreign investors and co-owned with the government.

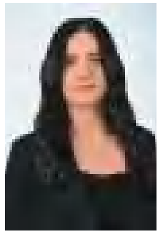
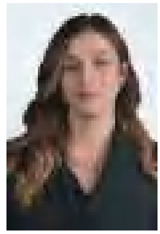
30. Are any significant development or change expected in the near future in relation to M&A in your jurisdiction?

Unfortunately, the lawmaking processes are not transparent, therefore, we cannot tell whether there are any changes are expected in the near future.

TÜRKİYE

ERGÜN AVUKATLIK BÜROSU



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A. General

1. What is the main legal framework applicable to companies in your jurisdiction?

The main law applicable to companies in Türkiye is the Turkish Commercial Code No. 6102, which governs corporate governance and transactions such as mergers, share purchases, spin-offs, and carve-outs. In addition, the Turkish Code of Obligations No. 6098 (regarding contractual relations between companies), the Capital Markets Law No. 6362 (applicable to public companies), and the Law on the Protection of Competition No. 4054 (addressing anti-competitive conduct) are also key laws.

Companies operating in certain regulated sectors in Türkiye may be subject to additional restrictions or permit requirements under legislation specific to those sectors, such as banking or the energy market (electricity, natural gas, petroleum, etc.). Key regulatory authorities include the Trade Registries, the Competition Authority of Türkiye (**"Competition Authority"**), and, for public companies, the Capital Markets Board of Türkiye (**"Capital Markets Board"**).

2. What are the most common types of corporate entities (e.g., joint stock companies, limited liability companies, etc.) used in your jurisdiction? What are the main differences between them (including but not limited to with regard to the shareholders' liability)?

The most common corporate entity types used in Türkiye are (i) joint stock companies ("**JSCs**") and (ii) limited liability companies ("**LLCs**").

Main differences between such corporate entity types are as follows;

- ***Initial share capital:*** Initial capital of TRY 250,000 (for non-public registered capital JSCs the minimum capital amount is TRY 500,000) is required for the incorporation of JSCs, while initial capital of TRY 50,000 is required for the incorporation of LLCs.

- ***Shareholders' Liability:*** In JSCs and LLCs, shareholders' liability is limited to their capital contribution to the company, save for (only for LLCs) any additional payment obligations under certain circumstances (e.g., in the event of financial difficulty) and other ancillary obligations which the shareholders may set forth in the articles of association of LLCs. Furthermore, concerning the tax and social security debts, a distinction arises in the liability borne by shareholders of LLCs and JSCs. In LLCs, shareholders have secondary liability for outstanding taxes (i.e., public claims) with their personal wealth but limited to their shareholding percentage.

- ***Managers/Boards of Directors Liability:*** LLCs and JSCs are regulated in the same manner. In LLCs and JSCs, the managers/board members and representatives have secondary liability for outstanding taxes and they may also, together with the company and authorized representatives of the company, be held jointly and severally liable to the Social Security Institution for social security debts.

- ***Transfer of Shares and Share Transfer Restriction:*** The shares of an LLC can be represented by registered share certificates (or alternatively, by certificates which can only be used for evidentiary purposes). Unless otherwise provided in the articles of association, any transfer of shares in an LLC shall be approved by affirmative votes of the majority of those attending the general assembly of shareholders meeting – such approval is a prerequisite for the intended share transfer to become effective. It should also be noted that transfer document must be notarized. On the other hand, the shares of a JSC can be represented by share certificates (or temporary share certificates)which may be issued in registered bearer form, which facilitates the process of share transfer. Nevertheless, to effectuate the transfer of registered shares for which the subscription amount has not been fully paid, the approval of the JSC is mandatory. Unless otherwise provided in the articles of association, no further restrictions imposed on share transfers in JSCs.

B. Foreign Investment

3. Are there any restrictions on foreign investors incorporating or acquiring the shares of a company in your jurisdiction?

Broadly speaking, Turkish legislation generally allows foreign investment in Türkiye. There are some restrictions in certain sectors such as aviation, broadcasting and maritime activities. Furthermore, it is worth noting that both foreign and Turkish companies are subject to certain restrictions on the acquisition of real estate in Türkiye. Accordingly, a purchaser may need to obtain specific regulatory approvals depending on the location of real property owned by a target company, for instance, in military zones and prohibited zones. Apart from these, there is a requirement to notify the Ministry of Industry and Technology of any foreign direct investment in a Turkish company, through an online system E-TUYS, for informational purposes.

4. Are there any foreign exchange restrictions or conditions applicable to companies such as restrictions to foreign currency shareholder loans?

In recent years, the Turkish Government took several measures, including enforcement of foreign currency borrowing restrictions, to procure Turkish Lira to gain its strength. The Decree No. 32 on the Protection of the Value of Turkish Currency and Capital Movements Circular regulate and set forth the principles for the determination of the value of Turkish currency against foreign currencies. This legislation sets forth specific restrictions on obtaining foreign currency loans from abroad or locally, if they are not generating any foreign currency income and if the entities or if their operations do not benefit from an exemption under the legislation. But this legislation should be checked consistently as it is constantly being amended.

Additionally, pursuant to the Communiqué numbered 2008-32/34 on Decree numbered 32, banks are obliged to notify Turkish Central Bank within 30 days as of any wire transfers abroad in relation to import and/or export activities and invisible transactions, with a balance equal to USD 50,000.

5. Are there any specific considerations for employment of foreign employees in companies incorporated in your jurisdiction?

Foreign persons shall obtain a work permit to legally stay and work in Türkiye. For the foreign persons to work in a company in Türkiye, such company shall make an application to the Ministry of Labor and Social Services and follow all procedures with the Ministry, on behalf of these employees. As of October 2024, work permit evaluation criteria were updated to revise the employment, financial adequacy, and salary requirements, and new provisions were introduced based on the sector, profession, or job type of foreign employees.

C. Corporate Governance

6. What are the standard management structures (e.g., general assembly, board of directors, etc.) in a corporate entity governed in your jurisdiction and the key liability issues relating to these (e.g., liability of the board members and managers)?

The executive body of a corporate entity is the board of directors for JSCs and the managers for LLCs, consisting of one or more members, who may be real persons or legal entities. In LLCs, at least one manager must be a shareholder of the company.

There is no requirement for board members or managers to be Turkish residents or nationals. They owe a duty of care to the company and must act as prudent managers, protecting the company's interests. Without the approval of the general assembly, they are prohibited from entering into transactions with the company on their own behalf or on behalf of third parties. If board members or managers breach their obligations with fault, they may be held liable for any damages caused to the company, its shareholders, or its creditors. Directors and officers' liability insurance may be obtained to mitigate such risks. However, this insurance only protects the insured party, which may in some cases be the company itself.

General assembly or shareholders have the ultimate control over matters, such as amending the articles of association, increasing and decreasing share capital, appointment of the board of directors in JSCs/managers in LLCs, resolving on dividend distribution.

7. **What are the audit requirements in corporate entities?**

Companies which meet at least two of the following conditions for two consecutive fiscal years are also subject to independent audit:

- active assets valued at TRY 150 million (TRY 30 million for companies whose capital market instruments are not traded on a stock exchange or other organized markets, but are considered public within the scope of the Capital Markets Board) or more;
- annual net sales revenue of at least TRY 300 million (TRY 40 million for companies whose capital market instruments are not traded on a stock exchange or other organized markets, but are considered public within the scope of the Capital Markets Board) or more; and
- at least 150 (50 for companies whose capital market instruments are not traded on a stock exchange or other organized markets, but are considered public within the scope of the Capital Markets Board) employees.

Additionally, regardless of these conditions, companies that actively operate in certain sectors as listed under a relevant decree – such companies which are subject to regulation and supervision of the Turkish Capital Markets Board, banks, other financial institutions etc. are subject to an independent audit.

The general assembly of a company appoints an auditor each year. The identity of the auditor is registered before the trade registry and announced in the Trade Registry Gazette. The auditor may be replaced during their term of office (within three weeks' time following the announcement of the appointment of the auditor in the Trade Registry Gazette) only by a court decision upon the request of the board of directors or by shareholders holding 10% of the company's share capital (and 5% for publicly held companies), if there are just grounds for replacement.

D. Shareholder Rights

8. **What are the privileges that can be granted to shareholders? In particular, is it possible to grant voting privileges to shareholders for appointment of board members?**

Under the Turkish Commercial Code, shareholders are entitled to both personal (*participation in general assembly meetings, voting rights, right to information, right to request special audit*) and financial rights (*pre-emption rights, right to receive dividends*). The Turkish Commercial Code permits shareholders to grant certain privileges to shares or share groups, regarding dividends, liquidation shares, pre-emptive rights and voting rights. These rights are conferred on the shares themselves and not directly on the shareholders. In this regard, privileges may be assigned by creating a specific class of shares, with such privileges expressly stipulated in the articles of association. As a rule, one share carries one voting right in general assembly meetings. However, it is possible to create privileged shares and grant up to fifteen voting rights per share to a specific share group.

The articles of association may set forth that certain or all general assembly resolutions be adopted by affirmative votes representing a specific percentage of the share capital, provided that such thresholds are not lower than those prescribed by the Turkish Commercial Code. In a similar manner, the articles of association may include provisions requiring that certain board of directors' resolutions be adopted by a supermajority of board members. Another voting privilege that can be granted to shares is in relation to the composition of the board, where a right to nominate a certain number of directors can be granted to a specific class of shares.

Besides the above-mentioned privileges, it is possible to grant other rights related to the governance and decision-making, receiving extra dividends or options to the shareholders, with the execution of a shareholders' agreement, which will be binding on the parties and not on the company. It is also possible to define and establish information rights, right of first refusal, drag-along rights, tag-along rights and anti-dilution rights that are granted to a group of shareholders in the shareholders' agreement.

9. Are there any specific statutory rights available to minority shareholders available in your jurisdiction?

Shareholders holding at least 10% of the total capital (this ratio is 5% in publicly traded companies) are defined as "minority" in accordance with the Turkish Commercial Code. Following rights are granted to the minorities by the law;

- right to call the general assembly meeting and add articles to the agenda;
- right to request the appointment of a special auditor from court;
- right to request the court to dissolve the company on the grounds of a valid reason;
- right to prevent the release of founders, board members and auditors from their liabilities relating to incorporation and share capital increase;
- right to request information and inspection;
- right to request print of the registered shares;
- right to request removal of auditor;
- right to squeeze-out in case of acquisition of public companies.

As per the Turkish Commercial Code, minority shareholders may be granted the right to be represented on the board of directors, provided that such right is expressly stipulated in the articles of association. If a candidate nominated by the relevant group or minority is submitted to the general assembly, the general assembly is required to elect the candidate as a board member, unless there is just cause to reject the nomination. In publicly held joint stock companies, the representation right granted in this manner may not exceed half of the total number of board members.

Shareholders may also agree to include other contractual protections for minority shareholders in shareholders' agreements, such as veto rights in specific decisions during general assembly or board meetings or special approval mechanisms for critical corporate actions, to safeguard the interests of minority shareholders and ensure their participation in critical company decisions.

10. Is it possible to impose restrictions on share transfers under the corporate documents (e.g., articles of association or its equivalent in your jurisdiction) of a company incorporated in your jurisdiction?

In LLCs, the share transfers shall be approved by the general assembly of shareholders with majority of the votes present at the meeting.

In JSCs, there are no legal restrictions on share transfers, provided that the capital corresponding to the registered shares has been duly paid and no contrary provision exists in the articles of association. Therefore, the fundamental principle governing share transfers in JSCs is freedom of transfer. However, if the articles of association of a JSC include a provision requiring the approval of the company (its board of directors) for a share transfer, the company may reject a share transfer based on an important cause.

11. Are there any specific concerns or other considerations regarding the composition, technical bankruptcy and other insolvency cases in your jurisdiction?

The Turkish Commercial Code stipulates different measures for JSCs and LLCs so as to protect the capital depending on the extent to which the capital of the company is affected.

- Pursuant to Article 376/1 of the Turkish Commercial Code, the board of directors/managers shall convene the general assembly for a meeting in the event that 1/2 of the total of capital and legal reserve funds of the company is lost. At such meeting, the board members / managers shall propose remedial measures to the general assembly.
- Article 376/2 governs the circumstances where 2/3 of the total of capital and legal reserve funds of the company are lost. In such a case, the general assembly must be convened without delay to decide either (i) to continue its operations with 1/3 of the capital or (ii) to take measures to recover the capital deficit. If the general assembly does not adopt any such decision, the company will automatically dissolve.
- Under the Article 376/3 of the Turkish Commercial Code, if there is a suspicion that the company is insolvent, the board of directors/managers shall prepare an interim balance sheet based on both the going concern and probable sale (liquidation) values of the assets and if the balance sheet confirms that the assets of the company are insufficient to cover the receivables of the creditors, the board of directors/managers shall request the bankruptcy of the company from the commercial court of first instance.

E. Acquisition

12. Which methods are commonly used to acquire a company, e.g., share transfer, asset transfer, etc.?

The method mostly used in acquisitions in Türkiye is share transfer.

13. What are the advantages and disadvantages of a share purchase as opposed to other methods?

In a share transfer transaction, an investor acquires the ownership of all or a portion of the shares of a company and indirectly assumes control over the company, including its assets, employees, contracts, rights and liabilities. This structure has various advantages and disadvantages when compared to other acquisition methods such as commercial enterprise transfers. Share transfers are procedurally simple and generally tax efficient. By contrast, asset transfers usually involve more procedural requirements such as notifying the creditors and fulfilling registration and announcement requirements. That said, in a share transfer, the purchaser acquires the company with all its existing and potentially undisclosed liabilities and risks including for tax, litigation, contractual etc. and therefore legal, tax and financial due diligence becomes more critical.

14. What are the approvals and consents typically required (e.g., corporate, regulatory, sector based and third-party approvals) for private acquisitions in your jurisdiction?

For private acquisitions, the seller typically undertakes the necessary steps to obtain the corporate authorizations, such as approval of the other shareholders where required under shareholders' agreements or the company's articles of association and adopting a board resolution to record the share transfer in the share ledger of the company. Additionally, third party consents are often required so that the buyer can continue to benefit from the key contracts, which contain change of control clauses. Failure to obtain such consent may result in termination or renegotiation of such contracts in less favorable terms. Depending on the nature and sector of the transaction, certain regulatory approvals or notifications may also be required. For instance, approval from the Turkish Competition Board may be required if certain thresholds are met and specific approval requirements may be triggered for companies operating in regulated sectors, such as energy or banking. In addition to the above, if a share transfer results in a target company being held by a single shareholder or if the shareholding changes in the target company exceed certain thresholds set forth under the Turkish Commercial Code, then the target company is also required to notify the Trade Registry.

15. What are the regulatory competition law requirements applicable to private acquisitions in your jurisdiction?

The Turkish competition law requirements for mergers and acquisitions are governed under the Law on Protection of Competition numbered 4054 and the Communiqué Regarding the Mergers and Acquisitions Requiring Approval from the Competition Board numbered 2010/4 ("**Mergers Communiqué**").

Pursuant to the Mergers Communiqué, mergers and acquisitions that meet two specific criteria fall within the scope of the Competition Board's approval requirement. First, there must be a change of control over the target company. Control is defined as the ability to exercise decisive influence over an undertaking's strategic business decisions such as its business plan, budget, material investment decisions and the appointment of senior management.

Second, the turnovers of the parties must meet the thresholds set forth in the Merger Communiqué, as follows:

i. the combined turnover of the transaction parties exceeds TRY 750,000,000 and the Turkish turnover of at least two of the transaction individually exceeds TRY 250,000,000, or

ii. in takeover transactions, the turnover of the asset or activity subject to the transfer, and in merger transactions, the Turkish turnover of at least one of the transaction parties exceeds TRY 250,000,000 and the global turnover of at least one of the other transaction parties exceeds TRY 3,000,000,000.

Failing to notify an acquisition which meets the above criteria, may result in administrative monetary fines and the transaction would be deemed as legally invalid with all its legal consequences.

16. Are there any specific rules applicable for acquisition of public companies in your jurisdiction?

The acquisition of shares in publicly held companies is primarily governed by the Capital Markets Law numbered 6362 and Communiqué on Tender Offers numbered II-26.1, which set forth the procedures and principles relating to both voluntary and mandatory tender offers.

Mandatory Offer: Any person or persons acting in concert, who acquire management control of a publicly held target company, either through partial or full acquisition of shares or voting rights, shall apply to the Turkish Capital Markets Board to launch a mandatory tender offer for the remaining shares. Acquiring management control in a company refers to directly or indirectly holding more than fifty percent of the company's voting rights, either individually or jointly with persons acting in concert, or holding privileged shares that grant the right to appoint or to nominate the absolute majority of the board of directors at the general assembly. If the real or legal persons who are required launch a tender offer, along with those acting in concert with them, fail to fulfill this obligation within the period determined by the Turkish Capital Markets Board, then their voting rights shall be automatically suspended. Accordingly, these shares shall not be taken into account when calculating the quorum for general assembly meetings.

Voluntary Share Purchase Offers: Any person may initiate a voluntary tender offer for all or part of the shares of a publicly held target company. In a voluntary tender offer, there is no mandatory minimum price and the buyer is free in determining the price and form of consideration.

In addition to the above, pursuant to the Communiqué on Squeeze-Out and Sell-Out Rights numbered II-27.3, if a bidder acting alone or in concert, acquires at least 98% of the voting rights of a publicly held company, such controlling shareholder(s) have the right to squeeze out other shareholders from the company and the minority shareholders have the right to sell-out their shares to the controlling shareholder(s).

Other Approvals: If the transaction meets the relevant criteria, Turkish Competition Board approval may be required prior to completion, as in the case of private company acquisitions. In addition, if a company operates in a regulated sector, further regulatory approvals may be necessary under sector-specific laws. Publicly held companies are also subject to public disclosure obligations, primarily regulated under the Communiqué on Material Events Disclosures numbered II-15.1. Under this legislation, shareholders who acquire or dispose of shares in publicly held companies shall make a public disclosure via the Public Disclosure Platform (*Kamuyu Aydınlatma Platformu*) when their shareholding or voting rights cross specified thresholds. Furthermore, any change in control, management, or financial condition of a company, which results in a significant impact on the company's operations, financial structure or management / shareholding structure may also trigger the obligation to make a material event disclosure.

17. Is there a requirement to disclose a deal, for instance to regulatory authorities? Is it possible to keep a deal confidential?

If an acquisition exceeds or has a possibility of exceeding the thresholds under the Law on Protection of Competition numbered 4054 (please see Question 15), a notification shall be made to the Turkish Competition Authority for the approval of the relevant transaction. Once notified, the details of the acquisition, including the parties involved and their fields of activity, are published on the Competition Authority's website. The Competition Authority also publishes its decisions after redacting commercial information.

In public M&A transactions, share purchase offers are subject to certain notification and public disclosure requirements under capital markets regulations, as provided under our answer to Question 16.

In private M&A transactions, there is no public disclosure requirement, and the acquisition documents typically contain confidentiality clauses. However, the Turkish Commercial Code imposes a post-closing disclosure obligation where the board of directors shall notify the Trade Registry if the share transfer results in the target company being held by a single shareholder, or if the shareholding changes exceed certain thresholds specified under the Turkish Commercial Code.

18. Can sellers be restricted from shopping around during a negotiation process? Is it possible to include break fee or other penalty clauses in acquisition documents to procure deal exclusivity?

There is no statutory restriction under Turkish law, however during negotiations the parties may contractually agree to limit shopping around by including restrictions in a term sheet / letter of intent / memorandum of understanding. Although not very common, in practice, it is possible to include break fees or other penalty clauses in the share transfer documentation to deter withdrawal or non-performance by either party.

19. What are the conditions precedent in a typical acquisition document? Is it common to have conditions to closing such as no material adverse change?

In a typical acquisition document, conditions precedent can generally be categorized into two groups: legally required and voluntary conditions. Legally required conditions include, for example, approval from the Turkish Competition Board for the transactions that result in a change of control and are over the monetary thresholds set out in the applicable legislation. The parties may also agree on voluntary conditions in line with the principle of freedom of contract, such as obtaining certain third-party consents or approvals.

20. What are the typical warranties and limitations in acquisition documents? Is it common to obtain warranty insurance?

Warranties commonly included in acquisition documents relate to the title and ownership of shares, corporate authority, books and records, material contracts, regulatory compliance, environmental matters, taxes, insurance coverage, employment matters, litigation and intellectual property rights. To manage risk exposure, sellers negotiate limitations on their liability, including monetary thresholds (e.g., caps, de minimis, baskets) and time limitations for bringing claims. Warranty and indemnity insurance is not that common in Türkiye due to the high premiums determined by insurance companies in relation to the scope of the warranties.

21. Is there a requirement to set a minimum pricing for shares of a target company in an acquisition?

There is no requirement to set a minimum price for shares in the acquisition of a private company; the parties to the transaction are free to determine the purchase price.

In public companies, the capital markets legislation imposes certain restrictions on the pricing of the shares. When there is a direct change in the management control of a target company, the mandatory tender offer price for:

(i) the listed shares cannot be less than (x) the arithmetic average of the daily weighted average prices of the listed shares over the six months preceding the public disclosure of the execution of the acquisition documents, or in the absence of such an agreement then prior to the acquisition of management control, (y) the highest price paid by the offeror or persons acting in concert with the offeror, for the same class of shares in the target company in the last six months before the mandatory tender offer requirement arose;

(ii) the non-listed shares cannot be less than (x) the price determined in a valuation report prepared in accordance with the capital markets regulations, considering any differences in privileges among share classes, if any, and (y) the highest price paid by the offeror or persons acting in concert with the offeror, for the same class of shares in the target company in the last six months before the mandatory tender offer requirement arose.

When there is an indirect change in the management control of the target company, the mandatory tender offer price shall be determined so that it cannot be less than:

(i) for non-listed shares or class of shares, the price determined in the valuation report prepared in accordance with the capital markets regulations considering any differences in privileges among share classes;

(ii) the highest price paid by the offeror or persons acting in concert with the offeror for the relevant class of shares in the last six months before the mandatory tender offer requirement arose;

(iii) for listed shares or class of shares, the arithmetic average of the daily adjusted weighed average stock exchange prices of the shares over the six months preceding the public disclosure of the execution of the documents relating to share transfer or acquisition of management control, which result in the indirect change of the management control, or in the absence of such an agreement then the date on which the management control was acquired.

There is no statutory minimum price requirement for voluntary tender offers in publicly held companies.

22. What types of acquisition financing are available for potential buyers in your jurisdiction? Can a company provide financial assistance to a potential buyer of shares in the target company?

In general, banks, private institutions, financing companies and funds play an active role in acquisition financing in Türkiye. It is also possible to obtain financing from the institutions abroad. Furthermore, as per article 380 of the Turkish Commercial Code, a target company cannot provide financial assistance such as advances, loans, or security for the acquisition of its own shares. This means that the target company cannot fund the purchase of its shares or establish a pledge or encumbrance over its assets (including any subsidiary shares) for the acquisition of its shares.

23. What are the formalities and procedures for share transfers and how is a share transfer perfected?

In LLCs after the execution of acquisition documents as required (please see Question 28), such share transfer shall be approved by the general assembly of the shareholders. The relevant resolution shall then be registered with the Trade Registry, announced in the Trade Registry Gazette and annotated in the share ledger.

There are some formal requirements for share transfers in JSCs as well. Transfer of bearer shares certificates is completed by physical delivery to the buyer and notification of such transfer to the Central Securities Depository of Türkiye by the buyer. Transfer of registered share certificates requires both endorsement and physical delivery to the buyer. For dematerialized shares the transfer is effected through a written share transfer agreement. In each option, share transfers shall be annotated in the company's share ledgers.

24. Are there any incentives (such as tax exemptions) available for acquisitions in your jurisdiction?

In acquisition transactions, there are different types of applicable taxes depending on the details of a transaction such as existence of physical share certificates, holding period and legal status of sellers. Transaction documents relating to share sales are exempt from stamp tax, however tax authorities may deem that stamp tax is applicable on the provisions which do not relate to the purchase and on the shareholders' agreements.

F. Enforceability

25. Can acquisition documents be executed in a foreign language?

Although one of the main principles of the Turkish Code of Obligations is the freedom of contract, the Law numbered 805 on the Compulsory Use of Turkish Language requires the use of Turkish language in contracts and notifications between Turkish parties.

26. Can acquisition documents be governed by a foreign law?

As per the Turkish International Private and Procedural Law, parties may choose foreign law to govern contracts that contain a foreign element (in terms of parties or a place), to the extent that the application of the selected foreign law is not explicitly contrary to the public order of Türkiye. Accordingly, parties may agree that all or some of the acquisition documents shall be governed by foreign law. A foreign element is deemed to exist if at least one of the parties to the transaction is a foreign person or entity, or the subject matter of the contract involves a foreign asset.

More recently, there has been an increase in the preference for Turkish law as the governing law in acquisition agreements. In such cases, the parties usually select arbitration as the dispute resolution mechanism, rather than Turkish courts, in order to ensure neutrality and impartiality.

27. Are arbitration clauses legally permissible or generally included in acquisition documents?

Arbitration clauses or agreements are legally permissible to be included in acquisition documents. The parties usually prefer to include arbitration clauses, to avoid delays associated with state court proceedings and to mitigate concerns over the validity of certain provisions specific to M&A documents. Parties are free to choose the governing law and seat of arbitration. The main arbitration institution in Türkiye is Istanbul Arbitration Center (ISTAC), but the parties may opt for other arbitration institutions around the world such as ICC International Court of Arbitration and the London Court of International Arbitration (LCIA).

28. Are there any specific formalities for the execution of acquisition documents? Is it possible to remotely/digitally sign documents?

Pursuant to the Turkish law, in LLCs, a share transfer agreement shall be written and notarized in order to be valid. On the other hand, in JSCs, there is no form or procedure required for the validity of share transfer agreements, except for the statutory requirements for the transfer of shares.

In acquisitions realized by the foreigners, the signatories of the parties often provide a power of attorney to their legal counsels enabling them to execute/sign the agreements on their behalf. For a power of attorney to be valid, the person providing a power of attorney shall be present at the notary public for the issuance of the power of attorney and if a power of attorney is issued abroad, such document shall be notarized and apostilled for the recognition before official authorities in Türkiye.

Standard electronic signatures on contracts are not considered as conclusive evidence and will only be admissible as commencement of evidence to prove the existence, authenticity and validity of a contractual relationship between the parties to a court. Pursuant to Turkish Code of Obligations, secure electronic signature has the same legal effect as a handwritten signature under Turkish law. Secured electronic signatures (which may only be provided by an electronic certificate service provider established or recognized in Türkiye) and e-signature shall not be used for certain types of contracts which need to be executed in an official form or through certain procedures, e.g., before a notary public. In practice, e-signature is mostly used in documents provided by public institutions and is not yet a common method in the agreements.

G. Trends and Projections

29. What are the main current trends in M&A in your jurisdiction?

Türkiye's M&A market maintained a notable level of activity despite a range of challenging factors, including geopolitical tensions, monetary policies, inflation, and elections. According to KPMG Türkiye, the disclosed value of mergers and acquisitions in Turkey reached approximately $5.3 billion in 2024, with the total estimated value, including undisclosed transactions, reaching around $10.1 billion. In 2024, activity was primarily concentrated in the technology, media, and telecommunications sector. Looking ahead to 2025, sectors such as technology, energy (particularly renewables), infrastructure, healthcare, and financial services are expected to remain key areas of interest.

30. Are any significant development or change expected in the near future in relation to M&A in your jurisdiction?

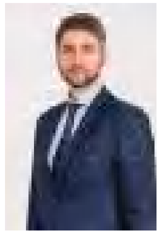
Recent legal developments include amendments to the Turkish Commercial Code concerning the minimum share capital requirements for joint stock companies (JSCs) and limited liability companies (LLCs), as well as changes related to board elections, authority, and meetings. Pursuant to Provisional Article 15 of the Turkish Commercial Code, companies whose share capital falls below the newly established minimum thresholds are obliged to increase their capital to the required levels by December 31, 2026. Any failure to increase their share capital to the required amounts by the specified deadlines shall result in dissolution of the breaching companies, except for companies in the registered capital system, which shall only exit the registered capital system rather than being dissolved.

There is no major legislative reform specific to M&A that has been announced so far in 2025. While the legal framework governing M&A in Türkiye largely remains the same, economic conditions and sectoral trends and investor behavior will be key drivers in the near future.

UKRAINE

INTEGRITES





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A. General

1. What is the main legal framework applicable to companies in your jurisdiction?

The Civil Code of Ukraine provides general regulations of legal entities. Limited liability companies and joint stock companies are also governed by the special laws (i.e., *Law of Ukraine "On additional and limited liability companies"* and *Law of Ukraine "On joint stock companies"*). Business entities of other legal forms are governed by the Economic Code of Ukraine and the *Law of Ukraine "On business companies"*.

2. What are the most common types of corporate entities (e.g., joint stock companies, limited liability companies, etc.) used in your jurisdiction? What are the main differences between them (including but not limited to with regard to the shareholders' liability)?

The main business vehicles used in Ukraine are a) limited liability companies ("**LLC**") and b) joint stock companies ("**JSC**").

A Limited Liability Company, where holders of participatory interests are not liable for the company's debts beyond the capital/assets they contributed or committed to contributing to the LLC capital. It is the most popular, widespread and flexible legal form that both local and foreign founders commonly use to operate in Ukraine.

A Joint Stock Company that issues shares registered with the National Commission for Securities and Stock Market (the "**SEC**"). The shareholders are liable for the company's debts only to the extent of the capital/assets they contributed as payment for the shares. JSCs are either private or public, with the main difference being that the shares of a public JSC can be placed and sold publicly, while shares of a private JSC are placed exclusively among its shareholders or a restricted list of persons specifically approved by the shareholders.

The main differences between the LLCs and JSCs are as follows:

LLC	JSC
no minimum equity capital requirement	200 minimum monthly salaries as of the date of state registration (appr. EUR 36,000 in November 2024)
easier and quicker to establish (1 – 2 weeks in practice) and operate	complex establishment process (4 – 6 months in practice)
participatory interests are not deemed to be registered securities (shares)	shares are securities registered by the SEC, no bearer shares are allowed
transfer of participatory interests to third parties is normally subject to pre-emptive rights of other shareholders	transfer of shares of private JSCs to third parties may also be subject to the pre-emptive rights of other shareholders
participants are liable within their contributions	disclosure obligations and reporting to the SEC shareholders are liable within their contributions

Other forms of business vehicles (for example, additional liability companies and private enterprises) are available but are rarely used.

B. Foreign Investment

3. Are there any restrictions on foreign investors incorporating or acquiring the shares of a company in your jurisdiction?

Foreign investors in Ukraine generally have the same rights as Ukrainian investors. There are very few restrictions on foreign investment.

Foreign investors are not entitled to purchase and own agricultural land. There is also statutory prohibition on foreign investors who are not allowed to acquire shares in companies that own agricultural land. There are some industry-specific restrictions, such as the 35% cap on foreign ownership of information agencies, and the prohibition on ownership of broadcasting companies by residents of jurisdictions that qualify as offshore under the Ukrainian law. Certain critical infrastructure, especially in the energy sector, is precluded by law from private ownership and therefore not available to foreign investors. This includes the gas transmission system, electricity grids, various plants and factories.

In view of Russia's annexation of Crimea and its military aggression against Ukraine, certain restrictions have been recently introduced on investment by the nationals and companies of a foreign state that is engaged in military aggression against Ukraine. For example, they are prohibited from owning shares (participatory interests) in the Ukrainian media companies and are disqualified from the privatization of the Ukrainian state-owned enterprises. Some licensed activities may not be carried out by businesses affiliated with the nationals and companies of a foreign state that is engaged in military aggression against Ukraine.

4. Are there any foreign exchange restrictions or conditions applicable to companies such as restrictions to foreign currency shareholder loans?

Due to the war, the National Bank of Ukraine ("**NBU**") has imposed a temporary moratorium on all cross-border payments from Ukraine or to correspondent accounts of foreign banks opened in Ukrainian banks, effectively blocking all transfers from Ukraine abroad subject to certain exemptions. The purchase of foreign currency by Ukrainian residents has been prohibited unless the foreign currency is purchased to make exempt payments. These measures were necessary to preserve Ukraine's international reserves.

The temporary rules do not allow transferring foreign currency abroad for repayment and servicing of loan obligations to non-residents by Ukrainian companies (subject to certain exceptions, like loans guaranteed by the state or executed with international financial institutions, etc.).

Cross-border payments for any recently imported goods are possible. At the same time, only service works, intellectual property rights, and other intangible rights from the list approved by the Government can be paid by the local businesses to foreign providers. The NBU has also reduced the maximum term for settlements under the export and import of goods applying to transactions (currently, 180 calendar days).

The NBU has determined that in order to make payments in foreign currency, a company must first use its foreign currency reserve and then, if necessary, purchase more on the Ukrainian foreign currency exchange market.

Termination of the mutual cross-border obligations by way of offsetting is currently not accepted by the local banks under the export or import transactions.

5. Are there any specific considerations for employment of foreign employees in companies incorporated in your jurisdiction?

Generally, foreign nationals must obtain a work permit to be employed in Ukraine. The permit is issued by the local employment centres. The work permits for citizens of the Russian Federation, the Republic of Belarus, as well as other states recognized as such that threaten the state sovereignty, territorial integrity and democratic constitutional order and other national interests of Ukraine, can be issued or extended upon approval of the Security Service of Ukraine. A work permit is necessary both for direct employment of a foreign national by a Ukrainian employer, for secondment of a foreign employee and internal corporate assignees to a Ukrainian employer.

Work permits are generally issued for up to three-year period and can be extended. In case of a direct employment, the validity term shall not exceed 2 years.

Under the general rule, a work permit is issued within seven business days upon filing the application. Three business days are needed, to extend the validity of the permit or to amend it.

The employer shall apply for an extension of the work permit not later than 20 and not earlier than 50 calendar days before the expiration of such permit. This term does not apply during martial law.

C. Corporate Governance

6. What are the standard management structures (e.g., general assembly, board of directors, etc.) in a corporate entity governed in your jurisdiction and the key liability issues relating to these (e.g., liability of the board members and managers)?

The management structure of the LLC includes a general shareholders' meeting and an individual or collective executive body (director or executive board). Under Ukrainian legislation, it is also possible to establish a supervisory board in the LLC to control the activities of the executive body.

A JSC in Ukraine has a management structure similar to that of an LLC. Given the recently adopted new *Law of Ukraine "On Joint Stock Companies"*, JSCs can choose to have either a one-tier or two-tier governance structure.

In a one-tier structure, the governing bodies are the general shareholders' meeting and the board of directors – a collegial body exercising management and control functions. It may consist of executive and non-executive directors. As an exception, for private JSCs with a one-tier management structure that have up to 10 shareholders, a single person executive body can be chosen instead of the board of directors.

The two-tier management structure of a JSC splits management and control functions between the general shareholder's meeting, the supervisory board, and the executive body – the executive board or a sole director. Also, the involvement of the corporate secretary is mandatory in public JSCs, JSCs of public interest, and JSCs with 100 or more shareholders/owners of ordinary shares.

According to the Ukrainian law, officials of JSCs or LLCs (e.g., members of the executive board or supervisory board) must act reasonably, in good faith, and the company's best interest. Under a general rule, the officials are personally liable to the company for damages caused by their actions or failure to act. In addition, shareholders in JSCs and members of the supervisory board representing them are jointly and severally liable for damages caused to the company by such board member(s).

Members of the company's governing bodies may also jointly bear subsidiary liability for the company's obligations if they fail to convene a general shareholders' meeting or notify controlling bodies about the decrease of the company's net assets value below the threshold established by the law, provided that such failure led to the declaring the company bankrupt during three years from the date of such decrease.

Other liability also may be established in the contract concluded with the officials of the company.

7. What are the audit requirements in corporate entities?

Financial statements of public or regulated companies are subject to mandatory audit by certified independent auditors. Such companies include, in particular:

- enterprises of public interest, including issuers of securities admitted to trading on the regulated capital market or publicly offered, banks, insurers, non-state pension funds, other financial institutions and large enterprises;
- public JSCs;
- subjects of natural monopolies on the national market;
- business entities that operate in the extractive industries;
- medium-sized enterprises;
- other financial institutions that relate to micro and small enterprises.

Financial statements and auditor reports of the mentioned companies must be disclosed within the time frame and in the manner prescribed by the *Law of Ukraine "On Accounting and Financial Reporting in Ukraine"*.

D. Shareholder Rights

8. What are the privileges that can be granted to shareholders? In particular, is it possible to grant voting privileges to shareholders for appointment of board members?

Generally, in Ukraine, shareholders receive certain rights in connection with their ownership over the shares. In particular, shareholders have the right to:

- participate in the management of the company;
- receive dividends;
- receive a part of the company's assets or their value in case of the company's liquidation;
- to have access to certain records/ information etc.

Shareholders of LLCs and JSCs have pre-emptive rights during the share capital increase. In LLCs, the shareholders also enjoy pre-emptive rights in case of the sale of the stock to third parties unless otherwise provided by the articles of association and/or shareholders agreement.

Shareholders of JSCs or LLCs may enter into a shareholders' agreement to fix their undertakings to exercise their rights and powers in a certain way or refrain from their exercise.

Such agreement can establish terms and conditions (or the procedure for the determination of terms and conditions) under which a shareholder has the right or obligation to buy or sell its stock, the procedure for nomination of candidates for the posts in the governing bodies of the company, as well as the obligation of the parties to vote at the general shareholders' meeting in the manner provided for by such agreement.

To ensure the fulfilment of their obligations by the parties of the shareholders' agreement, the agreement can envisage the issuance by the obliged party of an irrevocable power of attorney to the empowered party.

9. Are there any specific statutory rights available to minority shareholders available in your jurisdiction?

The Law of Ukraine "*On Joint Stock Companies"* provides for such mechanisms as a buyback of shares (right of a minority shareholder to demand from the company to repurchase their shares in cases envisaged by the law) and a sell-out procedure (right of a minority shareholder to demand from the acquirer of a dominant controlling stake of shares to buy out their shares).

In LLCs and JSCs, shareholders jointly owning 10% or more shares may also demand the company to convene an extraordinary general shareholders' meeting. In addition, every owner of stock may submit proposals to the general meeting agenda. Proposals of the owner(s) with more than 5% of shares are mandatorily included in the agenda. Proposals of the minority shareholders with fewer percentage of votes may be turned down by the body convening the general meeting on grounds stipulated in the articles of association (if any).

The minority shareholders also enjoy the same statutory rights as the majority shareholders, in particular rights related to access to information, receiving dividends etc.

10. Is it possible to impose restrictions on share transfers under the corporate documents (e.g., articles of association or its equivalent in your jurisdiction) of a company incorporated in your jurisdiction?

In addition to the pre-emptive right in case of the sale of the stock to third parties, the articles of association of the LLC may establish restrictions on the alienation or encumbrance of the stock in the company's share capital. It is also possible to include the requirement to obtain a consent of other shareholders for the alienation of the stock and its pledge.

The corresponding provisions can be included in the articles of association or excluded therefrom by a unanimous decision of the general shareholders' meeting, at which all shareholders of the company are present.

In the JSCs, generally, no restrictions on share transfer can be established in the corporate documents of the company. Nevertheless, the desired restrictions can be implemented by the shareholders on a contractual basis in the shareholders agreement both in a JSC and a LLC.

11. Are there any specific concerns or other considerations regarding the composition, technical bankruptcy and other insolvency cases in your jurisdiction?

Historically, the bankruptcy procedure was often misused to restrict the creditors in their rights to claim the debt. However, recent changes to the Ukrainian bankruptcy regulations substantially improved the legal framework which now protects both the creditors and the participants\shareholders of the company.

E. Acquisition

12. Which methods are commonly used to acquire a company, e.g., share transfer, asset transfer, etc.?

In Ukraine, methods to acquire a company are quite similar to those available in other jurisdictions, with some limitations and peculiarities. Ukrainian law provides the following methods to acquire a company:

- purchase of shares or participatory interests;
- purchase of an asset (including the purchase of an integrated property complex);
- mergers;
- debt-to-equity swaps.

The most common method used in Ukraine is the purchase of shares or participatory interests in a particular company. That is, the purchaser buys the outstanding stock directly from the company's shareholders.

Ukrainian law also allows the acquisition of a company through the purchase of assets which is quite common as well. This option allows the buyer to acquire only identified assets and liabilities of a company and not the company itself. However, the purchase of assets usually requires payment of the value-added tax (currently amounting to 20%), which increases the transaction value.

13. What are the advantages and disadvantages of a share purchase as opposed to other methods?

Generally, the purchase of shares provides for the following advantages for sellers or purchasers as opposed to other methods:

- structural simplicity and business continuity;
- direct receipt of sale proceeds by the shareholders;
- not subject to the Ukrainian value-added tax;
- no need to inform or consult employees or their representative(s).

At the same time, share purchases have the following disadvantages for sellers or purchasers:

- purchaser may acquire hidden liabilities;
- sale must be approved by shareholders;
- withholding taxation (15% or less) for cross-border transactions may apply to certain transactions;
- strict Ukrainian currency control and financial monitoring regulations with respect to cross-border payments.

14. What are the approvals and consents typically required (e.g., corporate, regulatory, sector based and third-party approvals) for private acquisitions in your jurisdiction?

In Ukraine, a number of approvals should be obtained for private acquisitions. The type of approval to be obtained depends on the type of business and the transaction value.

Generally, the parties to the transaction shall ensure compliance with their corporate procedures and obtain approvals as required by the law and the company's statutory documents.

The approval of the Antimonopoly Committee of Ukraine (the "**AMCU**") is also required if the transaction qualifies as a concentration, and the respective financial thresholds established by the *Law of Ukraine "On Protection of Economic Competition"* dated 11 January 2001 (as amended) are exceeded.

There may be other mandatory filings depending on a specific industry as well as the peculiarities of business operations. For example, acquisition of shares or participatory interest in an insurer over certain thresholds (10, 25 or 50%) will require prior approval of the regulator. As a matter of practice, obtaining such approvals may take time due to the bureaucratic procedures.

15. What are the regulatory competition law requirements applicable to private acquisitions in your jurisdiction?

The merger control notification is mandatory if the financial thresholds established by the law are met.

The following types of transactions are subject to merger control:

- merger of entities or takeover of one entity by another;
- direct or indirect acquisition of control over an entity or a part of it;
- creation of a joint venture by two or more entities;
- direct or indirect acquisition of shares, that ensures obtaining control including (1) 25% or more (2) 50% or more votes in the highest governing body of an entity.

The acquisition of less than 50% of shares in a company is subject to AMCU approval if such minority interest ensures the control to the acquirer (including the negative control via veto rights under a shareholders' agreement or other similar instruments).

Under Ukrainian competition law, control is a decisive influence over the business activity of an entity, irrespective of the form that such influence takes (including informal de facto control). The control test is based on the ability to veto important decisions relating to the business activity of an entity (approval of the budget, business, strategic and development plans, the appointment of senior management and key employees, the ability to enter certain types of agreements, etc.).

The merger control clearance is required, if:

- the aggregate worldwide value of assets or turnover of the parties to concentration exceeds EUR 30 mln, and the value of Ukrainian assets or turnover of at least two parties to the concentration exceeds EUR 4 mln each; or
- the aggregate value of Ukrainian assets or turnover of at least one of the parties to concentration exceeds EUR 8 mln, and the worldwide turnover of at least one other party to the concentration exceeds EUR 150 mln.

All thresholds are calculated on a group-level basis (taking into account the relations of control). All entities which are directly or indirectly controlled by the parent company, form a group of entities and constitute a single undertaking from a merger control standpoint. The thresholds test is applied for the acquirer group and the target group including the seller group.

The thresholds refer to the whole turnover and assets of the parties (not only those related to the relevant product/service market). The thresholds are the same for all industries and sectors involved.

Concentrations exceeding the thresholds stipulated by the competition law must be cleared with the AMCU before their implementation.

16. Are there any specific rules applicable for acquisition of public companies in your jurisdiction?

There is a specific regulation for acquisition of public joint stock companies. More specifically, if a buyer bought more than 50% of the common shares, it is obliged (1) to notify the SEC and (2) to make an irrevocable offer on the acquisition of the shares of the remaining shareholders.

Furthermore, reaching the threshold of more than 95% triggers the sell-out and squeeze-out mechanisms.

It is worth mentioning that the acquisition of public (state-owned) companies is subject to special procedure of privatization.

Privatization is the sale of state-owned property to private individuals or legal entities. All targets are sold exclusively through Government's electronic trading system Prozorro.

All targets form two groups: small-scale and large-scale privatization objects. Objects of small-scale privatization include not only state-owned enterprises and stakes but also objects of unfinished construction and socio-cultural purposes, separate movable and immovable property, the value of which does not exceed UAH 250 million.

If the cost of the object is higher than UAH 250 million – these are large-scale privatization objects, to which only state-owned enterprises and share packages can apply. Usually, such objects require more time for pre-privatization preparation, attraction of potential buyers and their familiarization with information about the enterprise.

17. Is there a requirement to disclose a deal, for instance to regulatory authorities? Is it possible to keep a deal confidential?

Under the general rule, it is possible to keep a deal confidential unless the legislation provides for notification, prior approval or reporting obligations. Some of them are mentioned below.

Concentrations exceeding the thresholds stipulated by the competition law must be cleared with the AMCU before their implementation.

Transaction on the acquisition of shares in JSCs shall be reported to the SEC, if it results in increase by a person of the existing interest in the target company to 10%, 25%, 50%, or 75% of the company's authorized (share) capital or votes in the company.

18. Can sellers be restricted from shopping around during a negotiation process? Is it possible to include break fee or other penalty clauses in acquisition documents to procure deal exclusivity?

Exclusivity clauses are quite common in the Ukrainian M&A market. Ukrainian law does not provide for specific regulations regarding break fees. Thus, general principles of Ukrainian contract law are applicable in this case. As Ukrainian law does not provide for any restrictions in this regard, the break fee penalty is enforceable in Ukraine. However, it is advisable for the parties to have a genuine intention to conclude a fair deal and act reasonably and in good faith, otherwise, such deal can be declared null and void by a court.

19. What are the conditions precedent in a typical acquisition document? Is it common to have conditions to closing such as no material adverse change?

The standard list of conditions precedent to the acquisition documents includes:

- obtaining preliminary regulatory permits/approvals;
- obtaining corporate approvals;
- delivery to the purchaser of written consents from certain key clients or suppliers of the target to confirm they consent to the contemplated transaction and agree not to exercise any termination right arising from the contemplated transaction (e.g., change of control provisions);
- pre-transaction restructuring;
- pre-transactional cleaning up, etc.

It is also quite common to have such condition precedent as no material adverse change. However, in reality, MAC clauses are rarely used and even more rarely upheld by courts. This practice is now being changed as such clauses have gained importance during the war.

20. What are the typical warranties and limitations in acquisition documents? Is it common to obtain warranty insurance?

Under the Ukrainian law, the parties to the agreement may agree on a list of warranties regarding the circumstances relevant to the conclusion, performance, or termination of such agreement.

The specific warranties included in the acquisition documents vary depending on the nature of the transaction and the assets being acquired. However, there are several warranties that are often included in M&A agreements in Ukraine, in particular warranties with respect to:

- corporate organization and authority;
- title to assets;
- compliance with laws;
- financial condition of company;
- litigation and claims.

It is not common in Ukraine to obtain warranty insurance.

21. Is there a requirement to set a minimum pricing for shares of a target company in an acquisition?

There is no statutory requirement in Ukraine to set minimum pricing for shares of a target company in an acquisition.

22. What types of acquisition financing are available for potential buyers in your jurisdiction? Can a company provide financial assistance to a potential buyer of shares in the target company?

The most common form of acquisition financing is a loan which can be taken in Ukraine or abroad.

The law on JSC prohibits the target company from financing any acquisition of its shares, as well as to guaranteeing the loan granted for this purpose by a third party.

The law on LLC prohibits the target company from financing only the obligation of a participant to contribute to the share capital, but not the acquisition of existing shares from participants.

23. What are the formalities and procedures for share transfers and how is a share transfer perfected?

The document that confirms transfer of the participatory interest of a limited liability company is the share transfer certificate, which shall be executed by the parties in front of a Ukrainian notary. This certificate should be provided to the state registrar to formalize the transfer of the shareholder's rights.

Once the certificate is submitted, the state registrar registers respective amendments with the Ukrainian corporate register (Unified State Register of Legal Entities, Private Entrepreneurs and Public Organizations).

As for the JSC, the instruction on transfer of shares in a JSC shall be filed with the depositary in person by the authorized representative of the seller. The registration of the title transfer is done by a depositary institution upon deposition of the shares at the securities account of the buyer.

24. Are there any incentives (such as tax exemptions) available for acquisitions in your jurisdiction?

Normally, foreign investors in Ukraine are taxed the same way as domestic companies unless there is preferential treatment. This kind of treatment can be awarded to projects under state programs for development of priority industries.

In addition, tax incentives may be available under intra-governmental double taxation treaties.

Finally, there are also special tax incentives for participants of industrial parks and large investments.

F. Enforceability

25. Can acquisition documents be executed in a foreign language?

Agreements involving domestic legal entities must be concluded in Ukrainian. If a foreign person is a party to the agreement, the parties may choose another language. In this case, documents are usually executed in two languages – Ukrainian and the language of the counterparty (or English).

26. Can acquisition documents be governed by a foreign law?

If a foreign person is a party to the agreement, the parties are free to choose a governing law. However, some other transactional documents will have to comply with the local legal requirement applicable to share transfers, including notification obligations to the SEC (for a JSC), share transfer certificate which has to be filed with the state registrar to reflect the change in ownership (for an LLC).

27. Are arbitration clauses legally permissible or generally included in acquisition documents?

The arbitration clauses are legally permissible and generally included in acquisition documents.

The arbitration clauses must be put down in writing. It may be concluded in the form of a separate agreement, a clause in a contract, or by exchange of letters. An arbitration agreement is also deemed to have been validly concluded if the parties exchange a written claim and a written defense in which one of the parties asserts and the other party does not deny the existence of an arbitration agreement.

An arbitration clause (agreement) may also be incorporated into the parties' contract by reference. According to the Ukrainian Arbitration Act, a reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the contract is executed in writing and the reference is such as to make the clause a part of the contract. The parties should include a clear and expressed reference to ensure that the respective provisions of, for example, the general terms and conditions constitute an integral part of the contract.

28. Are there any specific formalities for the execution of acquisition documents? Is it possible to remotely/digitally sign documents?

The agreements on transfer of shares or participatory interest can be in writing. The law does not require notarization of such agreements.

E-signatures are legally valid and enforceable in Ukraine. Thus, the Ukrainian law allows to sign such agreements remotely/digitally.

The simple e-signature is not sufficiently defined and regulated by the specific Ukrainian law. As this type of e-signature is not capable of identifying the person that signed it, it is not widely used in transaction on companies' acquisition.

The qualified e-signature shall have the equivalent legal effect of a handwritten signature and is based on a qualified open key certificate. This type of signature enables electronic identification of the signatory.

It should be noted that certain transaction documents (e.g., share transfer certificate which is the basis for registration of the title transfer) require notarization in Ukraine. The instruction on transfer of shares in a JSC shall be filed with the depositary in person by the authorized representative of the seller.

G. Trends and Projections

29. What are the main current trends in M&A in your jurisdiction?

The war dropped down the market in 2022 in most of the areas. In 2023 the situation slightly improved by the companies which generated profits with no possibility to distribute the dividends. Those M&A deals which we see on the market have certain peculiarities which are shortly described above.

International structuring: Considering the overall situation in Ukraine, the sellers prefer to structure the deals on the "outside Ukraine" level (where possible). This includes the pre-deal structuring, involving the creation of a holding company mostly in a European jurisdiction, with further centralization of all shares and assets.

Changes in focus: Indeed, the situation in Ukraine is rather dynamic and special attention is given to the material adverse change ("MAC") clauses, as well as the force majeure ("FM") clauses. As a result, MAC and FM clauses became much more complex and compound. Such clauses now cover not only local regulations but also martial law, conscription and relocation of employees, as well as functions of governmental authorities, banks, state registers, etc.

Deferral conditions: In view of the global uncertainty, the parties to an M&A deal often negotiate various deferral conditions, for example, the payment conditions linked to certain events and the transfer of title after certain dates.

30. Are any significant development or change expected in the near future in relation to M&A in your jurisdiction?

From the legal point of view, Ukrainian corporate legislation has been substantially improved and many "English law instruments" have been introduced. Considering this, we may expect that more M&A deals will be structured under the Ukrainian law.

From the business point of view, we expect a number of distressed asset M&A deals in the coming months as the war has had a negative impact on numerous businesses.

Along with that, Technology and Agriculture are likely to remain the most active sectors in terms of M&A.

Also, a number of M&A deals in Ukraine will be driven by the ongoing privatization.

Finally, we expect that after the war, we will see the number of M&A deals increasingly growing in various sectors.

UNITED ARAB EMIRATES

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A. General

1. What is the main legal framework applicable to companies in your jurisdiction?

The main legal framework applicable to companies in the United Arab Emirates (the "**UAE**") is the Federal Law No. 32 of 2021 on Commercial Companies, which came into force on 2 January 2022. This law sets out the rules and regulations for the formation and operation of companies in the UAE, including limited liability companies, joint ventures, and public shareholding companies. The UAE also has a number of free zones that have their own specific laws and regulations governing the formation and operation of companies within those zones.

The main legal frameworks for companies in the Dubai International Financial Centre (the "**DIFC**") and the Abu Dhabi Global Market (the "**ADGM**") are the zones.

The main legal frameworks for companies in the Dubai International Financial Centre (the "DIFC") and the Abu Dhabi Global Market (the "ADGM") is the DIFC Companies Law and the ADGM Companies Regulations 2015 respectively. Both frameworks are based on English common law and govern the formation and operation of companies within the DIFC and the ADGM respectively, as well as their relationships with shareholders, directors and other stakeholders. The DIFC and the ADGM each have their own court system, which are separate from the UAE's federal court system and are responsible for resolving disputes that arise within the DIFC and the ADGM.

2. What are the most common types of corporate entities (e.g., joint stock companies, limited liability companies, etc.) used in your jurisdiction? What are the main differences between them (including but not limited to with regard to the shareholders' liability)?

The most common types of corporate entities in the UAE are:

- **Limited Liability Company ("LLC")**: this type of company is the most common corporate structure used in the UAE. It is a separate legal entity from its shareholders, meaning that the shareholders' liability is limited to the amount of capital they have invested in the company.
- **Free Zone Company**: these types of companies are established in one of the UAE's free trade zones and are subject to the regulations of the respective free zone authority. Free zone companies typically have more flexibility in terms of ownership and operations in comparison to LLCs.
- **Public Joint Stock Company ("PJSC")**: these types of companies are typically larger and have a higher level of regulation compared to LLCs and free zone companies. They are required to have at least five shareholders and their shares can be traded on a stock exchange. Shareholders' liability is limited to the amount of capital they have invested.
- **Private Joint Stock Company ("Private JSC")**: similar to a PJSC, except that the shares of the company cannot be traded on a stock exchange, and the company must have at least two shareholders, however as an exception, a legal entity can incorporate a Private JSC and hold its entire shares. Shareholders' liability is limited to the amount of capital they have invested.
- **Special Purpose Vehicle (SPV)**: this type of company is established for the purpose of separating the obligations and assets associated with a specific financing operation from the obligations and assets of its parent entity. As above, at the time of writing, we expect the SCA to issue further resolutions and guidance but anticipate that such vehicles could be utilized in bond issuances, debt capital market transactions and credit transactions.
- **Sole Proprietorship**: this type of company is owned and run by a single individual, and the owner is personally liable for all the debts and liabilities of the company.
- **Foreign Branch Office**: this type of entity is not a separate legal entity but an extension of the foreign company. Such a company is not permitted to undertake commercial activities, and the parent company is liable for all its debts and liabilities.

B. Foreign Investment

3. Are there any restrictions on foreign investors incorporating or acquiring the shares of a company in your jurisdiction?

Up until recently, most mainland (non-free zone) companies were required to have a UAE shareholder owning at least 51% of the shares in the capital of the company. However, pursuant to Federal Law No. 32 of 2021 on Commercial Companies, the UAE now allows 100% foreign ownership of certain onshore companies, provided such companies carry out certain types of activities that are considered non-strategic.

Each Emirate can determine which activities are allowed to be conducted by companies with 100% foreign ownership, subject to certain restrictions. Such activities typically focus on commercial and industrial activities, however, certain sectors and activities are specifically excluded from such allowance of 100% foreign ownership, including (i) commercial agencies; and (ii) strategic activities (including the military, banking, insurance and re-insurance, and telecoms sectors).

Neither the DIFC nor the ADGM place restrictions on foreign investors incorporating or acquiring the shares of a company. All companies incorporated in the DIFC and the ADGM can be 100% foreign-owned, and it is possible for such a company to own assets and conduct business outside of that free zone, subject to certain rules and regulations.

It is worth noting that there are restrictions on certain sectors such as oil, gas and other strategic sectors of the economy. It is also worth noting that the UAE has a number of bilateral investment treaties with other countries that may provide additional protections and benefits to foreign investors in specific circumstances.

4. Are there any foreign exchange restrictions or conditions applicable to companies such as restrictions to foreign currency shareholder loans?

Companies in the UAE are generally free to conduct transactions in foreign currency, including accepting foreign currency shareholder loans, however, the Central Bank of the UAE (the "**CBUAE**") has the authority to impose foreign exchange controls or restrictions in certain circumstances (i.e. during periods of economic instability).

The CBUAE has not imposed any significant foreign exchange restrictions in recent years, however companies must keep up to date with any changes to such regulations to ensure they are compliant. It is important to note that companies must comply with the regulations of the CBUAE as well as other relevant authorities, such as the UAE Ministry of Economy. Additionally, foreign currency loans may be subject to restrictions or conditions in some sectors or industries, such as the real estate sector, which may be subject to the rules issued by the Real Estate Regulatory Authority, which is the Dubai real estate sector regulatory agency.

5. Are there any specific considerations for employment of foreign employees in companies incorporated in your jurisdiction?

There are several considerations for the employment of foreign employees in companies incorporate in the UAE. Some of these include:

- **Sponsorship & Residency Visa**: In order to lawfully reside and work in the UAE (even if that work is on a temporary work visa, please see below), all expatriate employees must be sponsored by a locally licensed entity for UAE work permit and residence visa purposes (note, this would not apply to visits for ad hoc business meetings which are not revenue-generating). Sponsorship is both employer-specific and location-specific, permitting the individual to work only for the employer through whom they have obtained their visa and at the location specified in the visa.
- **Contract Requirements**: Depending on where a company's UAE entity is licensed and registered, the sponsorship application process requires the registration of a standard prescribed labour contract ("**UAE Labour Contract**"), in a form prescribed by either the UAE Ministry of Human Resources and Emiratisation, or the applicable free zone authority. The UAE Labour Contract is issued by the Labour Department and is mandatory in order to obtain the labour card and residence visa. If the company is based in one of the UAE's free zones, it may (depending on the free zone) be required to complete the relevant free zone's employment contract.
- **Visa Process**: There are a number of steps that will need to be followed

to obtain a UAE Residency Visa, but essentially the process involves three steps: (i) application for an entry permit, (ii) medical visit and (iii) stamping of the UAE Residency Visa on the applicant's original passport. In most cases, employees are required to provide the authorities with legalised copies of their degree certificates.

- **Taxation**: The personal income tax and corporate income tax level is currently 0% in the UAE. Please note however, an individual's overall tax situation will depend on how many days they physically reside in the UAE and in other countries (i.e., the UK), the tax regime differs considerably and specific tax advice would need to be sought in respect of this. In summary however, from a UAE perspective, there is no obligation for an individual to pay taxes in the UAE.
- **Visa Quota**: In respect of free zones, companies are generally subject to a visa quota based on a number of factors such as office leasing space (which in turn limits the number of foreign employees that can be employed by the company at any given time).

It is important for companies to comply with these rules and regulations to avoid any legal or financial penalties. It is also important for foreign employees to be aware of these considerations to ensure compliance with the laws and regulations of the UAE.

C. Corporate Governance

6. What are the standard management structures (e.g., general assembly, board of directors, etc.) in a corporate entity governed in your jurisdiction and the key liability issues relating to these (e.g., liability of the board members and managers)?

The standard management structures in a corporate entity in the UAE are:

- **General Assembly**: this is the highest governing body of the company, composed of all the shareholders of the company. The General Assembly is responsible for making major decisions such as appointing the board of directors, amending the company's articles of association, and approving the company's financial statements.
- **Board of Directors**: the board is responsible for managing the day-to-day operations of the company and making strategic decisions on behalf of the shareholders. The Board of Directors is typically composed of between 3 (three) and 11 members, depending on the articles of association of the company.
- **Executive Management**: responsible for implementing the decisions of the Board of Directors and running the operations of the company.

The liability of the board members and the managers are generally limited to their actions within the scope of their authority; however, they may be held liable for any damages caused by their negligence or breach of their duties. The Board of Directors may also be held liable for the financial losses of the company if they are found to have acted in bad faith or with gross negligence.

7. What are the audit requirements in corporate entities?

Corporate entities incorporated in the UAE are subject to audit requirements as part of their financial reporting obligations. The specific audit requirements can vary depending on the emirate and industry sector and the size of the business, but some common requirements include:

- **Auditing Standards**: companies are required to comply with the International Financial Reporting Standards (IFRS) and the International Standards on Auditing (ISA) when preparing their financial statements and conducting their audits.
- **Auditing Firm**: companies are required to appoint an independent auditing firm to conduct their annual audits. The auditor should be a member of one of the recognised professional accountancy bodies, such as the Institute of Chartered Accounts in England and Wales (ICAEW).
- **Financial Statements**: companies are required to prepare and submit their financial statements to the relevant authorities annually. These financial statements should be audited by an independent auditor and should include a balance sheet, an income statement, a cash flow statement, and a statement of changes in equity.
- **Audit Report**: the independent auditor will issue an audit report which includes an opinion on the financial statements. The auditor will also issue a management letter which includes observations and recommendations for improving the company's financial controls, internal controls and reporting.
- **Compliance**: companies are required to comply with the regulations and laws regarding financial reporting and auditing in the UAE and the auditors are required to confirm that companies have not violated any financial reporting and anti-money laundering laws and regulations.

D. Shareholder Rights

8. What are the privileges that can be granted to shareholders? In particular, is it possible to grant voting privileges to shareholders for appointment of board members?

In the UAE, shareholders are generally granted certain privileges, which include the following:

- **Right to vote**: shareholders have the right to vote on important matters related to the company (i.e., appointment of board members, changes to the articles of association and the distribution of dividends).
- **Right to receive dividends**: shareholders are entitled to receive dividends from the company's profits, subject to the company's articles of association.
- **Right to attend and participate in general meetings**: shareholders have the right to attend and participate in general meetings of the company, where important matters related to the company are discussed and voted on.
- **Right to inspect the company's books and records**: shareholders have the right to inspect the company's books and records, subject to the company's articles of association.
- **Right to appoint board members**: shareholders have the right to vote for the appointment of board members, subject to the company's articles of association.

The rights and privileges of shareholders may vary depending on the type of company and place of incorporation.

9. Are there any specific statutory rights available to minority shareholders available in your jurisdiction?

There are specific statutory rights available to minority shareholders (in addition to the right to attend and participate in general meetings, the right to vote and the right to inspect the company's books and records, as mentioned above), including:

- **Right to request a meeting of shareholders**: minority shareholders have the right to request a meeting of shareholders if they believe their rights are being violated or if they have a valid reason for requesting such a meeting, subject to the company's articles of association.
- **Right to seek legal remedies**: minority shareholders have the right to seek legal remedies in case of any violation of their rights or if they believe that the company's actions are prejudicial to their interests, subject to the company's articles of association.

Minority rights can be protected through shareholder agreements and/or through providing protection in the memorandum of association and articles of association of a company. While shareholders' agreements are generally enforced in the UAE courts, these agreements are essentially private contracts among the shareholders. To be effective against all parties, the relevant provisions should be incorporated into the memorandum of association and articles of association.

10. Is it possible to impose restrictions on share transfers under the corporate documents (e.g., articles of association or its equivalent in your jurisdiction) of a company incorporated in your jurisdiction?

Yes, it is possible to impose restrictions on share transfers under the corporate documents of a company incorporated in the UAE. The company's articles of association can include provisions that restrict the transfer of shares without the consent of the company of the board of directors.

11. Are there any specific concerns or other considerations regarding the composition, technical bankruptcy and other insolvency cases in your jurisdiction?

Some of the concerns and considerations regarding the composition, technical bankruptcy and other insolvency cases include:

- **Limited legal framework**: the UAE's legal framework for insolvency and bankruptcy is relatively limited compared to other jurisdictions.
- **Lack of specialized courts/tribunals**: the UAE does not have specialized courts or tribunals to handle insolvency and bankruptcy cases. Instead, such cases are heard by general courts, which may not have the expertise or resources to deal with such complex matters.
- **Limited creditor support**: the UAE's legal framework for insolvency and bankruptcy does not provide much support for creditors. Creditors may not have the same legal rights as in other jurisdictions, which can make it difficult for them to recover their debts.
- **No specific regulations for crossborder insolvency**: the UAE does not have specific regulations for crossborder insolvency, which can make it difficult for foreign creditors to recover their debts if a company becomes insolvent.
- **Reputation risk**: insolvency and bankruptcy can have a negative impact on a company's reputation, which can make it difficult for the company to attract new customers/partners.

E. Acquisition

12. Which methods are commonly used to acquire a company, e.g., share transfer, asset transfer, etc.?

The method of acquisition will depend on the circumstances of the transaction and the goals of the buyer and seller. In the UAE, the most common method of acquiring a company is by way of a share transfer, whereby the buyer purchases the shares of the company from the existing shareholder(s), allowing the buyer to acquire control of the company without having to assume responsibility for its liabilities.

Asset transfer is another method of acquiring a company, already less common, whereby the buyer purchases the assets of the company, rather than its shares. This method can be useful in certain circumstances, such as when the buyer only wants to acquire certain assets and not the entire business.

A merger and acquisition can also be done in the UAE, in which case the assets and liabilities of both companies are combined, and the shareholders of the absorbed company receive shares in the acquiring company. Another method is through the purchase of a controlling interest in a company, whereby the buyer acquires a large enough number of shares to gain control of the company's board of directors and make strategic decisions on the company's behalf.

13. What are the advantages and disadvantages of a share purchase as opposed to other methods?

Advantages

- **Ease of transaction**: share purchases are generally simpler and less complex than other methods of acquisition, such as asset purchases or mergers, as they only involve the transfer of ownership of the shares and not the assets or the liabilities of the company.
- **Retention of existing management**: share purchases allow the buyer to acquire control of the company while retaining the existing management team, which can help to ensure a smooth transition and continuity of operations.

Disadvantages

- **Lack of control over assets**: share purchases only provide the buyer with control over the company, but not its assets, which may limit the buyer's ability to affect change of access to assets in a way that would be beneficial for the buyer.
- **Limited due diligence**: share purchases may involve less due diligence than other methods of acquisition, which can make it difficult for the buyer to fully understand the financial and operational condition of the company before the purpose.
- **Dependency on other shareholders**: share purchases may depend on the agreement and the willingness of other shareholders to sell their shares, and the buyer may not be able to acquire enough shares to gain control of the company if other shareholders are unwilling to sell.
- **Price volatility**: share prices may be subject to market fluctuations, which can make it difficult for the buyer to predict the final purchase price if not fixed in advance.

14. What are the approvals and consents typically required (e.g., corporate, regulatory, sector based and third-party approvals) for private acquisitions in your jurisdiction?

The approvals and consents required for private acquisitions in the UAE will vary depending on the specific circumstances of the transaction (i.e., the nature of the business, the industry sector, and the structure of the acquiring and target companies). However, some of the typical approvals and consents that may be required include:

- **Corporate approvals**: the acquiring and target companies will typically be required to obtain the approval of their respective shareholders (see below) and boards of directors for the transaction. Individuals signing the local transfer documentation must be empowered by a notarized (and attested, if signed abroad) power of attorney.
- **Shareholder approvals**: shareholders of limited liability companies enjoy statutory pre-emption rights on a transfer of shares, which cannot be waived unless agreed by all shareholders at the time of transfer. There are no statutory pre-emption rights for shareholders of private joint stock companies, nor for free zone entities, however, shareholders of free zone entities can agree on such restrictions between themselves (in the company's articles of association, memorandum of association or shareholders' agreement). Where there are two or more shareholders of the target company, the parties should also be mindful of existing drag-along and/or tag-along rights (if any) that may impact on the proposed transaction.
- **Regulatory approvals**: depending on the nature of the business and the industry sector, various regulatory approvals may be required for the transaction. For example, companies operating in the financial services or telecommunications sectors may be subject to additional regulatory approvals and approval may be required from the municipality in the relevant Emirate where constructions and/or engineering companies are involved. A transfer of shares typically requires the approval of the relevant DED or free zone authority.
- **Sector-based approvals**: certain sectors, such as the real estate sector, may be subject to specific regulations and approvals. For example, the Real Estate Regulatory Authority (RERA) may require certain approvals for the transfer of ownership of properties.
- **Third-party approvals**: certain third-party approvals may be required for the transaction, such as approvals from banks, landlords, suppliers, or customers, depending on the contractual arrangements between the seller and the relevant parties. For example, if assets are secured against bank financing, it is very likely that the bank's consent will be needed.
- **Competition Approval**: approval of the UAE Competition Authority may be required in case of any merger or acquisition that meets the threshold set by the Competition Law (see below).
- **Central Bank Approval**: the CBUAE may require approvals for the transactions that are related to the banking and financial services sector.

It is important to note that the process of obtaining approvals and consents can be complex and time-consuming in the UAE.

15. What are the regulatory competition law requirements applicable to private acquisitions in your jurisdiction?

The UAE has implemented Federal Law No.36 of 2023 on Competition (the "**Competition Law**") to regulate private acquisitions and ensure fair competition among businesses. The Competition Law applies to all economic activities within the UAE and applies to any merger, acquisition or joint venture that meets certain thresholds.

The following are the main regulatory competition law requirements that are applicable to private acquisitions in the UAE:

- **Notification**: any acquisition that meets the thresholds (see below) set out by the Competition Law must be notified to the UAE Competition Authority (the "**UCA**") for review and clearance before it can be completed. Filings must be submitted at least 90 days prior to completion of the transaction.
- **Review process**: the UCA will review the notified transaction to determine if it would result in a significant lessening of competition in the relevant market. The Minister of Economy must issue a decision within 90 days from when a filing is deemed complete, subject to a 45-day extension (or when the Competition Committee issues requests for additional information, which stops the clock until parties comply.
- **Remedies**: the UCA may impose remedies on the parties to the transaction to address any competition concerns, which can include divestitures, licensing of intellectual property rights, or other commitments to maintain competition in the relevant market.
- **Penalties**: the Competition Law imposes significant fines and penalties for non-compliance, including fines of up to 10% (and no less than 2%) of the parties' total annual revenue. If it is not possible to determine the amount of relevant revenues, the fine will be set as a fixed amount between AED 500,000 and AED 5,000,000. The Competition Authority can also order the closure of an establishment found to be in violation of the Competition Law for a period of up to 6 months.

The thresholds are based on the combined turnover of the parties and their market shares in the relevant markets. The parties must notify the UCA if:

- **Turnover Threshold**
  - the parties have a combined annual turnover in the UAE exceeding AED 300 million during the last fiscal year
- **Market Share Thresholds**
  - the total market share of the parties exceeds 40% of the total sales in the relevant market during the last fiscal year

16. Are there any specific rules applicable for acquisition of public companies in your jurisdiction?

Yes, there are specific rules applicable to the acquisition of public companies in the UAE. Such rules are intended to ensure fair and transparent treatment of shareholders, as well as to protect the rights of minority shareholders. For example:

- **Disclosure**: acquiring parties in a public company acquisition is required to make full and accurate disclosures to shareholders and the relevant regulatory authorised, including the Securities and Commodities Authority (the "**SCA**") in the UAE. This includes information about the terms of the acquisition, the financial condition of the acquiring party, and any other information that may be material to the shareholders' decision.
- **Tender offer**: acquiring parties are typically required to make a tender offer to all shareholders of the public company, offering to purchase their shares at a fair price. The tender offer must be open for a minimum period of 21 days, and the terms of the offer must be the same for all shareholders.

- **Fair treatment**: acquiring parties are required to treat all shareholders of the public company fairly and equitably. This includes not taking any action that would discriminate against minority shareholders, or that would be detrimental to the interests of the company or its shareholders.
- **Shareholders' approval**: the acquisition of a public company in the UAE requires the approval of shareholders, and the shareholders of the target company must approve the acquisition by a simple majority vote.
- **Regulatory authorities' approval**: the acquisition of a public company in the UAE must also be approved by the relevant regulatory authorities, such as the SCA and the CBUAE.

17. Is there a requirement to disclose a deal, for instance to regulatory authorities? Is it possible to keep a deal confidential?

In the UAE, there may be a requirement to disclose a deal to regulatory authorities, depending on the type of transaction and the nature of the business.

- **Public companies**: acquisition of public companies in the UAE are subject to disclosure requirements, as detailed above.
- **Private companies**: the disclosure requirements for private companies are less stringent than for public companies, however, if the acquisition involves a change of control or the transfer of a significant asset, it may be subject to regulatory approvals and the parties may be required to provide certain information to the relevant authorities.
- **Competition Law**: mergers and acquisitions that meet the threshold of the Competition Law (see above) must be notified to the UCA for review and clearance before they can be completed, and the parties must provide information to the UCA as required.

Although there are disclosure requirements for certain types of transactions, it is possible to keep certain aspects of a deal confidential, such as commercially sensitive information or proprietary information. The parties to the transaction can include confidentiality agreements and nondisclosure provisions in the transaction documents, and the regulatory authorities have the discretion to respect the parties' request for confidentiality.

If the target is listed on the ADX or DFM, the SCA Disclosure and Transparency Regulations require publication of certain information, which includes the target's annual audited financial statements and half yearly financial statements, information on material developments affecting the target's share price, details on acquisitions or disposals of the target's major assets, dealings in shares by the target's board or executive management and changes to the target's board or executive management.

For companies listed on the NASDAQ Dubai, obligations regarding disclosure and reporting are set out in the DFSA Market Rules, as well as generally in the DFSA Rulebook. These disclosure obligations are very similar to those of the SCA Disclosure and Transparency Regulations above.

18. Can sellers be restricted from shopping around during a negotiation process? Is it possible to include break fee or other penalty clauses in acquisition documents to procure deal exclusivity?

In the UAE, sellers are generally free to shop around during a negotiation process, unless there is a specific agreement between the parties that restricts their ability to do so. it is possible for buyers to include exclusivity provisions in the acquisition documents (i.e., an "exclusivity" clause) which would prohibit the seller from engaging in negotiations with other parties during a certain period. However, it is important to note that the enforceability of such exclusivity provisions may depend on the specific terms of the agreement. Generally, the UAE courts will not enforce agreements that are deemed to be restrictive of competition or that are detrimental to the interests of the public.

Break fees and/or other penalty clauses can be included in acquisition documents, however, the UAE courts may exercise discretion in evaluating the enforceability of such clauses, and they may be considered unenforceable if they are deemed to be excessively punitive or if they are not in line with the UAE laws and regulations.

Onshore in the UAE, the arrangement pertaining to break fees must be fully disclosed in the offer documents, which must include a clear definition of events that would trigger such break fees). Break fees are capped at 2% of the offer value and any arrangement on break fees requires SCA approval. In the DIFC, break fees are frequently employed and generally deemed permissible under the DIFC regime, unless the DFSA objects to them.

19. What are the conditions precedent in a typical acquisition document? Is it common to have conditions to closing such as no material adverse change?

The typical conditions precedent to an acquisition in the UAE include the following:

- **Due Diligence**: the buyer may require the seller to provide access to all necessary information for the buyer to conduct its own due diligence investigation of the company or assets being acquired.
- **Regulatory Approvals**: the buyer and the seller may need to obtain any necessary regulatory approvals for the acquisition, such as from the CBUAE or the Ministry of Economy.
- **Third-Party Consents**: the seller may be required to obtain any necessary consents or approvals from third parties in order to complete the acquisition (for example, in respect of a change of control).
- **Representations and Warranties**: the seller will be required to make representations and warranties regarding the company or assets being acquired, including regarding its ownership, financial condition, and legal compliance.
- **Indemnification**: the seller may be required to indemnify the buyer for any losses or damages arising from any breaches of representations or warranties.

The above is not an exhaustive list, and the specific conditions precedent will vary depending on the details of the acquisition and the parties involved.

In the UAE, it is a common requirement for the seller to warrant that there has been no material adverse change in the company or assets being acquired since the date of the agreement (as a condition to closing).

20. What are the typical warranties and limitations in acquisition documents? Is it common to obtain warranty insurance?

The seller will typically provide warranties regarding the company or assets being acquired, such as warranties regarding ownership, financial condition, and compliance with laws and regulations (but please note that these will depend on the details of the acquisition and the parties involved). These warranties are intended to provide the buyer with certain assurances about the company or assets being acquired and are typically included to protect the buyer against any unknown or undisclosed issues that may arise after the acquisition.

The limitations and exclusions of these warranties are also commonly included, such as:

- the warranties will only be valid for a specific period after the closing of the acquisition,
- the warranties will be subject to any materiality or material adverse change qualifications,
- the warranties will be limited to the knowledge of the seller at the time of the agreement,
- certain warranties may not apply to any known or disclosed issues that the buyer was aware of before the acquisition.

It is uncommon in the UAE for the buyer to obtain warranty insurance to protect against breaches of the warranties provided by the seller. This type of insurance can provide the buyer with additional protection if the seller breaches any of the warranties and the buyer suffer a loss as a result.

21. Is there a requirement to set a minimum pricing for shares of a target company in an acquisition?

There is no specific requirement in the UAE to set a minimum pricing for shares of a target company in an acquisition. The price of such shares is typically negotiated between the buyer and the seller and can be based on a number of factors such as the financial performance of the company, the value of the assets, and the market conditions.

It is important to note, however, that there are regulations in place that may impact pricing. For example, the SCA has the power to regulate securities transactions and may set rules regarding the pricing of shares in publicly traded companies, and the CBUAE may also regulate the pricing of shares in companies that are subject to its oversight.

22. What types of acquisition financing are available for potential buyers in your jurisdiction? Can a company provide financial assistance to a potential buyer of shares in the target company?

The types of acquisition financing available for potential buyers in the UAE include:

- **Debt**: this involves borrowing funds from a lender (i.e., a bank or a financial institution), and such lender typically requires the buyer to provide collateral for such borrowing.
- **Equity**: this involves the sale of shares in the acquiring company to raise funds for the acquisition.
- **Mezzanine**: this is a hybrid of debt and equity financing, in which the lender provides funds in the form of a loan but also receives an equity stake in the company.
- **Vendor**: this involves the seller providing financing to the buyer, usually in the form of a loan or a deferred purchase price.
- **Private Equity**: private equity firms provide capital to companies in exchange for an ownership stake.
- **Corporate banking**: most of the UAE banks offer corporate banking services, which include tailored solutions for M&A activities, such as project financings, syndicated loans, and structured finance.

It is possible for a company to provide

financial assistance to a potential buyer of shares in the target company; however, this is subject to certain regulations and restrictions. The UAE Companies Law prohibits a company from providing financial assistance for the purchase of its own shares unless certain conditions are met (such as the company obtaining an independent expert's report that the assistance is fair and reasonable).

23. What are the formalities and procedures for share transfers and how is a share transfer perfected?

In the UAE, the formalities and procedures for share transfers vary depending on whether the shares being transferred are in a public or private company.

For shares in public companies:

- the shares must be registered in the name of the transferee with the SCA or the relevant regulatory body
- the transferee must submit the necessary documents and forms to the SCA or the relevant regulatory body, such as the share transfer form, proof of payment of the share purchase price, and any other required documents
- the SCA or the relevant regulatory body will then review and approve the share transfer, and update the company's register of shareholders

For shares in private companies:

- the company's articles of association or memorandum of association must provide for the transfer of shares
- the share transfer agreement must be signed by the transferor and transferee and then be delivered to the company for registration
- the company will then update its register of shareholders and issue a new share certificate in the name of the transferee

In the DIFC the formalities and procedures for share transfers are regulated by the DIFC Companies Law and the DIFC Companies Regulations. In the ADGM, the formalities and procedures for share transfers are regulated by the ADGM Companies Regulations. The procedures for share transfers in the DIFC and the ADGM are as follows:

1) a share transfer agreement, which sets out the terms of the transfer (including the purchase price and any other relevant terms) must be executed between the transferor and transferee,
2) the share transfer agreement must be accompanied by the original share certificate(s) and a share transfer form, which must be completed and signed by the transferor and transferee,
3) the share transfer form and share transfer agreement, along with the original share certificate(s) must be delivered to the DIFC Companies Registrar or the ADGM Companies Registrar (as applicable) for registration,
4) the DIFC Companies Registrar or the ADGM Companies Registrar (as applicable) will then review the documents and, if they are in order, will register the transfer and update the company's register of shareholders,
5) after the registration of the share transfer, the company will issue a new share certificate in the name of the transferee.

The share transfer agreement is considered binding and enforceable from the date of execution, and the transfer of shares is deemed to be completed upon registration of the transfer with the DIFC Companies Registrar or the ADGM Companies Registrar (as applicable).

24. Are there any incentives (such as tax exemptions) available for acquisitions in your jurisdiction?

There are various incentives available for acquisitions in the UAE that are provided by the government to encourage foreign investment and economic growth in the country. Some of the incentives available include:

- **Tax Exemptions**: foreign investors may be eligible for tax exemptions on their income and profits, depending on the type and location of the investment.
- **100% Foreign Ownership**: foreign investors are generally allowed to own 100% of a company in the UAE, with certain exceptions in some sectors such as oil and gas.
- **Free Zones**: the UAE has several free zones, such as the DIFC and the ADGM, which offer a range of benefits to companies operating within them, including 100% foreign ownership, tax exemptions, and relaxed regulations.
- **Economic Development Zones**: the UAE government has established various economic development zones with the aim of attracting foreign investment. These zones include Dubai South, Dubai Industrial City, and Abu Dhabi Industrial City, and are designed to provide various benefits to companies operating within them, such as tax exemptions and relaxed regulations.
- **Subsidies and Grants**: the UAE government provides subsidies and grants to companies that meet certain criteria, such as technology-based companies, companies that are focused on innovation, and companies that are engaged in research and development.

F. Enforceability

25. Can acquisition documents be executed in a foreign language?

Yes. Acquisition documents can be executed in a foreign language in the UAE, however, they must also be translated into Arabic and certified by a legal translator. The original document and its translation must both be presented to the relevant authorities for the acquisition to be legally recognised and registered.

26. Can acquisition documents be governed by a foreign law?

Yes. In the UAE, acquisition documents can be governed by a foreign law provided that the foreign law does not conflict with the laws of the UAE. It is, however, important to note that the UAE's courts will apply UAE law in the event of any disputes arising from an acquisition, and that any foreign judgments or arbitral awards relating to the acquisition must be recognized and enforced by the UAE courts.

27. Are arbitration clauses legally permissible or generally included in acquisition documents?

Arbitration clauses are legally permissible and generally included in acquisition documents in the UAE. The UAE is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which means that arbitration awards made in other signatory countries will be recognized and enforced in the UAE. The UAE has also enacted its own arbitration law, known as the UAE Federal Law No. 6 of 2018 on Arbitration (the "**Arbitration Law**"), which governs arbitration in the UAE and is based on the UNCITRAL Model Law. The arbitration clause should be drafted in compliance with the Arbitration Law, and the arbitration clause should be clear, specific and should indicate the rules of arbitration that will be followed.

Arbitration is a common means of resolving disputes in the UAE, particularly in the commercial and construction sectors.

28. Are there any specific formalities for the execution of acquisition documents? Is it possible to remotely/digitally sign documents?

Yes, there are specific formalities that must be followed when executing acquisition documents in the UAE. In general, most legal documents, including acquisition documents, must be executed in writing and signed by the parties. Some legal documents, such as real estate and commercial agency agreements, must also be notarized and attested by the relevant authorities.

In recent years, the UAE has been working to make it possible for remote/digital signing of legal documents (including acquisition documents), and the UAE government has introduced e-signatures and digital signature solutions to facilitate this process. The use of electronic signatures is now legally recognised and accepted in the UAE, provided it is in compliance with the regulations set forth by the UAE's Telecommunications Regulatory Authority, however, the regulations and laws are still evolving and so signing electronically is not currently common in practice.

G. Trends and Projections

29. What are the main current trends in M&A in your jurisdiction?

There are several current trends in M&A in the UAE, being the following:

- **Technology**: with the increasing adoption of digital technologies, there is an increasing trend in M&A activities in the technology sector, particularly in areas such as e-commerce, digital health and fintech.
- **Private Equity Investment**: the UAE's private equity market has seen significant growth in recent years, with increased investment from both local and international investors in sectors such as education, healthcare and consumer goods.
- **Strategic partnership**: companies in the UAE are increasingly focusing on strategic partnerships to expand their market reach, enter new markets, and gain access to new technologies.
- **Infrastructure and real estate**: infrastructure and real estate sectors continue to be attractive to investors in the UAE, with ongoing investment in transportation, energy and real estate projects.
- **Consolidation**: recent economic uncertainty has led to increased consolidation in the UAE's business landscape, with companies looking to merge or acquire other companies to diversify their revenue streams and improve their financial positions.

30. Are any significant development or change expected in the near future in relation to M&A in your jurisdiction?

Significant developments and changes expected in the near future in relation to M&A in the UAE include:

- **Economic diversification**: with the ongoing efforts to diversify the UAE's economy, the government is expected to continue to provide incentives and support for M&A activities in sectors such as technology, renewable energy, and healthcare.
- **Remote M&A**: with the increased adoption of digital technologies and the shift towards remote working, the use of virtual and digital tools for M&A transactions are expected to become more common.
- **ESG (Environmental, Social and Governance)**: with the growing awareness of the importance of ESG factors, companies are expected to increasingly consider these factors when making M&A decisions.

- **Laws and Regulations**: the UAE government is expected to continue to refine and update its laws and regulations to create a more favorable environment for M&A activities.

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A. General

1. What is the main legal framework applicable to companies in your jurisdiction?

The primary source of English company law is the Companies Act 2006 ("**CA 2006"**) which provides a comprehensive framework for company law in the UK. Other legislation and rules important for the operation of companies in the UK include:

- the Insolvency Act 1986; and
- the City Code on Takeovers and Mergers ("**Takeover Code"**).

2. What are the most common types of corporate entities (e.g., joint stock companies, limited liability companies, etc.) used in your jurisdiction? What are the main differences between them (including but not limited to with regard to the shareholders' liability)?

The two main types of companies used in the UK are:

- Private company limited by shares ("**Limited Company**") – this is the most common form of corporate entity used in the UK.
- Public limited company ("**Public Company**") – this is a more regulated form of a company used mainly in connection with listed businesses.

Both types of companies have separate legal personalities and the liability of their members is limited to the nominal value of their shares.

The main differences are:

- Limited companies are prohibited from offering their shares to the public.
- In respect of corporate acquisitions, the Takeover Code applies to all Public Companies which have their registered office in the UK and any acquisition of a Public Company must generally comply

with the Takeover Code (however, in certain circumstances, it can also apply to a Limited Company).

- Public Companies cannot take advantage of various procedures under the CA 2006 which are available to Limited Companies (e.g. being able to pass shareholder resolutions as written resolutions).
- Public Companies have a minimum share capital of a nominal value of at least GBP 50,000. In contrast, there is no minimum share capital requirement applying to Limited Companies (all that is required is that they have one share in issue).

Other types of entities can also be used for conducting business (e.g. a limited liability partnership) but these are much less common in the context of M&A transactions.

B. Foreign Investment

3. Are there any restrictions on foreign investors incorporating or acquiring the shares of a company in your jurisdiction?

While the UK was traditionally quite liberal with respect to foreign investors acquiring shares in UK companies, this has changed with the introduction of the National Security and Investment Act 2021 (**NSIA**) which has introduced a new hybrid regime for foreign investments in the UK.

It consists of a mandatory regime for 17 most sensitive sectors of the economy (such as advanced robotics, artificial intelligence, defense, energy) and a voluntary regime for all other sectors.

Under the mandatory regime, parties must notify the UK Government if they acquire more than 25%, 50% or 75% of votes or shares (or the ability to block or pass resolutions) in a target entity active within a specified sector in the UK. The mandatory regime is of suspensory nature which means that a transaction cannot complete until it receives clearance.

The voluntary regime applies to all sectors of the economy, and parties are encouraged to voluntarily notify any "trigger events" which they consider may be of interest from a national security perspective. The UK Government also has extensive "call-in" powers to review qualifying transactions that have not been notified up to five years post-completion. The call-in period is reduced to six months if the Government has been notified of the transaction.

There are criminal and civil sanctions for non-compliance with a mandatory notification obligation, which can impact both buyers and sellers. A fine of up to 5% of worldwide turnover or GBP 10 million (whichever is higher) can be imposed and buyer-side directors can face up to five years imprisonment. A completed transaction will also be void.

4. Are there any foreign exchange restrictions or conditions applicable to companies such as restrictions to foreign currency shareholder loans?

Generally not.

5. Are there any specific considerations for employment of foreign employees in companies incorporated in your jurisdiction?

Following the UK leaving the European Union, in general, all foreigners must hold a visa to work in the UK (subject to some exceptions, e.g., in respect of citizens of Ireland or citizens of other EU countries who lived in the UK before December 31, 2020 (subject to certain conditions).

C. Corporate Governance

6. What are the standard management structures (e.g., general assembly, board of directors, etc.) in a corporate entity governed in your jurisdiction and the key liability issues relating to these (e.g., liability of the board members and managers)?

UK companies are managed by a single board of directors. Executive directors are in charge of managing the business and may also be employed by the company. If there are any non-executive directors, these are generally expected to fulfil a supervisory role. The law does not, however, distinguish between executive and non-executive directors and decisions must be taken by the board acting collectively.

Persons who have not been formally appointed as directors but act as such will be treated as directors.

Similarly, persons in accordance with whose directions or instructions the directors of a company are accustomed to act will be treated as directors for certain purposes.

If directors breach their duties to the company, they may be personally liable to compensate the company for losses caused. They may also have to restore company property and pass any profits they have made to the company. It is generally a criminal offence to fail to comply with statutory administrative requirements for accounts to be prepared and public filings to be made. It is also a criminal offence for directors to fail to declare their interest in a transaction involving the company. See also the response to question 11 below in respect of directors' duties when the company is in financial difficulty.

7. What are the audit requirements in corporate entities?

All Public Companies and other companies operating in certain sectors (such as authorized insurance companies and banking companies) must have their annual accounts audited every year.

In addition, generally speaking, Limited Companies must have their annual accounts audited if they satisfy at least two of the following:

- an annual turnover of more than GBP 10.2 million;
- balance sheet of more than GBP 5.1 million;
- more than 50 employees on average.

D. Shareholder Rights

8. What are the privileges that can be granted to shareholders? In particular, is it possible to grant voting privileges to shareholders for appointment of board members?

The company's articles of association set the rights and limitations attached to the shares. Different rights can be enjoyed by different shareholders and special rights can be granted such as rights to appoint directors, weighted voting rights, special dividend rights etc.

9. Are there any specific statutory rights available to minority shareholders available in your jurisdiction?

Certain rights can be enjoyed by shareholders holding at least a certain percentage of shares in the company, such as:

- 5% of shares/voting rights in the company can, for example, call a general meeting or, in respect of a Limitied Company, require the company to circulate a written resolution to shareholders;
- 10% shares/voting rights in the company can call for a poll vote on a resolution at a general meeting

- more than 10% shares/voting rights in the company can prevent a general meeting from being held on short notice;
- more than 25% shares/voting rights in the company can block a special resolution.

In addition, any minority shareholder can bring an unfair prejudice claim against the company.

10. Is it possible to impose restrictions on share transfers under the corporate documents (e.g., articles of association or its equivalent in your jurisdiction) of a company incorporated in your jurisdiction?

Yes, Limited Companies can impose share transfer restrictions. These are often included in both the articles of association and shareholders' agreements.

Public Companies' shares must generally be freely transferable and share restrictions can only be imposed in rare circumstances.

11. Are there any specific concerns or other considerations regarding the composition, technical bankruptcy and other insolvency cases in your jurisdiction?

Where a company is in financial difficulties or insolvent, its directors must protect the interests of the company's creditors as a whole (instead of the company's members). In particular, when directors become aware that there is no reasonable prospect that the company will avoid becoming insolvent, they must take every step to minimize the creditors' losses.

Appropriate legal advice should be taken in these circumstances. The directors may be required to repay creditors with whom the company traded while they were aware that insolvency was probable.

12. Acquisition Which methods are commonly used to acquire a company, e.g., share transfer, asset transfer, etc.?

The most commonly used method to acquire a Limited Company is through a share transfer. Asset transfers are also used but are less common in practice.

The regime under the Takeover Code applies to Public Companies which can be acquired either through a contractual offer or statutory, court-approved mechanism called a scheme of arrangement (which involves a vote by shareholders and court approval and is often seen as a more straightforward path to acquiring full ownership of the target).

13. What are the advantages and disadvantages of a share purchase as opposed to other methods?

As in other jurisdictions, share acquisitions tend to be simpler as they do not require individual assets to be listed in the acquisition documents (all of the company's assets transfer automatically with the company), there is no need for consents to transfer individual agreements (though there may be change of control provisions that are triggered) or consult with the target's employees (as tends to be the case in the context of business and assets acquisitions). Share acquisitions may also be more advantageous from the tax perspective.

On the flipside, as in other jurisdictions, share purchases involve acquiring the target company with all of its assets and liabilities which may not work from the seller's perspective.

14. What are the approvals and consents typically required (e.g., corporate, regulatory, sector based and third-party approvals) for private acquisitions in your jurisdiction?

There are various regulated business sectors in the UK where government or regulator consent may be necessary, including financial services, broadcasting, utilities, and railways (see, for example, the response to question 3 above). On a share sale, there may be change of control clauses that need to be waived in underlying joint ventures or other key contracts. Also, the transfer of shares may require shareholder approval in accordance with the articles of association.

On a business sale, contract counterparty consent is generally needed to transfer contracts formally, although workarounds are often adopted for day-to-day contracts.

15. What are the regulatory competition law requirements applicable to private acquisitions in your jurisdiction?

The UK merger control regime is voluntary (i.e. there is technically no legal obligation to notify a merger to the Competition and Markets Authority ("**CMA**") and transactions may complete without notification or clearance). However, regardless of whether a merger has been notified, the CMA is empowered to impose interim orders prohibiting the parties from integrating and, in exceptional cases, may even prohibit completion of the transaction.

In addition, following the UK's exit from the EU, many large deals which previously fell within the jurisdiction of the EU may now be subject to parallel UK and EU review.

16. Are there any specific rules applicable for acquisition of public companies in your jurisdiction?

Yes, the Takeover Code applies to acquisitions of Public Companies in the UK and it contains a number of special rules (for example, relating to public announcements, mandatory offers, offer periods, squeeze out of minority shareholders etc.).

17. Is there a requirement to disclose a deal, for instance to regulatory authorities? Is it possible to keep a deal confidential?

The deal needs to be disclosed if any mandatory consents or approvals (including any regulatory consents if the target is a regulated entity) are required. In addition, with respect to Public Company takeovers, those need to be initially notified to the Takeover Panel, and, eventually, to the public.

18. Can sellers be restricted from shopping around during a negotiation process? Is it possible to include break fee or other penalty clauses in acquisition documents to procure deal exclusivity?

Exclusivity agreements are frequently entered into in respect of private M&A transactions in the UK. These may include break fees which, while not very common, are allowed provided they comply with the legal requirements (such as not being so high as to amount to a penalty).

In general, offer related arrangements (such as break fees) are not allowed in the context of Public Company acquisitions (subject to some limited exceptions). Some specific arrangements, such as irrevocable commitments and letters of intent with the target's directors and/or major shareholders are permitted under the Takeover Code.

19. What are the conditions precedent in a typical acquisition document? Is it common to have conditions to closing such as no material adverse change?

A typical acquisition document would, if applicable, include conditions relating to merger control approvals and third party consents having been obtained, completion of pre-closing reorganizations etc.

Traditionally it was not common to see no material adverse change conditions unless the buyer was in a particularly strong negotiating position, however, due to the economic and political uncertainty, these are insisted on by the buyers in an increasing number of deals.

20. What are the typical warranties and limitations in acquisition documents? Is it common to obtain warranty insurance?

As in a number of jurisdictions, the scope of warranties is quite wide – they are a very important part of any acquisition document as, in addition to giving the buyer the possibility to bring a claim in the event of a breach, they also serve the purpose of encouraging disclosure by the sellers. The exact scope of the warranties would primarily depend on the bargaining position of the seller and the buyer (e.g., private equity funds are unlikely to provide warranties beyond title and capacity).

General tax indemnities are very common.

Typical limitations include maximum liability cap, time limitations for bringing a claim, de minimis and basket.

The warranties tend also to be qualified by matters that have been disclosed to the buyer (including, typically, disclosure of the full data room).

It is pretty common to obtain warranty insurance, in particular in PE driven deals.

21. Is there a requirement to set a minimum pricing for shares of a target company in an acquisition?

There is a requirement to set a minimum pricing for shares of a target company in an acquisition, only in respect of listed companies.

22. What types of acquisition financing are available for potential buyers in your jurisdiction? Can a company provide financial assistance to a potential buyer of shares in the target company?

In general, Public Companies (and their subsidiaries) are prohibited from giving financial assistance for the purpose of buying shares in such companies.

There is no such prohibition for Limited Companies (subject to complying with certain rules, such as directors' duties under the CA 2006).

23. What are the formalities and procedures for share transfers and how is a share transfer perfected?

To transfer shares in a Limited Company, the seller must sign a stock transfer from and stamp duty arising on the stock transfer form (of 0.5%) must be paid and the stock transfer form must be submitted to the UK Tax Authority ("**HMRC**"). Once HMRC has confirmed due receipt of the stamp duty payment and submission of the stock transfer form, the target company's register of members can be updated and the legal title to the shares, transfers to the buyer.

24. Are there any incentives (such as tax exemptions) available for acquisitions in your jurisdiction?

If a share disposal by a corporate seller qualifies for the UK's substantial shareholding exemption, a gain made by the seller is exempt from UK corporation tax.

E. Enforceability

25. Can acquisition documents be executed in a foreign language?

Yes (but given the prominence of the English language, it does not really happen in practice).

26. Can acquisition documents be governed by a foreign law?

Yes (subject to any mandatory provisions of English law).

27. Are arbitration clauses legally permissible or generally included in acquisition documents?

They are permissible and often seen in practice (in particular in transnational transactions).

28. Are there any specific formalities for the execution of acquisition documents? Is it possible to remotely/digitally sign documents?

If the SPA contains a power of attorney, it will need to be executed as a deed which requires specific formalities.

It is possible to sign documents (including deeds) electronically.

F. Trends and Projections

29. What are the main current trends in M&A in your jurisdiction?

As the UK had a relatively turbulent couple of years which saw raising inflation and interest rates, cost-of-living and political crises and a number of other issues, M&A activity cooled down from the highs of 2021 (which was a record year in both value and volume). Accordingly 2023 was still a relatively slow year for M&A in the UK.

However, the latter part of the year saw an increase in activity with expectations for this upward trend to carry forward into 2024. Private equity funds- in particular, are still sitting on a lot of dry powder and are ready to return to regular deal-making activities. Similar to the patterns seen in 2023, ESG, TMT, energy and healthcare are the likely areas to attract a lot of attention from investors.

30. Are any significant development or change expected in the near future in relation to M&A in your jurisdiction?

No.

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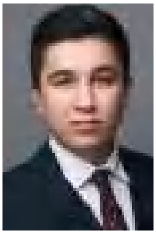

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A. General

1. What is the main legal framework applicable to companies in your jurisdiction?

Companies have the full legal capacity as separate legal personalities to be engaged in any business activity (including licensable activities). Numerous factors (such as the purpose of a business, cost, and complexity of registering a legal entity, liability issues, management structures, and capital requirements) affect the choice of corporate structure.

The legislation applicable to companies consists of the Civil Code of the Republic of Uzbekistan (as amended), effective from March 1, 1997, Law of the Republic of Uzbekistan No.310-II "On Companies with Limited and Additional Liability" dated December 6, 2001 ("**LLC Law**"), Law of the Republic of Uzbekistan No. 223-I "About joint stock companies and protection of the shareholders' rights" (as amended) dated May 6, 2014 ("**JSC Law**") and the Law of the Republic of Uzbekistan No.77-II "On Foreign Economic Activity" dated May 26, 2000, and other legislative acts.

2. What are the most common types of corporate entities (e.g., joint stock companies, limited liability companies, etc.) used in your jurisdiction? What are the main differences between them (including but not limited to with regard to the shareholders' liability)?

Among the variety of existing corporate forms (full and limited partnerships, unitary enterprise, and production cooperative society), only two corporate forms appear to be the most common and suitable for foreign investors such as a limited liability company ("**LLC**") and a joint stock company ("**JSC**").

LLC is a company established by one or more individuals or legal entities with a charter capital divided into shares whose size is determined by the foundation documents (bylaws).

JSC is a commercial organization, the charter capital of which is divided into a certain number of participatory interests, certifying the rights of shareholders in relation to the company. The JSC is a legal entity and owns the separate property, including property transferred to it in the charter capital, accounted for on its independent balance sheet, can acquire and exercise property and personal non-property rights on its own behalf, bear obligations, and be a plaintiff and defendant in court.

In contrast to a JSC, shares in an LLC are not securities. LLC participants are not liable for its obligations, and they bear the risk of losses connected with the LLC's activities within the limits of the value of their personal contributions (participatory interest). It has minimal requirements in terms of registration, and management and no requirements for disclosure of information, except for shareholders (named participants in LLCs).

Most private businesses in Uzbekistan are organized in a form of LLCs, while state-owned enterprises and all banks are mainly registered as JSC. JSCs are heavier regulated by capital markets authorities while LLCs are simpler to manage. JSCs may be characterized by the complex procedure of their registration and administration. Contrary, LLC Law is rather simple and straightforward and not over-regulated as in the case of JSC.

B. Foreign Investment

3. Are there any restrictions on foreign investors incorporating or acquiring the shares of a company in your jurisdiction?

Despite the consolidation of the investment laws into a single legal document, the equity restrictions, which are effective now, are still dispersed in different legal acts. The law sets limits in certain sectors (mass media, banking, defense, and national security).

For mass media, it is prohibited to incorporate mass media companies by legal entities in the charter capital which is composed of 30% or more of foreign investment.

For banks, the total share of non-residents – individuals and legal entities that are not international financial institutions, foreign banks, and other credit organizations, should not exceed 50% of the charter capital of the bank.

Shareholding Restriction (aka 'Matryoshka Rule'): There is a rule that a founding company may not hold 100% participatory interest in the charter capital of an LLC, if the former, in turn, is owned by a single person (either corporate or individual). In other words, either an LLC or a founding company should be in joint ownership (with two or more participants/ shareholders). This rule does not apply to a company that is held by a JSC with one shareholder.

4. Are there any foreign exchange restrictions or conditions applicable to companies such as restrictions to foreign currency shareholder loans?

There are no any specific restrictions on foreign currency shareholder loans. However, the loan agreement should be compatible with Uzbek law and must be registered with the Central Bank of the Republic of Uzbekistan via the company's service bank.

5. Are there any specific considerations for employment of foreign employees in companies incorporated in your jurisdiction?

The foreign nationals are entitled to the same rights as provided for locals as well as owe the same duties to their employers as locals, additionally being subject to holding the relevant work permit, issued individually for the foreign employee, and visa.

A work permit is a document giving the right a foreign citizen to carry out labor activities in the territory of the Republic of Uzbekistan. A work permit is issued to a foreign specialist personally for a 1-year period and is subject to renewal in case of continuous employment of a foreign specialist.

When submitting an application, the company pays an application fee in the amount of 1 basic calculated value ("**BCV**"), which is 375,000 UZS, or approximately USD 29. The review period is 15 business days. Upon successful review and upon granting the work permit, the company needs to pay out the fee amounting to 30 BCV, which is 11,250,000 UZS, approximately USD 869[4].

Under the labor laws, there are additional requirements are provided for highly qualified and qualified foreign specialists:

Highly qualified foreign specialists must:

- be a graduate of one of the 1000 best universities in the world rank;
- have at least 5 years of professional experience in the relevant field;
- have an annual salary of at least USD 60,000 payable from the company's bank account.

The qualified foreign specialist must:

- have a higher education;
- have at least 5 years of professional experience in the relevant field;
- have an annual salary of at least USD 30,000 payable from the company's bank account.

After successful consideration, when issuing a work permit, a company must pay a state fee in the amount of 1 BCV, which is 375,000 UZS, approximately USD 29 for highly qualified specialists, and a state fee of 2 BCV, which is 750,000 UZS, approximately USD 58 for qualified specialists. Work permit for qualified and highly qualified specialists is issued for a period of up to three years, with the possibility of extension.

For foreign employees of representative offices physically presenting and residing in Uzbekistan must procure an individual accreditation card.

C. Corporate Governance

6. What are the standard management structures (e.g., general assembly, board of directors, etc.) in a corporate entity governed in your jurisdiction and the key liability issues relating to these (e.g., liability of the board members and managers)?

The managing bodies of JSC are the General Meeting of Shareholders, the Supervisory Board and the Executive Body.

LLC's management consists of a supreme body (the General Meeting of Participants (founders) or a single founding member); and Executive Body (individual or collective). The company may also have a Supervisory Board within its corporate structure, which is, however, not mandatory.

The General Meeting of Shareholders/ Participants ("GMSP/GMP") is a supreme management body of a company. GMSP has exclusive powers concerning the specific issues mainly covering business, financial, management and structural

4 The average exchange rate of USD 1 equal to UZS 12,940 was used.

matters of the company. The exclusive powers of GMP include of the LLC include:

- the definition of the main areas of the company's activities, as well as the decision to participate in other associations of commercial organizations;
- change in the size of the charter capital of the company;
  introduction of changes and additions to the foundation documents;
- formation of Executive Bodies of the company and early termination of their powers;
- election and early termination of the powers of the audit commission (auditor) of the company;
- election and early termination of the powers of the Supervisory Board if its creation is provided for by the company's charter;
- approval of annual reports and annual balance sheets;
- deciding on the distribution of the company's net profit among the participants of the company;
- approval (adoption) of documents regulating the activities of the company's bodies;
- deciding on conducting an audit, determining the audit organization and the maximum amount of payment for its services;
- making decisions on the establishment of other legal entities, representative offices, and branches;
- decision-making on the reorganization or liquidation of the company;
- appointment of a liquidator and approval of liquidation balances.

Issues referred to the exclusive powers of the GMP cannot be transferred to them for the decision of the company's Supervisory Board, except for cases, provided in the Charter, as well as to the decision of the company's Executive Body.

The Supervisory Board is an intermediate body. It does not carry out daily operations and executive management of the company but performs certain managerial functions of a higher level, such as determining certain programs, policies, and categories of operations, appointing the Executive Body, and the internal audit body, providing authorizations, approvals, etc. In fact, the Supervisory Board acts in accordance with the authority delegated to it by the GMP.

The day-to-day management of the company is performed by the Executive Body (director/management board), which is mandatory. The authority entrusted to the Executive Body shall be specified in the foundation documents (charter and/ or foundation agreement (if there is more than one participant in the company) of the company.

7. What are the audit requirements in corporate entities?

<u>Audit requirements in LLC.</u>

An internal audit service is mandatory only for LLCs with a state share of 50 percent or more with a book value of assets of more than 100,000 BCV (approximately USD 2,897,990). The internal audit service is created and its employees are appointed by the Supervisory Board of the company. The internal audit service reports to the Supervisory Board of the company.

Companies with a book value of assets of more than 100,000 BCV (approximately USD 2,897,990) or proceeds from the sale of products (works, services) of more than 200 000 BCV (approximately USD 5,851,600), the average annual number of employees is over 100 people are subject to a mandatory annual audit conducted by an independent external audit organization.

Audit requirements in JSC.

An internal audit service is mandatory for the JSC with if a state share of 50 percent or if the book value of a company's assets is more than 100,000 BCV (approximately USD 2,925,800). The internal audit service is created and its employees are appointed by the Supervisory Board of the company. The internal audit service reports to the Supervisory Board of the company.

Note: The company, whose shares are included in the exchange quotation list of the stock exchange, is obliged to establish an audit committee consisting exclusively of members of the Supervisory Board of this company. The internal audit service of the company in its activities is accountable to the audit committee if any.

In addition, the JSC is subject to a mandatory annual audit conducted by an independent external audit organization.

D. Shareholder Rights

8. What are the privileges that can be granted to shareholders? In particular, is it possible to grant voting privileges to shareholders for appointment of board members?

In the LLC. The participant may participate in person or through his representatives based on a power of attorney, discuss issues, and vote at the GMP of the company. The order of decisions in the company shall be established in the company's charter, as well as regulated in the LLC Law. Each participant of a company shall have, at the GMP, the number of votes proportional to his participatory interest in the charter capital of the company.

The election of members of the Supervisory Board and the Executive body falls within the competence of the general meeting of participants and is elected by a simple majority of votes at the general meeting. However, the company's charter may provide for another order of appointment of the Supervisory Board and the Executive Body.

In the JSC. In accordance with the JSC Law, the members of the Supervisory Board of the company are elected by the general meeting of shareholders in the manner prescribed by JSC Law and the charter of the company for a period of three years.

Formation of the Executive Bodies of the company and early termination of their powers are carried out by the decision of the general meeting of shareholders if the charter of the company does not refer these issues to the competence of the Supervisory Board of the company. In accordance with the charter of the company or by decision of the general meeting of shareholders or the Supervisory Board of the company, the appointment of a director or members of the company's board is carried out, as a rule, on the basis of a competitive selection, in which foreign managers can take part.

9. Are there any specific statutory rights available to minority shareholders available in your jurisdiction?

In the LLC. The Uzbek LLC Law does not provide for the concept of a "minority shareholder". The concept of a "minority shareholder" is contained in the regulations on the procedure for the activities of the committee of minority shareholders in a JSC, according to which minority shareholders are owners of participatory interest whose participation and voting at the general meeting of shareholders does not affect the results of voting on the agenda of the meeting. We believe that it is advisable to apply this definition to a minority participant in a limited and additional liability company. Thus, it is not the size of the participatory interest that classifies minority participants as such, but the ability to influence the results of voting on issues decided by the GMP.

The rights of minority shareholders of the company are not expressly provided for by the LLC Law. However, based on the context of the LLC Law, the following corporate rights of minority participants in the company can be distinguished, in addition to the general rights established by the law LLC for all participants in the company.

<u>The right to veto certain issues:</u> In accordance with the LLC Law, the decision to approve the charter of the company, amend the charter of the company, increase the charter capital of the company, reorganize and liquidate the company, as well as the decision to approve the monetary value of the contributions made by the company's participants are decided by the participants unanimously. This means that a participant with a participatory interest of even 1% of the charter capital has the right of veto on all such issues, that require a unanimous decision of the GMP. It should also be borne in mind that the LLC Law does not prohibit establishing such a decision-making procedure for other issues decided at a general meeting of company participants.

Mandatory buyout offers. In accordance with the LLC Law, a person who has become the owner of 50 or more percent of a participatory interest in the charter capital of a company (with the exception of the state) is obliged within 30 days to offer minority participants to sell him participatory interest at market value, if before that the person did not own participatory interest or owned less than 50 percent of the participatory interest in the charter capital of the company. Thus, a minority participant is provided with the right to withdraw from the company upon the appearance of a participant owning 50 or more percent of the participatory interest in the charter capital of the company.

The requirement to expel a participant from the company. A participant of the company or participants of the company, whose participatory interest in the aggregate amount to at least 10 percent of the charter capital of the company, have the right to demand in court the exclusion from the company of a participant, including a majority participant who grossly violates his obligations or by his actions (inaction) makes it impossible to operate the company or significantly complicates it.

LLC Law allows the establishment of other rights of the company's participants, including minority participants, in the charter and foundation agreement. In order to protect the rights and legitimate interests of minority shareholders in a company, a committee of such shareholders may be established.

In the JSC: In accordance with the Uzbek law, minority shareholders are owners of shares whose participation and voting at the general meeting of shareholders may not affect the results of voting on the agenda of the meeting. The following mechanisms are available in order to protect the rights of minority shareholders:

Committee of minority shareholders: In accordance with the Uzbek JSC Law, in order to protect the legitimate rights and interests of minority shareholders in the company, a committee of minority shareholders may be created from among minority shareholders. The competence of the committee of minority shareholders includes: participation in the preparation of proposals on issues related to the conclusion of major transactions and transactions with affiliates submitted for consideration by the general meeting of shareholders or the supervisory board of the company; consideration of appeals from minority shareholders related to the protection of their rights and legitimate interests; submitting appeals to the authorized state body for regulating the securities market on the protection of the rights and legitimate interests of minority shareholders; consideration of other issues in accordance with the law and the charter of the company. At the same time, interference in the activities of the committee of minority shareholders by the supervisory board or the executive body of the company is not allowed.

Mandatory buyout offers: In accordance with the Uzbek JSC Law, the person who became the owner of 50% or more shares of the company within 30 days is obliged to announce a proposal to owners of the remaining shares to sell their shares at market value, provided this person previously did not own any shares or owned less than 50% of the shares of this company. If written consent of the shareholder for the sale of its shares is received during this period, the owner of 50% or more shares of the company shall be obliged to buy those shares.

10. Is it possible to impose restrictions on share transfers under the corporate documents (e.g., articles of association or its equivalent in your jurisdiction) of a company incorporated in your jurisdiction?

<u>In the LLC:</u> The restriction on the sale of a participatory interest to a third party may be imposed under the charter of the company. In case such a restriction on the transfer of a participatory interest to third parties is prescribed by the charter, and other participants in the company refuse to acquire it, the company is obliged to acquire such participatory interest, at the request of the selling participant.

At the same time, the company is obliged to pay the selling participant the actual value of his participatory interest, which is determined on the basis of the company's financial statements for the last reporting period preceding the day the company's participant makes such a request, or, with the consent of the company's participant, to give him a property of the same value in kind.

In the JSC: In accordance with the JSC Law, shareholders have the right to alienate their shares without the consent of other shareholders and the company. However, please note that in case if the number of shareholders does not exceed 50, the company's charter may provide for a preemptive right:

- allowing other shareholders to purchase shares sold by other shareholders of this company, at a price and on the terms of an offer to a third party in proportion to the number of shares owned by each of them;
- allowing a company to purchase shares sold by its shareholders, if other shareholders of this company have not exercised their preemptive right.

11. Are there any specific concerns or other considerations regarding the composition, technical bankruptcy and other insolvency cases in your jurisdiction?

In case of insolvency, the director of the company is obliged to notify the shareholders and creditors to start the pre-trial readjustment process. In particular, the company may be the subject of a deferral or financial assistance may be requested for its recovery.

Both the debtor and creditors and in the case of a company with state shares, the State Assets Management Agency, may apply to the court for insolvency proceedings.

The interests of creditors in the insolvency proceedings are upheld by a committee or a meeting of creditors. Once the court accepts the application, the creditor cannot address the debtor individually.

In case of non-submission or untimely submission by officials of materials on financial and economic activities of the company to the state agency for bankruptcy cases — attracts imposing of penalty from 3 to 5 BCV (from 87 up to 145 USD).

The same offense committed repeatedly within a year after the application of an administrative penalty – entails the imposition of a fine from 5 to 10 BCV (from 145 up to 290 USD).

E. Acquisition

12. Which methods are commonly used to acquire a company, e.g., share transfer, asset transfer, etc.?

There are several mechanisms to acquire shares/participatory interest in the company in Uzbekistan:

(1) acquisition of a shares/participatory interest in the company;

(2) an increase of the charter capital of the company at the expense of the contribution of a third party accepted into the company as a participant;

(3) transfer of a participatory interest of one company as a contribution to the charter capital of the other company.

13. What are the advantages and disadvantages of a share purchase as opposed to other methods?

The listed mechanisms of acquiring a company are approximately the same in terms of processing transactions. The main advantages and disadvantages of purchase of share/participatory interest as opposed to an increase of the charter capital of the company at the expense of the contribution of a third party accepted into the company as a participant and transfer of a participatory interest of one company as a contribution to the charter capital of the other company is listed below:

Tax consequences. If the acquisition of a company occurs through the acquisition of a participatory interest or transfer of a participatory interest as a contribution to the charter capital of the company at the nominal value, there are no consequences that can occur.

In case a share/participatory interest is transferred or sold at market or contract value, and if the market and contract value of the sold share/ participatory interest is higher than the nominal value, then the seller has income from the sale of the share/ participatory interest, which will be taxed. However, in the case when the acquisition of the company occurs by increasing the charter capital, there are no tax consequences that might occur.

<u>Non-monetary contribution:</u> Moreover, by the legislation of the Republic of Uzbekistan, a contribution to the charter capital can be made not only in money but also in property or other rights having a monetary value. The monetary value of non-monetary contributions to the charter capital of the company, made by the company's participants and third parties accepted into the company should be approved by the decision of the general meeting of the company's participants and adopted by all participants of the company unanimously. However please note, that in case, of an increase of the charter capital of the company at the expense of the non-monetary contribution of a third party accepted into the company as a participant, VAT (12%) will apply.

Also please note that non-monetary contributions to the charter capital of the LLC, valued in excess of 10,000 BCV (3,750,000,000 UZS, approximately USD 292,580), shall be assessed by an appraisal organization and cannot exceed the estimated value.

Antimonopoly approval: The approval of Competition Promotion and Consumer Protection Committee of the Republic of Uzbekistan ("**Antimonopoly Committee**") is required both when acquiring ashares (participatory interest) in the charter capital of the company by increasing the charter capital of the company and when acquiring a participatory interest in the company or transfer of a participatory interest as a contribution to the charter capital of the company.

Pre-emptive right: In the case of an acquisition of a participatory interest in the company, the participants in the company and the company have a pre-emptive right to purchase selling participatory interest, while in the case of an increase of the charter capital of the company at the expense of the contribution of a third party accepted into the company as a participant or transfer of a participatory interest as a contribution to the charter capital of the company, this rule does not apply.

14. What are the approvals and consents typically required (e.g., corporate, regulatory, sector based and third-party approvals) for private acquisitions in your jurisdiction?

Under Uzbek law there are some rules and requirements set for private acquisition which are listed below.

- General consent: Per Uzbek LLC law participant of the company has the right to sell or otherwise assign his participatory interest in the charter capital of the company or part of it to one or more participants of the company. The consent of the company or other participants of the company to make such a transaction is not required unless otherwise provided by the charter of the company.
- Pre-emptive right: The sale of a participatory interest to third parties is allowed unless prohibited by the charter of the company. In this case, the participants of the company enjoy the pre-emptive right to purchase a participatory interest over third parties.

If other participants of the company have not exercised their pre-emptive right to purchase a participatory interest sold by its participant, then the company has a pre-emptive right to acquire this participatory interest.

Accordingly, a participant who intends to sell his participatory interest to a third party is obliged to notify the other participants in the company and the company itself in writing, indicating the price and other conditions for its sale.

Participant of the company wishing to exercise the pre-emptive right to purchase the participatory interest must, within seven days, notify the participant of the company who offered to sell his participatory interest, indicating that he intends to purchase the participatory interest offered for sale in full or a certain part of it.

If the total value of the received offers does not exceed the size of the sold participatory interest, each of the participants acquires that part of it, which he indicated in his notification.

If the participants of the company or the company itself do not use the pre-emptive right to purchase a participatory interest offered for sale within a month from the date of such notification, unless another period is provided for by the charter of the company or agreement of the participants in the company, the participatory interest may be sold to a third party at a price and on conditions known to the public and its participants.

Obtainment of prior consent of the covenants under the agreements. (change of control clause): If the terms of the agreements (if any) contain a requirement to obtain prior consent to the transfer of participatory interest, it is necessary to obtain the consent of the covenants under the agreements before such a transfer.

15. What are the regulatory competition law requirements applicable to private acquisitions in your jurisdiction?

Under Law of the Republic of Uzbekistan No.ZRU-850 "On Competition" dated October 4, 2023 ("Competition Law") obtaining the consent of the Antimonopoly Committee for transactions on acquisition of participatory interest in the charter capital of companies might be required.

To regulate economic concentration, the authorized state body will exercise state control by granting prior consent in specific situations, including:

- Reorganization of business entities through mergers and acquisitions;
- Accrual of a right by a person or a group of persons to dispose of shares of JSC or LLC registered in Uzbekistan. Preliminary consent is required when acquiring more than 25% of the voting shares in the charter capital of the JSC, or more than 1/3 of the participatory interest in the charter capital of the LLC.

State control over such transactions will occur only if:

- the book value of assets or proceeds from the sale of goods for the last calendar year of one of the business entities participating in the transaction exceeds 250,000 BCV (93,750,000,000 UZS, approximately USD 7,244,977); or
- the total book value of assets or revenue from the sale of goods for the last calendar year of the business entities participating in the transaction isexceeds 500,000 BCV (187,500,000,000 UZS, approximately USD 14,489,954).

Note, that the state control over the transactions will not occur in the following cases:

- transactions involving the merger or acquisition of enterprises with the participation of the state or the acquisition of shares in their charter capital are carried out by decision of the President of the Republic of Uzbekistan;
- establishing an economic entity;
- transactions for the acquisition by an economic entity of its own shares (participatory interest) in the charter capital;
- transformation of a joint stock company (limited liability company or additional liability company) into another organizational and legal form while maintaining the size of its charter capital;
- acquisition of shares (participatory interest) by investment intermediaries for the purpose of their further resale;
- transactions for the acquisition of shares (participatory interest) by an individual in the charter capital of an economic entity, if at the time of filing the application such an individual did not dispose of more than 25 percent of shares (participatory interest) in the charter capital of any commercial entity.

Consent to transactions for the acquisition of the participatory interest by a company or group of companies in the charter capital of companies is issued by the Antimonopoly Committee.

The state fee for consideration of the application and accompanying documents is 1 BCV (approximately USD 29) for consideration and for the issuance of the preliminary consent of the Antimonopoly Committee - 0.05 percent of the proceeds of the parties to the transaction from the sale of goods for the last calendar year (in the absence of proceeds - of the book value assets), but in the amount of not less than 7 BCV (2,625,000 UZS, approximately USD 203) and not more than 1,000 BCV (375,000,000, approximately USD 28,979).

The Antimonopoly Committee considers the application within 30 (thirty) calendar days and informs the applicant of the decision in writing.

In case there are reasons why the transaction leads or may lead to restriction of competition, including by creating or strengthening a dominant position in the product or financial market, the Antimonopoly Committee may extend the term of consideration of the application for a maximum of 2 (two) months by sending a written notice indicating the grounds for the extension.

16. Are there any specific rules applicable for acquisition of public companies in your jurisdiction?

A shareholder holding shares in JSC may sell his shares for more or less than nominal value. However, if the shares:

(1) are included in the exchange quotation list ("**Listing**") of Republican Stock Exchange "Toshkent" JSC ("**Exchange**") - the income of the seller (including a non-resident of the Republic of Uzbekistan) on the transaction is not subject to corporate income tax and tax on the income of individuals;

(2) are not included in the listed - the seller pays a fee of 0.3 percent of the transaction amount in lieu of income tax for legal entities (or income tax for individuals).

<u>Obtaining the consent of the Antimonopoly Committee</u>. The preliminary consent of the Antimonopoly Committee for the transactions on the acquisition of the participatory interest by a company or group of companies in the charter capital of a JSC is necessary in cases such JSC or group of companies acquires the right to dispose of more than 25 percent of the said participatory interest; and State control over such transactions will now occur only if:

- the book value of assets or proceeds from the sale of goods for the last calendar year of one of the business entities participating in the transaction exceeds 250,000 BCV (93,750,000,000 UZS, approximately USD 7,244,977), or
- the total book value of assets or revenue from the sale of goods for the last calendar year of the business entities participating in the transaction exceeds 500 000 BCV (187,500,000,000 UZS, approximately USD 14,489,954).

The Antimonopoly Committee considers the application within 30 calendar days and informs the applicant of the decision in writing.

In case there are reasons why the transaction leads or may lead to restriction of competition, including by creating or strengthening a dominant position in the product or financial market, the Antimonopoly Committee may extend the term of consideration of the application for a maximum of 1 (one) month by sending a written notice indicating the grounds for the extension.

Note: The Competition Law also mandates obtaining preliminary consent for the establishment or reorganization of enterprises with state participation and their affiliated entities, any changes in their types of activities, and the acquisition of shares or participatory interest by such enterprises.

Implementation of a transaction for the purchase and sale of shares on the Exchange: If the shareholder sells his shares, the seller and the buyer must conduct (through their investment intermediary) a transaction on the Exchange (respectively (a) on the Exchange trading floor- for listed JSCs, or (b) over-the-counter transaction floor- for non-listed JSCs).

The parties must use the following sections of the Stock Market module:

(1) The main section of the Main Board - when selling less than 1% of the shares of charter capital of the JSC (the value for the shares is determined in accordance with the market price of the share);

(2) Negotiation auction Nego Board - when selling shares from 1% of the charter capital of JSC, the seller, and the buyer can agree on the cost of the transaction independently (through the section) both lower and higher than the market price of the share.

Registration of an agreement on the change of ownership without the actual payment of shares: In the event that the owner of shares is changed without actual payment for the shares (for example, the transfer of shares by donation, or the transfer of shares due to the fulfillment of an obligation by a shareholder to a third party, or another transaction leading to a change of ownership), such a change requires registration, therefore this type of transfer of rights refers to over-the-counter transactions with securities papers leading to a change of ownership.

According to the Regulations on the accounting register of over-the-counter transactions with securities (Registered by the Ministry of Justice of the Republic of Uzbekistan on March 9, 2009, reg. No. 1919), an over-the-counter transaction with securities made in writing, are subject to registration with the purchaser's investment intermediary, which records and certifies rights to data securities ("**Registrar**") who may charge a fee to affect the registration of a change of ownership.

The parties represented by their representatives in the presence of the Registrar shall sign in triplicate (one for the parties and one for the registrar) the agreement submitted for registration of an over-the-counter transaction with securities. It should be noted that in case of fulfillment of the shareholder's obligation to a third party, the parties themselves determine the price per share, in accordance with which the principal and interest (if applicable) are calculated, so it may be different from the market price.

When registering an agreement, the registrar may also request the relevant agreement (for example, a loan agreement) after signing the agreement by the parties, registers an over-the-counter transaction with securities by making an appropriate entry in the accounting register for over-the-counter transactions with securities and on the basis of the relevant agreement and instruction from the shareholder to write off shares to the depository account of the acquirer, the transfer of shares to the acquirer is carried out.

17. Is there a requirement to disclose a deal, for instance to regulatory authorities? Is it possible to keep a deal confidential?

In the JSC: The owner of shares is obliged to disclose information on the acquisition, independently or jointly with affiliated persons, as a result of one or several transactions of a block of shares in a JSC, which in the aggregate constitutes 20 percent or more of the charter capital of this JSC.

Disclosure of information is carried out within two business days from the date of conclusion of the transaction (transactions) in the republican newspaper or on the official website of the stock exchange.

In addition, significant facts that must be provided in the annual report of a JSC are changing in the list of legal entities in which the issuer owns 10 or more percent of the shares (interests, shares) of each such legal entity. The annual report must also contain information on the ownership of 5 or more percent of shares (stakes, shares) of other legal entities if the issuer's shares are included in the exchange quotation list of the stock exchange.

Also, JSCs must disclose material information about an affiliate on its official website and on the Unified Corporate Information Portal within two business days from the date of the event (registration of the share transfer).

<u>In the LLC:</u> As for the disclosure of transactions in an LLC when purchasing a participatory interest, there is a need to disclose transactions to the Antimonopoly Committee if, in accordance with the legislation of the Republic of Uzbekistan, it is necessary to obtain the prior consent of the Antimonopoly Committee.

Also, when re-registering an LLC due to a change of participants, acquisition documents are provided to the registering authority. However, please note that the acquisition documents, as well as the details of the transaction on acquisition of the participatory interest (the purchase price of the participatory interest, the final beneficiaries of the parties to the transaction, the conditions specified in the acquisition documents and the document itself), are not published in open sources.

Note. The Competition Law in addition to the previously required documents, applicants seeking preliminary consent from the Antimonopoly Authority must now also provide information about individuals who are ultimate beneficial owners and hold actual control over a business entity through direct or indirect ownership of 25% or more of its shares or stocks.

18. Can sellers be restricted from shopping around during a negotiation process? Is it possible to include break fee or other penalty clauses in acquisition documents to procure deal exclusivity?

This concept is not recognized under Uzbek law.

19. What are the conditions precedent in a typical acquisition document? Is it common to have conditions to closing such as no material adverse change?

The conditions precedent may vary among transactions on acquisition of the participatory interest. However, from many transactions on the acquisition, some of the common Conditions Precedent in such transactions include:

- The conditions precedent for the seller's representations and warranties, namely, the seller's representations and warranties must be true and accurate and the sellers must fully comply with such representations and warranties.
- The conditions precedent for internal approval for transaction on acquisition of the participatory interest. Accordingly, the seller must provide evidence/ to obtain internal approvals, authorizing the execution and performance of the sale and purchase agreement;
- The conditions precedent for prior consent of the Antimonopoly Committee for the transaction on acquisition of the participatory interest (if applicable);

- The Conditions Precedent for completing all required legal procedures to recognize the buyer as a new participant of the company such as conduction of the re-registration of the company;
- The Conditions Precedent for the obtainment of the certificate of absence of tax debts or fulfilment of obligations with the tax authorities. As such, the seller commits that the seller hides no tax obligation besides what are included in the sale and purchase agreement.

20. What are the typical warranties and limitations in acquisition documents? Is it common to obtain warranty insurance?

Usually, the following warranties and limitations are included in the acquisition documents:

- The warranty on the authority to enter the agreement;
- No contravention to enter the agreement;
- Possession of the selling participatory interest and no encumbrances.

Please note, that implementation of warranties and limitations in acquisition documents is possible, however, this has not yet been tested in court.

Warranty insurance is not recognized under Uzbek law.

21. Is there a requirement to set a minimum pricing for shares of a target company in an acquisition?

In the LLC, there is no legal requirement in regards to the setting of the price of the shares/participatory interest when selling such shares/participatory interest. Thus, the seller of the shares/participatory interest has the right to set the price at his own request. In practice, the shares/participatory interest may be sold at a nominal, market, actual or contract value.

- Nominal value. The nominal value of the participant's share/participatory interest in the charter capital of the company is determined by the size of the charter capital of the company, fixed in its foundation documents in the form of a specific amount of money;
- Actual value[5]
- Market value; and
- Contract value.

Profit on sale of shares/participatory interest is subject to taxation in Uzbekistan. The rate and type of tax depends on the seller (individual or legal ettily) and its tax residency status.

22. What types of acquisition financing are available for potential buyers in your jurisdiction? Can a company provide financial assistance to a potential buyer of shares in the target company?

The practice of providing acquisition financing is not common in the Republic of Uzbekistan. There are two types of acquisition financing available for potential buyers in our jurisdiction:

- Bank loans;
- Loans, provided by legal entities.

However please note, that the bank loans for the acquisition financing in practice are provided only by the major banks.

23. What are the formalities and procedures for share transfers and how is a share transfer perfected?

5 The actual value of the participatory interest of a participant corresponds to part of the value of the company's net assets, proportional to the size of his participatory interest.

The procedure of transfer of the participatory interest in the LLC is the following:

- notify other participants of the Company and the Company itself about the sale of the participatory interest;
- receive written waivers to exercise the pre-emptive right to purchase a participatory interest from other participants of the Company and from the Company;
- conclude a contract for the sale of the participatory interest and deed transfer of the participatory interest;
- obtain a certificate of absence of tax debts;
- adopt a decision of the GMP on changing the composition of participants and approving the Charter and the Foundation Agreement of the Company in a new edition;
- carry out re-registration in connection with a change in the composition of participants in the Company.

In the JSC, according to the Law of the Republic of Uzbekistan "On the Securities Market" the circulation of securities (shares) is carried out through transactions by legal entities and individuals on the securities market. The process of selling shares after their placement among the Issuer's shareholders is carried out on the secondary securities market.

In this case, transactions for the purchase and sale of shares are carried out exclusively at organized trading in securities, with the exception of the repurchase of shares by the joint-stock company itself at the request of shareholders.

The organizers of securities (shares) trading are:

(i) stock exchange;

(ii) a foreign exchange that has established a securities department.

24. Are there any incentives (such as tax exemptions) available for acquisitions in your jurisdiction?

There are no tax incentives available for acquisitions. However, please note, that in case there is a double tax treaty between the country – resident of the buyer and the Republic of Uzbekistan, it is possible to avoid taxation in the territory of the Republic of Uzbekistan.

F. Enforceability

25. Can acquisition documents be executed in a foreign language?

Acquisition documents can be executed in a foreign language. In practice, such documents are usually executed bilingually. Please note, that for registration purposes acquisition documents must be executed in the Uzbek language and additionally can be executed in other foreign languages as well.

26. Can acquisition documents be governed by a foreign law?

Acquisition documents can be governed by foreign law, with the following exception. Shareholders/participants may enter into an agreement between shareholders/ participants (which will be governed by contractual relations), according to which the parties prescribe additional conditions for acquiring a share/participatory interest, while such an agreement may be governed by the law of another country with the exception of corporate issues included in the exclusive jurisdiction of the Republic of Uzbekistan.

Please note, that foreign law (law other than Uzbek law) can be agreed to by the parties to a contract involving foreign individuals or foreign legal entities (non-

Uzbek residents) as counterparties or that is "fraught with foreign element". The Uzbek law fails to further elaborate what can be viewed as "fraught with foreign element" for this purpose. However, traditionally, this concept encompassed factors of foreign (non-Uzbek) nature. Domestic contracts, in their turn, are governed by Uzbek laws by default.

27. Are arbitration clauses legally permissible or generally included in acquisition documents?

The choice of foreign arbitration is recognized by the legislation of Uzbekistan unless the disputed issue is in the exclusive jurisdiction of the national courts of Uzbekistan. In accordance with the legislation of Uzbekistan, corporate disputes such as disputes related to the creation, reorganization, and liquidation of a legal entity, disputes related to the ownership of shares/participatory interests, shares/participatory interests in the charter capital, disputes on invalidating transactions, disputes on appealing decisions of management bodies, etc. to the exclusive jurisdiction of the economic courts of the Republic of Uzbekistan.

28. Are there any specific formalities for the execution of acquisition documents? Is it possible to remotely/digitally sign documents?

No, there are no specific formalities for the execution of acquisition documents. The acquisition documents are usually executed in simple written form. The legalization/ apostille is required only in cases when such documents are executed outside of the Republic of Uzbekistan. There is no such option of signing the acquisition documents remotely or digitally.

G. Trends and Projections

29. What are the main current trends in M&A in your jurisdiction?

At the moment, there are two main trends in M&A in the Republic of Uzbekistan, namely:

(1) acquisition of a state share by the way of privatization;

(2) direct acquisition of shares / participatory interests in private companies.

Acquisition of a state share through privatization. On March 24, 2023, Presidential Decree No. PP-102 was adopted, where a list of shares in the charter capital of business entities that were subject to privatization was approved. According to the resolution, state shares in 1001 companies in such areas as industry, energy, automotive, and others should be sold to the private sector.

Direct acquisition of shares / participatory interests in private companies. As discussed in item 12 of this questionnaire, there are several mechanisms of acquiring shares/ participatory interest in the company in Uzbekistan, however, the most popular practice is the direct acquisition of shares / participatory interests. The practice of direct acquisition of shares / participatory interests in private companies by foreign investors has become widespread in Uzbekistan over the past years.

30. Are any significant development or change expected in the near future in relation to M&A in your jurisdiction?

Due to the rapid growth of foreign investment In Uzbekistan for the past few years, significant changes in the legislation are expected. Thus, the adoption of the Entrepreneurial Code is expected. The code is expected to combine 9 (nine) existing laws, 2 (two) new drafts of legislation, and more than 10 legal acts aimed at regulating all processes from starting a business to its termination.

Also, the concept of the "corporate agreement" was introduced in the Civil Code by the Law of the Republic of Uzbekistan "On Amendments and Additions to Certain Legislative Acts of the Republic of Uzbekistan in Connection with the Further Improvement of the Legal Framework for Corporate Relations" dated February 7, 2025. The law takes effect on May 8, 2025. At the moment, there is no concept of "corporate agreement" and "shareholder agreement" in Uzbek legislation, however, in practice, the parties may conclude an "Agreement of participants". Along with the above changes, and taking into account that the legal framework governing the activities of LLCs is considered (outdated), a new law on LLCs is also expected to be adopted. Thus, at the beginning of February 2024, discussions on the draft of new law on LLCs started.

Notes: