Ergun Publication Series: Global Legal Guides

GLOBAL MERGERS & ACQUISITIONS GUIDE

2023

ERGUNBOOKS

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Edited by

Lara Sezerler
Irmak Yensel Nergiz
Melis Kaim
Serra Nur Çelik
Begüm Şen

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Foreword

We are delighted to present the first edition of the Global M&A Guide, a publication that unites experts from various countries to offer comprehensive insights into mergers and acquisitions from a global perspective. This edition features authors from different jurisdictions, each presenting their perspectives and analysis based on their countries' laws and regulations.

Mergers and acquisitions are complex transactions that require a deep understanding of the legal and regulatory frameworks in different jurisdictions. Given today's global business environment, it is imperative for professionals involved in M&A transactions to have access to up-to-date and comparative information, enabling them to navigate the intricacies of M&A deals successfully.

In this guideline, we have gathered an exceptional team of authors who are renowned experts in their respective jurisdictions. They have shared their expertise, knowledge, and practical insights to provide you with a comprehensive understanding of the legal and regulatory aspects of M&A transactions in their countries. By examining the similarities and differences across jurisdictions, this publication aims to facilitate a deeper understanding of the nuances and challenges associated with conducting M&A deals on an international scale.

The authors have covered a wide array of topics, including general information, foreign investment, corporate governance, shareholder rights, enforceability, trends and projections. Each chapter offers a detailed analysis of the relevant legal provisions and practices in their jurisdiction, ensuring that readers gain valuable insights into the specific requirements and considerations when conducting M&A transactions in different countries.

We would like to express our sincere gratitude to the authors for dedicating their time and expertise to contribute to this guideline. Their invaluable contributions have made this publication a truly comprehensive and insightful resource for professionals involved in M&A.

As we embark on this journey with the first edition of this guideline, we hope that this edition of the Global M&A Guide will become an indispensable tool in your international endeavours.

Lara Sezerler
İstanbul, 2023

ARGENTINA

MARVAL, O'FARRELL & MAIRAL

Barbara Rampeti
Partner
bvr@marval.com

Santiago Cocimano
Associate
sanc@marval.com

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 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, 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 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 AR$ 100,000 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 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 three regular and three alternate statutory supervisors, being the committee always comprised by members in odd numbers; 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 two and a maximum of fifty 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 AR$ 10 or its multiples and entitle the quota holders to 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 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 S.A.s or S.R.L.s, 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 7 July 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 imposes limits on the ownership or possession of rural land by foreign individuals or legal entities. For example, no more than 15% of the total amount of 'rural lands' in Argentine territory may be owned or possessed by foreign individuals or legal entities. This percentage is also applicable to the territory of the province or municipality where the relevant lands are located. Under no circumstance may foreign individuals or legal entities of the same nationality hold or possess more than 30% of the above-stated 15%. Also, ownership by the same foreign owner may not exceed one thousand hectares (1 000 Ha) of the 'core area', or the 'equivalent surface' to be determined by the enforcement agency according to the location of the land. In addition, foreign legal entities or individuals may not be owners of rural lands that comprise or are located beside permanent and significant bodies of water (such as seas, rivers, streams, lakes, ponds, wetlands, swamps, glaciers, confined aquifers, etc.).

Lastly, foreigners who wish to purchase land located in frontier and other security areas, or who have a controlling participation in a company owning such land, must obtain prior government approval, which is usually obtained.

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 US$ 1=AR$ 185) 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 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.

Current 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 or work visa to work in local companies and be registered as local employees. This visa or permit must be requested through the Argentine Immigration Department if application will be in country or the Argentine consulate if the application will be out of country. This visa or permit must be sponsored by the local entity/company already registered at the Argentine Immigration Department.

Non-Mercosur citizens must have this visa or permit to stay as temporary resident in Argentina. Mercosur citizens have the possibility to be local employees without having a work visa sponsored by the local company. They can apply for a Nationality visa that allows to work, study, and live in Argentina without need of a visa sponsor.

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 three directors is required if the company's capital exceeds the sum of AR$ 50,000,000. 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 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 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 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 five days in the Official Gazette, at least 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 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 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 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 AR$ 50,000,000 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 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 three regular and 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 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 AR$ 50,000,000, the quota holders must hold an annual meeting to consider the financial accounts of the previous year, which must be called within 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 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 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 AR$ 50,000,000 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 AR$ 50,000,000 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 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 AR$ 50,000,000. 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 AR$ 50,000,000 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 one to 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 thirty (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 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 16,255,000,000 for the year of 2023, which is an adjustable value, updated on a yearly basis - approximately USD 88,703,956).

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 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. 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 is needed, since the principal threshold provided in the Antitrust Law has not been met.

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 thirty-six 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 3,251,000,000 approximately USD 16,565,605), 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 9.753.000.000 approximately USD 49,696,815) in the last thirty-six 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 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.

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?

Among the main current M&A trends in Argentina, the food and agribusiness sectors are among the most relevant ones. Currently, despite the complex global and local scenarios, there are still foreign investments in these areas. The war certainly played a role in this aspect.

The second industry in which most of the investments in the country are concentrated is mining, specifically lithium. This is largely due to the opportunity that northern Argentina has to be a supplier of the mineral for batteries.

The fintech field is very active as well, which has substantially grown in a very short period of time due to the talent of Argentine entrepreneurs and their capacity to adopt innovative ideas. One element to take into account is that an amendment to the Personal Data Protection Law is expected to materialize this year, the draft of which was already presented in 2022, which will seek to serve as a facilitator for innovation, business, investments in digital business and the digital economy in general.

Another sector that has seen strong growth in M&A, not only during the pandemic, but even after it, is the pharmaceutical sector.

Lastly, the energy sector is expected to see a big expansion in the near future. This is largely due to the fact that there is consensus among the main political forces in the National Congress on the convenience of passing a law that makes the development of these resources viable, especially natural gas (as well as the necessary infrastructure for its industrialization and commercialization, both in the domestic and international markets).

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

In the midst of a complex political and economic landscape, 2023 will be challenging for Argentina. The political scenario will be marked by the presidential elections that will occur in October. Regardless of which of the political parties prevails and wins, it is expected that the elected government will adopt much more friendly and flexible measures for foreign investors.

In this context, the most significant development to be expected in relation to mergers and acquisitions in our jurisdiction is given by the existence of a Draft Bill for the amendment of the Antitrust Law that proposes that the pre-closing system for

the notification of economic concentrations shall become effective 90 days after its publication in the Official Gazette without any further requirements or conditions.

If passed, this Bill would entail the entrance into effect of a suspensory regime by means of which the antitrust approval in Argentina (if applicable) would have to be obtained prior to the transaction's closing.

On February 4th, 2021, the Draft Bill received partial clearance from the Senate. However, the Bill was not discussed by the House of Representatives during its ordinary sessions of 2021 and 2022. As such, it appears that the project has lost traction and there is no visibility as to when (or if) it will be discussed again. Considering the lack of developments within the Legislative Branch, it should not be discarded as a plausible scenario that the executive power may decide to introduce the pre-closing system with a Decree of Necessity and Urgency, but there is no certainty as to when (or if) this will happen.

In the meantime, the post-closing merger control system remains applicable in Argentina, by means of which the parties may notify a transaction before the Antitrust Commission up to one week after its closing date.

In addition, we expect some new regulations to attract foreign investors for imports, exports, repatriation of proceeds and governance.

BAHRAIN

TROWERS & HAMLINS

Brian Howard
Partner
bhoward@trowers.com

Benjamin O'Brien-McQueenie
Partner
bobrienmcqueenie@trowers.com

Matthew McDonald
Senior Associate
mmcdonald@trowers.com

Amina AlWazzan
Paralegal
aalwazzan trowers.com

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.

Protected cell companies are 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 which 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, there are no foreign exchange restrictions applicable including foreign currency shareholder loans. Banks in Bahrain are required to verify source of funds for transactions partaking where the amount of money is in excess of 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 and closed joint stock companies shall have a board of directors which consists of at least five 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 that the nominal value is at least BHD10,000 or owns at least 1% of the shares has the right to become a board member. Whereas the shareholders that 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 permit 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 CCB 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 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 that 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, if it does not conflict with the 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 once the debtor is unable to pay debts within thirty days of their maturity or 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. In particular, employment must be terminated and employees must be rehired. 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 institute, 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. It 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 either 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 in 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, there are no clear legislation regulating the acquisition of non-listed companies, or clear laws and regulations on break fee clauses and penalties and whether these are permissible and enforceable in the courts of the Kingdom of Bahrain.

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 what the target is whether 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 acquisition 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 to the TMA article 2.22, 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 notary and MOICT. The Notary and 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 done in front of notary in person.

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 sector, some of this is driven by the instructions of the CBB. In addition, Bahrain's Covid Recovery Plan is providing a boost to investment by reducing the burden of regulation in certain areas, as well as innovation. The higher oil price over the past 12 months have helped Bahrain in relation to its budget plans.

Also, we are seeing more deals structured on an asset or business sale basis, whereas the trend in recent years was on share sale basis.

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 Bahrain government under the Covid Recovery Plan 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 over Covid.

BANGLADESH

DOULAH & DOULAH

A.B.M. Nasirud Doulah
Partner
ndoulah@doulah.com

Amina Khatoon
Partner
akhatoon@doulah.com

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?

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.

BOSNIA AND HERZEGOVINA

MARIĆ & CO

Bojana Basnjak-London
Partner
bojana.bosnjak-london@mariclaw.com

Nebojsa Maric
Partner
nebojsa.maric@mariclaw.com

Ezmana Turkovic
Partner
ezmana.turkovic@mariclaw.com

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

CESCON BARRIEU

Ana Carolina Castro Reis Passos
Partner
anacarolina.passos@cesconbarrieu.com.br

Rodolpho Clemente Neto
Associate
rodolpho.clemente@cesconbarrieu.com.br

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 to 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 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 need to have a complex management/governance structure, stock option plans or a more sophisticated capitalization structure and/or have 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 required for the public issuance of securities; (ii) in a Sociedade Empresária Limitada, the quotaholders have their liability limited to the quotas that it 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.

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:

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

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 shall have 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.

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 authorize 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 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 and quasi-public companies. It shall be composed by at least 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, 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 *ultra vires* acts 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 of the company's voting capital stock or ten percent of the company's non-voting capital stock may request the right to elect a director and its alternate in a separate election.

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 latest 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 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.

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

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 done under the condition (suspensive or resolutive) that the buyer carries 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) absence of a material adverse change; (vi) renewal of certain material agreements; and (vii) 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 recent 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.

CROATIA

WOLF THEISS

Sasa Jovicic
Partner
sasa.jovicic@wolftheiss.com

Marija Lalin
Senior Associate
marija.lalin@wolftheiss.com

Lucia Mocibob
Senior Associate
lucia.mocibob@wolftheiss.com

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.

Joint stock companies

- 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 aggregate worldwide turnover of all the parties to the concentration, based on the last available financial statements, exceeds approximately EUR 130 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

GORRISSEN FEDERSPIEL

Lasse Lyng Myrup
Managing Counsel
lape@gorrissenfederspiel.com

Kasper Berg
Attorney
kabe@gorrissenfederspiel.com

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 2022-11-09 No. 1451 on Public and Private Limited Companies).

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). The primary features of the two types of company are generally the same as they both (i) have a separate legal personality, (ii) are

subject to corporate tax treatment 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, a shareholder may be liable in certain circumstances, 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 40,000. 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 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 8 February 2023, the Minister for Industry, Business and Financial Affairs introduced a bill to amend the Financial Business Act, the Criminal Code and various other acts. The bill implements the political agreement of 16 June 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 proposes 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.

The bill is enacted and entered into force on 1 July 2023.

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.

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 rule, the seller usually prefers a share deal as it may lead to a lower taxation of the seller, 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 of the target, which the buyer otherwise could have used in the future, could affect the choice of transaction structure.

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 2010. 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).

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?

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.

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 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 a gift has been made.

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 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.

23. 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 in non-public M&A are 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 applicable) has 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 proved 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.

24. 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 most often 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 tax exempt and should not be included in the taxable income. However, it depends on the classification of the shares:

- Subsidiary shares: the shareholders own directly at least 10 per cent of the share capital in a company resident in Denmark or in a country where taxation of dividends must be waived or reduced under Directive 2011/96/EU (PSD) or a double tax treaty (DTT);
- Group shares: shareholding in a group company (controlling interest whereby the companies are subject to mandatory Danish joint taxation or qualify for voluntary Danish international joint taxation); and
- Portfolio shares: shares that do not qualify as subsidiary shares or group shares.

Dividends on subsidiary shares and group shares are tax exempt, whereas dividends on portfolio shares are subject to taxation.

F. Enforceability

25. 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.

26. 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.

27. 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.

28. 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

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

The last part of 2022 was characterised by uncertainty and market volatility which tends to slow down M&A activity – and we did also see a drop in the activity. Generally, several M&A-transactions have suffered from lack of alignment on valuation of target with the result that less M&A-transactions were closed in 2022 compared to (record high) 2021.

Irrespective of this, at the end of Q4 and in Q1 of 2023, there seems to be an increasing traction in the number of M&A-transactions with some deals already being closed and amble activity seen for transactions launching in H2 of 2023.

Moreover, and true to the strong tradition of the renewable energy sector in Denmark, we see a significant increase in the number of larger M&A-transactions related to the renewable energy sector, including large-scale wind and solar projects, biogas fuel- and PtX-projects, being signed at different stages in the project phases.

We are optimistic that landmark transactions and 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?

The beginning of 2023 has been characterised by global recession fears and rising interest rates, and many central banks have (and is expected to continue to have) a focus to reduce the record inflation in several jurisdictions.

We expect the current trends to continue throughout 2023, especially with respect to M&A-transactions related to the renewable energy sector.

FRANCE

WILLKIE FARR & GALLAGHER LLP

Gabriel Flandin
Partner
gflandin@willkie.com

Ji-Soo Kim
Associate
jskim@willkie.com

Hugo Kerbib
Associate
hkerbib@willkie.com

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).

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.

Note that a specific temporary control regime also applies until the end of 2023 for acquisitions of 10% of the voting rights of French sensitive listed companies (only for investors outside the EEA or the EU).

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 4/8/50 rule):

- a total balance sheet exceeding EUR 4,000,000;
- a total turnover excluding taxes exceeding EUR 8,000,000; 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 4/8/50 rule.

Finally, controlled companies that (i) exceed two of the three following thresholds, *i.e.,* a total balance sheet exceeding EUR 2,000,000, a total turnover excluding taxes exceeding EUR 4,000,000 and an average headcount exceeding 25 employees, and (ii) belong in a group which exceeds two of the three thresholds of the 4/8/50 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.

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 and in the national official bulletin for civil and commercial announcements (BODACC) within 15 days from the date of the transfer. 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 the acquisition of at least 10% of the company's capital if this triggers 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 5,000,000; 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, (ii) 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 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. 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*) 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?

2021 was a significant year in France as M&A transactions rebounded strongly following the uncertainty resulting from the Covid-19. In H2 2022, volumes of transactions have been in decline and large-cap transactions have halted, due to the combined effect of inflation, rising interest rates and energy prices and the occurrence of armed conflicts (in particular the war in Ukraine). However, despite these

unfavorable conditions, the deal value remained almost steady at the end of the year compared to 2021. A higher number of M&A transactions are expected in this current year, fueled by companies whose desire is to consolidate their positions or by private equity funds who need to deploy the proceeds accumulated in the previous years.

In terms of the structure of M&A deals, the current macroeconomic and political context in the world and particularly in Europe tends to benefit the sell-side, with for instance the steady incorporation of warranty insurance. On the other hand, we also note that buyers increasingly request more advanced and broader due diligence in an attempt to anticipate risks and uncertainties, compared to last year.

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 recently 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. We note however that foreign investment controls may be tightened in the coming months in an attempt to harmonize FDI processes across European jurisdictions and consequently, transactions may be analysed with a higher level of scrutiny. ESG criteria (especially environmental matters and gender equality) are also expected to invade even more starkly the corporate environment in the upcoming year.

GIBRALTAR

HASSANS

Tim Garcia
Partner
tim.garcia@hassans.gi

Matthew Torres
Partner
matthew.torres@hassans.gi

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 12.5% 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).

HUNGARY

WOLF THEISS

János Tóth
Partner
janos.toth@wolftheiss.com

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 Temporary FDI Regime).

Although FDI screening was designed not to capture any investors from the EU, the EEA or Switzerland, now both Hungarian FDI screening regimes require 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 temporary 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 temporary one).

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 300 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 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 filing test 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?

Despite the modest slowdown of overall deal activity during the COVID-19 pandemic, 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

JSA ADVOCATES & SOLICITORS

Sidharrth Shankar
Partner
sidharrth@jsalaw.com

Prakriti Jaiswal
Partner
prakriti.jaiswal@jsalaw.com

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.

(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 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 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 Companies Act. There is no limit on the number of members, and it is formed by the association of persons voluntarily. Transferability of its shares is not restricted, and the company can invite 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 country. 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 minimum of 3 (three) directors. A company can appoint maximum of 15 (fifteen) directors which can be extended by passing a special resolution. 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.

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 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 is 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 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 ("**FIs**") 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, 2013 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 2000 crores (USD 277 million)	Or	INR 6000 crores (USD 831 million)
2.	Acquirer's group and target, together	INR 8000 crores (USD 1109 million)	Or	INR 24000 crores (USD 3326 million)
World-Wide Thresholds				
Alternative	**Entity**	**Assets**		**Turnover**
3.	Acquirer and target, together	USD 1000 million (USD 1 billion) (INR 7216 crores)	Or	USD 3000 million (USD 3 billion) (INR 21648 crores)
	Of which in India	INR 1000 crores (USD 139 million)		INR 3000 crores (USD 416 million)
4.	Acquirer's group and target, together	USD 4000 million (USD 4 billion) (INR 28864 crores)	Or	USD 12000 million (USD 12 billion) (INR 86592 crores)
	Of which in India	INR 1000 crores (USD 139 million)		INR 3000 crores (USD 416 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 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 discounted cash flow method.

(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 slip 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?

Defying the global slowdown, India is at one of the top spots in M&A activities. The recent steps by the Government of India have eased doing business in India by reducing several compliances. Indian startups are on the track of turning into unicorns and alluring foreign investors. Certain sectors such as energy, healthcare, infrastructure, information technology continue to catch the eyeballs of the institutional investors. As per some reports, India's domestic M&A activity rose over 190% in 2022 to $105.6 billion, primarily driven by the merger of HDFC-HDFC Bank. The financial services sector had the highest share in total M&A deals of 2022, which is a 300% increase from 2021. However, the high technology sector saw the highest number of deals worth $18.6 billion, which had 12.5% of the total market share.

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. The Economic Survey 2023 has predicted a 6.5 GDP for India. Certain policy measures such as production link schemes, green hydrogen regulations, infrastructure push may boost the drone, 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

STUDIO LEGALE PADOVAN

Marco Padovan
Managing Partner
mpadovan@studiopadovan.com

Jose A. Alvarez de Cienfuegos
Senior Associate
Jacienfuegos@studiopadovan.com

Edoardo Poletti
Senior Associate
epoletti@studiopadovan.com

Alessandro Carofiglio
Associate
acarofiglio@studiopadovan.com

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: € 4,400,000;
- profits: € 8,800,000;
- average number of employees: 50.

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 €517 million (threshold updated as of 21 March 2022) and the domestic turnover of the target company, branch or merged company exceeds €32 million (threshold updated as of 21 March 2022).

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.

IVORY COAST

GENI & KEBE

Dr. Francky Lukanda
Senior Associate
f.lukanda@gsklaw.sn

Dr. Mohamoud Sangare
Associate
m.sangare@gsklaw.sn

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;
- 2022 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;

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.

KAZAKHSTAN

GRATA

Igor Lukin
Partner
ilukin@gratanet.com

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

Tamirlan Muktarov
Senior Associate
tmuktarov@gratanet.com

Oleg Kim
Junior Associate
okim@gratanet.com

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.

LIBYA

TUMI LAW FIRM

Dr. Mohamed Tumi
Founder
mtumi@tumilawfirm.com

Mazen Tumi
Partner
mmtumi@tumilawfirm.com

Malak Ejledi
Junior Associate
malak.ejledi@tumilawfirm.com

Imtinan Al Rwemed
Junior Associate
imtinan.alrwemed@tumilawfirm.com

Hannah Khllat
Junior Associate
hannah.khllat@tumilawfirm.com

A. General

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

- Civil Code
- Commercial Law No. 23 of the year 2010 (the "**Commercial Law**")
- Decree 207 of the year 2012 Regarding Foreigners' Participation in Foreign Companies
- Law No. 9 of the year 2010 on Investment Promotion
- Decree 107 of the year 2009 on Establishing the Libyan Investment and Development Fund

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 entities in Libya are joint stock companies and limited liability companies.

The main difference is with respect to the minimum capital set by Libyan law to establish each entity. Namely, a minimum capital of 100,000 LYD (one hundred thousand Libyan Dinars ("**LYD**")) is required for joint stock companies whereas a minimum capital of 3,000 LYD (three thousand Libyan Dinars) is required for limited liability companies.

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.

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.

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.

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?

N/A

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.

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.

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

BRUCHER THIELTGEN & PARTNERS

Philippe Sylvestre
Counsel
philippe.sylvestre@brucherlaw.lu

Sébastien Rimlinger
Counsel
sebastien.rimlinger@brucherlaw.lu

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?

The recently published draft law N° 8053 aims to completely overhaul the legal procedures pertaining to mergers and divisions contained in title 10 of the Luxembourg law of 10 August 1915 regarding commercial companies, as amended and introduce a new regime regarding cross-border conversions.

NETHERLANDS

ORANGE CLOVER

Kees Hooft
Partner
kees.hooft@orangecloverlaw.com

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

Dr. Ayodele Oni
Partner
ayodele.oni@bloomfield-law.com

Adedoyin Afun
Partner
adedoyin.afin@bloomfield-law.com

Adebisi Lamidi
Associate
adebisi.lamidi@bloomfield-law.com

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.

POLAND

LINKLATERS

Daniel Cousens
Partner
daniel.cousens@linklaters.com

Michał Szperzynski
Managing Associate
michal.szperzynski@linklaters.com

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 15 September 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 6 March 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 6 March 2018
- The Act on the National Court Register (KRS) of 20 August 1997
- The Law on Bankruptcy of 28 February 2003
- The Polish Accounting Act dated 29 September 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?

Acquisitions by foreign investors from outside the EU/EEA or OECD of Polish protected entities require consent from the Office of Competition and Consumer Protection ("**OCCP"**) (*Urząd Ochrony Konkurencji i Konsumentów*).

Protected entities are entities domiciled in Poland and:

- publicly listed in Poland;
- active in key sensitive sectors (such as, amongst others, energy, defence, chemical, software, pharmaceutical, food and beverage sectors, stevedoring in Polish ports and cloud computing);
- holding assets considered as critical infrastructure; or
- developing software to operate specified systems,

which generated more than EUR 10 million turnover in Poland in any of the last two financial years preceding the transaction.

In addition, the acquisition of more than 20% of shares or votes of entities that are considered to be strategic entities (which currently includes fifteen Polish companies), 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.

Additionally, Polish law sets out restrictions regarding foreign ownership of shares in companies operating in certain regulated sectors (for example television and radio operators) as well as a notification regime for real estate acquisitions, if the target company owns real property in Poland.

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 or an audit commission 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.

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 JSC 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 general 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 LLC) 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 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 general 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 might be certain time limits for such restrictions (e.g., 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 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 companies.

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.

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. Completing a transaction prior to clearance does not render the transaction void but may result in heavy fines.

Under Polish law, a transaction is 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 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 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 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 transfers 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.

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.

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).

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?

While the macroeconomic landscape in Poland has been relatively difficult, M&A activity remains robust with Poland remaining the top country for both deal value and volume in the CEE region. The energy, healthcare and TMT sectors are particularly active and ESG is a topic that is getting more and more attention from investors.

Warranty and indemnity insurance also becomes more popular and is widely used, in particular on bigger transactions with the warranty and indemnity insurance market becoming more sophisticated.

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

No.

QATAR

SULTAN AL-ABDULLA & PARTNERS

Omar Qouteshat
Senior Associate
oqouteshat@qatarlaw.com

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.

Limited Liability Companies:

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.

Holding Companies:

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.

Public Shareholding Company:

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.

Private Shareholding Company:

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

ȚUCA ZBÂRCEA & ASOCIAȚII

Horia Ispas
Partner
ndoulah@doulah.com

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 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 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 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 2023, a quota of 100,000 foreign workers newly admitted to the Romanian labour market is established by G.D. No. 1448/2022).

(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 administrație) 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

An 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 investments and (ii) new investments (jointly, FDIs) which (2) have as scope certain strategic areas of activity are subject to mandatory screening and authorisation 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.

In theory, as an exception, FDIs not exceeding a value of 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.

FDIs currently include:

i. Foreign direct investments are defined as:

- Investment of any nature carried out by a foreign investor (*see current legal definition below*) with the aim of establishing or maintaining lasting and direct links between the foreign investor and the targeted enterprise or a separate organizational unit of an enterprise, to whom these funds are made available or are to be made available for carrying out an economic activity in Romania, and which allows the foreign investor to exercise control over the administration of the enterprise.
- 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 currently 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;

However, in practice, the authority also considers screening applicable to EU investors. Currently, there is a draft law under discussion in the Parliament, expected to be issued shortly, that will expressly expand screening to EU investors.

ii. New investments are defined as:

- Initial investment in tangible and intangible assets within the same perimeter related to the start-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 application. 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.

As indicated above, changes to the existing FDI regime are expected, being estimated that the review scope will further expand.

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?

No specific incentives exist in Romania for acquisition. However, the Romanian Fiscal Code adopted in its legislation the participation exemption, regulating the tax exemption for (i) capital gains realized from disposal of shares held either in Romanian entities or entities located in treaty countries, (ii) dividends and (iii) liquidation revenues, provided there is a minimum holding of 10% between the companies for at least 1 year.

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?

The Romanian M&A market recorded an increase last year in the overall number of transactions, as well as separately in the number of domestic and international transactions. Technology replaced real estate as the most active sector by deal count. Also, the overall numbers reflect an increased willingness 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?

Towards the end of the year, one can expect an increase in the number of transactions coming to the market. Also, the latest trends reflecting that technology is the leading sector in M&A activity for the cumulative period 2018 – 2022 highlight that the M&A activity will further intensify in the IT sector.

SENEGAL

GENI & KEBE

Boubacar Diakité
Senior Associate
b.diakite@gsklaw.sn

Cécilia G Ahouadi
Junior Associate
c.gnango@gsklaw.sn

Ruth L Balounga
Junior Associate
r.accouna@gsklaw.sn

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	- 10,000,000 XOF if the Company does not launch public offering. - 100,000,000 XOF if the Company launches public offering	The law does not provide for a minimum share capital But the usual LLC share capital is 1,000,000 XOF
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 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
Limited Liability Companies	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 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 auditors (one auditor and an alternate auditor).

For those making public offerings, they should appoint at least 4 auditors (2 auditors and 2 alternate auditors).

When auditors are appointed in the Articles of Association or by the constitutive general meeting the duration of their mandate shall be two (2) financial years.

When auditors are appointed by the ordinary general meeting, the duration is six (6) financial years.

For LLCs, only those that meet 2 of the 3 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.

SOUTH KOREA

BAE, KIM & LEE

Sky Yang
Partner
sky.yang@bkl.co.kr

Mark M. Cho
Senior Foreign Attorney
mark.cho@bkl.co.kr

Alan Peumjoo Lee
Partner
alan.pj.lee@bkl.co.kr

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), 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.

TAJIKISTAN

GRATA

Bahodur Nurov
Senior Associate
bnurov@gratanet.com

A. General

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

The most relevant legal acts are: (i) Civil Code (Part 1, 2 and 3), (ii) Tax Code, (iii) Registration of Legal Entities and Individual Entrepreneurs Act, (iv) Competition Protection Act, (v) Limited Liability Companies Act, (vi) Joint Stock Companies Act.

In addition to the ones mentioned above, there are numerous other laws whose reach and application depend on the particular kinds of business activity a company engages in in Tajikistan.

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 $666,666 in 2023, 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 $1,333,333 in 2023, 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

Lara Sezerler
Partner
l.sezerler@cergun.av.tr

Irmak Yensel Nergiz
Senior Associate
i.nergiz@cergun.av.tr

Serra Nur Çelik
Associate
s.celik@cergun.av.tr

Begüm Şen
Legal Intern
b.sen@cergun.av.tr

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 numbered 6102 on the corporate governance and transactions including mergers, share purchases, spin-offs and carve-outs. Besides Turkish Commercial Code, the Turkish Code of Obligations numbered 6098 (on the matters regulating the contractual relations between companies), the Capital Markets Law numbered 6362 (on the matters applicable to public companies) and the Law on the Protection of Competition (on the anti-competitive conduct by companies) are the main applicable laws.

In addition to these, companies can be subject to additional governmental approvals or permits arising from banking or energy market (electricity, natural gas or petroleum etc.) regulations, if the company operates in a certain regulated field.

Key regulatory authorities are Trade Registries, Competition Authority and for public companies 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;

- ***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, with regards to the tax and social security debts, there is a difference between liability of 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. LLCs and JSCs, the managers/board members and representatives have secondary liability for outstanding taxes and 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 must be approved by affirmative votes of the majority of those attending the general assembly of shareholders meeting – approval is required for a proposed share transfer to take effect. The transfer document must be notarized. On the other hand, the shares of a JSC can be represented by share certificates, which can be issued in the form of registered or bearer share certificates; or temporary share certificates, which in principle can easily be transferred. In order to, however, transfer registered shares for which the subscription amount has not been fully paid, the approval of the JSC is required. Unless otherwise provided in the articles of association, no other restrictions apply to 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?

Turkish legislation generally allows foreign investment in Türkiye, however there are restrictions in certain sectors such as aviation, broadcasting and maritime. Also, foreign companies and Turkish companies are subject to certain restrictions on the acquisition of real estate in Türkiye, therefore the target company may be subject to certain regulatory approvals depending on the location of real property, e.g., military zones and prohibited zones. There is a requirement to notify a foreign direct investment in a Turkish company, to the Ministry of Industry and Technology.

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 various steps, 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 on the determination of the value of Turkish currency against foreign currencies.

These amendments, in principle, prohibit legal entities from obtaining foreign currency loans from abroad or locally, if they are not generating any foreign currency income. However, there are also several exemptions for this prohibition. Under the foreign exchange legislation, all loans borrowed from abroad by a Turkish borrower must be utilized through a Turkish bank acting as an intermediary. Additionally, pursuant to the Communique

numbered 2008-32/34 on Decree numbered 32, the banks must notify Turkish Central Bank within 30 days on any wire transfers to abroad in relation to import/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. The work permit shall be issued for a period of year.

A Turkish company must employ five Turkish citizens for each foreign employee they hire. If the foreigner who plans to work in Türkiye is also a shareholder of a company in Türkiye, such five-to-one rule shall be sought for the last six months of the one-year work permit to be issued by the Ministry of Labor and Social Security, where such company needs to hire 5 Turkish citizen employees for the last six months of such shareholders work permit duration. Noting that the foreign shareholder of the company requesting work permit must have a share capital of at least 20%, but not less than 40,000 TL. In addition to above, such company's paid capital must be at least 100,000 TL to employ foreigners.

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 managers for LLCs, comprising of one or more (real person or legal entity) members. For LLCs, at least one of the members shall be a shareholder of the company. There is no Turkish residency or nationality requirement for such persons. Board members have a duty of care against the company, they shall act as a prudent manager and protect the interests of the company. They are restricted from entering into any transactions with the company on behalf of themselves or any third person without the permission of the general assembly. If board members violate their obligations with fault, they may be held liable for the damages caused to the company, the shareholders and the creditors of the company. It is possible to obtain a directors and officers' liability insurance to mitigate exposure. It should also be noted that such insurance would only offer protection to the insured party, which in some cases is 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, resolving on dividend distribution.

7. What are the audit requirements in corporate entities?

Companies satisfying at least two of the following conditions for two consecutive fiscal years are subject to an independent audit from 1 January 2023:

- active assets valued at TRY 75 million (TRY 30 million for public companies) or more;
- annual net sales revenue of at least TRY 150 million (TRY 40 million for public companies) or more; and
- at least 150 (50 for public companies) employees.

Additionally, regardless of these conditions, companies that are active in certain sectors as listed under the relevant decree – such as banks, financial institutions and companies operating under license in other regulated markets, such as media service providers – are subject to an independent audit.

The general assembly of a company appoints an auditor each year. The identity of the auditor must be registered before the trade registry and announced in the Trade Registry Gazette. The auditor can be replaced during its term of service only by court order requested by the board or by the minority shareholders, 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?

Both personal (*participation in general meetings, voting rights, right to information, requesting special audit*) and financial rights (*pre-emption rights, right to receive dividends*) are granted to the shareholders under the Turkish Commercial Code. Shareholders can also be given representation on the board of directors.

In addition to these, Turkish Commercial Code states that some other privileges can be granted to shares or share groups, with regards to dividend, liquidation share, pre-emptive right and voting rights by including provisions under the articles of association. Please kindly note that the Turkish Commercial Code grants these rights to be created over the shares and not to the benefit of the shareholder itself. Therefore, share groups are created under the articles of association in order to create the privileges. In this regard, it is possible to grant below mentioned privileges to a share group regarding voting by regulating such privilege in the articles of association.

In general, one share grants one voting right to a shareholder in a general assembly meeting. However, by granting a privilege over a share group, up to fifteen votes can be granted to a share. The number of votes granted to such share group are to be determined under the articles of association. Also, it can be decided that a certain or all decisions of the general assembly are to be adopted with the affirmative votes corresponding to a certain percentage. Details of such resolution items are to be stated under the articles of association.

Another voting privilege that can be given to the shares are in relation to the composition of the board, where a right to nominate a certain number of directors can be granted to the selected share group. Also, similar to the general assembly meetings, it can be decided under the articles of association that certain board of directors' resolutions may be adopted with supermajority.

Beside 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. It is also possible to regulate 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 of the general assembly meeting;
- right to request the appointment of a special auditor from court;
- right to request postponement of the general assembly meeting regarding the evaluation of financial statements;
- 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.

As per Turkish Commercial Code, if it is included in the articles of association, the minorities may have the right to be represented at the board of directors.

The parties may agree to include other contractual protections for the minority shareholders in the relevant acquisition documents, such as veto rights in general assembly or board meetings 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 LLCs, the share transfers must be approved by the general assembly of shareholders with majority of the votes present at the meeting.

For the share transfer of JSCs, as long as the registered shares are paid and unless otherwise is stated under the articles of association of the JSC, there is no restriction arising from the law. The main principle for share transfer in JSC is the freedom of transfer. However, in JSCs, it is possible for the company to reject to provide its approval to the share transfer if there is such a provision under the articles of association requiring the approval of the company (board of directors) for the share transfer, provided that such restriction should be 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 the Turkish Commercial Code, the board of directors/managers must call the general assembly for a meeting in the event that 1/2 of the total of the capital and reserve funds of the company remain uncovered. At this stage, where the risk of loss of capital first arises, the law requires the board members to convene the general assembly and propose remedial measures.
- Article 376/2 regulates the situation where 2/3 of the total of the capital and reserve funds of the company remain uncovered. In this case, the law sets forth certain measures to be taken by the board of directors/managers. The general assembly immediately should decide (i) to be satisfied with 1/3 of the capital or (ii) to recover the capital deficit. The general assembly should decide on one of these measures. If the general assembly does not make any decision, the company will automatically dissolve.

- Under the Article 376/3 of the Turkish Commercial Code, a company is deemed to be bankrupt if its assets cannot cover its debts, meaning, if the total amount of capital and reserve funds are not covered. In this case, the board of directors/managers shall prepare an interim balance sheet and if the assets of the company are insufficient to cover the claims of the creditors, the board of directors/managers shall request the bankruptcy of the company.

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 acquiring shareholder assumes the ownership of the entire company, which includes all assets and employees and liabilities. Similarly, in a transfer of commercial enterprise, -the assets can be transferred as a whole-, without the necessity of transferring each part of an enterprise separately. However, when it comes to an asset transfer, there are additional and distinct procedural steps depending on the type of the assets. In addition to these, the buyer must notify the creditors or announce the transaction in the Trade Registry Gazette or a national newspaper in transfer of a commercial enterprise and an asset transfer, as per the Turkish Code of Obligations.

In the share transfer, if there are assets or liabilities that the parties do not wish to include in the transfer, these must be removed from the company before the share transfer, which can be performed as a condition to closing of the share 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?

For private acquisitions, typically, the seller take the necessary steps to complete the corporate authorizations such as approval of the other shareholders if necessary under the contractual arrangements between the shareholders, board resolution to register the share transfers to the share ledger. Also third party consents are typically required so that the buyer may continue to benefit from the contracts which have a change of control clause. Regulatory based approvals may also be required such as from the Competition Board or also for companies operating in regulated sectors such as from the Energy Market Regulatory Authority.

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 set forth under the the Law on Protection of Competition numbered 4054 and Communiqué Regarding the Mergers and Acquisitions Requiring Approval from the Competition Board numbered 2010/4 ("**Mergers Communiqué**").

As per the Mergers Communiqué, mergers and acquisitions which satisfy two conditions are subject to the Competition Board's approval. Firstly, there must be a change of control over the target company. Control is understood to be the right to exercise decisive influence over the strategic business decisions of an undertaking, such as the business plan, the budget, the material investment decisions and the appointment of senior management.

Secondly, the turnovers of the parties must satisfy the thresholds set out in the Merger Communiqué and provided below:

i. the total turnover of the parties to the transaction exceeding TRY 750,000,000 and the Turkish turnover of at least two of the parties to the transaction above TRY 250,000,000 separately, or

ii. in takeover transactions, the turnover of the asset or activity subject to the transfer, and in merger transactions, the turnover of the Turkish turnover of at least one of the transaction parties exceeding TRY 250,000,000 and the global turnover of at least one of the other transaction parties exceeding TRY 3,000,000,000.

Failing to notify an acquisition may lead to administrative 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 traded companies may trigger voluntary and mandatory share purchase offers. The voluntary share purchase offers may be made at any time and on a voluntary basis, whereas a controlling shareholder must proceed with a mandatory share purchase offer within the timeline set forth under the capital markets legislation if certain circumstances have realized and within the timeline set forth in the capital markets legislation.

Mandatory Offer: Any person or persons acting in concert, who acquire control of the management of a publicly traded target company, through partial or complete acquisition of the shares or the voting rights, shall apply to the Capital Markets Board, for a mandatory tender offer within 6 (six) business days and to commence the actual mandatory tender offer process within 2 (two) months following the completion of such acquisition. Acquisition of management control occurs under specific conditions, particularly when a person individually or acting in concert with others, (a) acquires, directly or indirectly, at least 50% of the voting rights of a publicly traded company, or (b) regardless of any shareholding threshold, directly or indirectly, acquires privileged shares which grant the power to elect directors constituting the majority of the board or to nominate such number of directors for election at the general assembly of shareholders. There are a few exceptions to the mandatory tender offer requirements; e.g., a mandatory tender offer will not be triggered if the management control is acquired as a result of a voluntary tender offer or if the voting rights of a shareholder exercising management control falls below 50% and subsequently exceeds the 50% threshold with additional share purchases before the management control is transferred to a third party. The mandatory tender offers are subject to certain rules on pricing and public disclosures. The sale of the shares by the shareholders responding to the share purchase offer shall be realized through the intermediation of an investment institution which performs the purchase transactions on behalf of the offerors.

Voluntary Share Purchase Offers: Any person may make a voluntary offer for all or part of the shares of a publicly traded target company, through an application to the Capital Markets Board. In such offer method, there is no minimum price and the buyer is free in determining the price and form of consideration offered to the minority shareholders. If the bidder, who individually or acting in concert, acquires at least 98% of the voting rights of the 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), in accordance with the capital markets and other relevant legislation.

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

Although some sectors such as banking, energy and telecom, have specific approval before or notification process after the acquisition, key regulatory authorities regarding M&A transactions in Türkiye are the Competition Authority and the Capital Markets Board.

If an acquisition exceeds or if has a possibility of exceeding the thresholds stated in the law on competition (please see Question 15), a notification must be made (jointly by the parties or by any of the parties or their representatives) to the Competition Authority for review and clearance, for the approval to be obtained to have validity to the relevant transaction. A notification form requiring information on the parties, target company and/or transaction, will be filled out and assigned delivered to the authority. Notified acquisitions (including the relevant parties and their fields of activity) will be announced on the website of the Competition Authority. Therefore, in cases where an application is made for acquisitions that may affect competition, such transaction will be announced to the public by the Competition Authority. On the other hand, for the public companies, share purchase offers are subject to certain notification and public disclosure requirements under capital markets regulations, even if the acquisition has not yet been finalized.

In private M&A, there is no public disclosure requirement and the acquisition documents usually include confidentiality clauses. There is a disclosure requirement for after the closing, where the board of directors is required to submit notifications to the trade registry, if the shareholding changes are above certain thresholds.

On the other hand, in order to protect the rights of the potential investors, the public companies have certain disclosure obligations as per the capital market legislation. Through the Public Disclosure Platform (KAP) and their website, the public companies are under the obligation to inform investors timely and accurately on the events and developments that may affect the value of their capital market instrument and/or investor's decision, such as financial statements, changes in shareholding structure and management control, investment decisions and changes to the privileged 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?

There is no specific restriction under the law, however the parties to the negotiation may agree to restrict shopping around in their term sheet / letter of intent / memorandum of understanding. It is possible to include break fees or other penalty clauses in acquisition documents for either one of the seller or purchaser.

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 condition precedents in a typical acquisition document can be separated into two categories, which are legally required conditions and voluntary conditions. Examples to legally required conditions are approvals from Competition

Board of Türkiye for the transactions that are creating a change of control and are over the monetary limits determined under the relevant legislation and Capital Markets Board of Türkiye for public companies. On the other hand, voluntary conditions can be determined between the parties in accordance with the freedom of contract principle, e.g., completion of certain consents or approvals from third parties.

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

The typical warranties in acquisition documents are in relation to the share capital, records, agreements, taxes, insurances, litigation and intellectual property rights of the target company. The limitations with regards to the warranties are depending on the deal structure, however most common limitations are with regards to monetary thresholds and time limitations. The warranty insurance is not that common in Turkey for acquisition transactions, due to the high premiums determined by the insurance companies in relation to the warranties.

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

In non-public companies, there is no general requirement to set a minimum price for shares in an acquisition. The parties of the transaction can freely determine the acquisition price.

In public M&A, the capital markets legislation imposes certain restrictions on the pricing of the shares, some of which are set forth below:

- Shareholders holding 10% or more shares and holding the management control of the target company regardless of their shareholding percentage at the time of the approval of the offering circular relating to the initial public offering of a publicly traded company, may not sell their shares in the stock exchange at a price below the initial public offering price for a period of 1 year following the commencement of trading of the shares in the stock exchange.
- The mandatory tender offer price for (i) the listed shares cannot be less than the arithmetic average of the daily weighted average price of the previous 6 (six) months as of the public disclosure relating to the execution of the acquisition documents, or less than the highest purchase price paid for the same group of company shares during the 6 (six) month period before the mandatory tender offer requirement arose; (ii) the non-listed shares cannot be less than price determined in the valuation report prepared in accordance with the capital markets regulations relating to valuation, by taking the differences between privileges amongst share groups, if any, into account, or less than the highest purchase price paid for the same group of company shares during the 6 (six) month period before the mandatory tender offer requirement arose. There is no minimum price requirement for voluntary tender offers.

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 angel investors play an active role in acquisition financing in Turkey. It is also possible to obtain financing from the institutions abroad. KOBİ loans (for Small and Medium Enterprises Development Organization of Türkiye (KOSGEB) are also alternative for small

and medium enterprises. Noting that debt financing option is mostly used in larger M&A transactions instead of the small-scaled ones.

Furthermore, there is a prohibition imposed by the Turkish Commercial Code on financing from the target company under the Article 380. Under this prohibition, the company is restricted from acting as a financing assistance for the acquisition of its own shares. In other words, it is stating that the target company funds cannot be used in the share transfer, regardless of the amount of shares to be acquired by the third party. Therefore, the purchase price cannot be paid with the funds of the target company and the assets of the target company (including any subsidiary shares) cannot be pledged or encumbrance cannot be created over them. However, financing of share purchases by credit or financing institutions for their shares is not prohibited under aforementioned article.

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 must be approved by the general assembly of the shareholders. The resolution of the general assembly on the approval must be registered with the Trade Registry and announced in the Trade Gazette of Türkiye. Finally, such share transfer must be annotated in the share ledger.

In JSCs in order for a share transfer to be valid, there are some formal requirements for share certificates. While bearer shares certificates are required to be transferred by delivery of the share certificates to the acquirer, registered share certificates are required to be transferred by endorsement and delivery of the share certificates to the acquirer. Shares which are not materialized in form of share certificates are required to be transferred by a written transfer agreement. In each option, share transfers are annotated to the share ledgers.

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

There are different types of taxes are applicable to acquisition transactions, depending on the type and details of a transaction. Share sales are exempt from stamp tax, however if the share purchase agreements include terms other than the share transfer, such as relations between the shareholders or other conditions, the tax offices may deem that the agreement is subject to stamp tax since it regulates other transactions.

There are also some exemptions from corporate income tax and value added tax under the Turkish tax legislation if the transaction parties satisfy certain conditions; e.g., in case the seller has held the shares for over more than 2 years.

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 the 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 procedure law, the parties are entitled to choose a foreign law in contracts with a foreign element (in terms of parties or a place), to the extent that the applicable provision of such foreign law is not explicitly contrary to the public order

of Türkiye. Therefore, the parties may agree that all or some of the acquisition documents will be governed by a foreign law.

A foreign element shall be deemed present, if at least one of the parties of the transaction is a foreigner or the subject matter of the contract is a foreign asset.

More recently there is an increase in the choice of Turkish law as the governing law and in such cases the parties usually chose arbitration as the dispute resolution method instead of Turkish courts, to procure impartiality.

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

Arbitration clauses or agreements are legally permissible and frequently included within the scope of acquisition documents, especially regarding the ones with foreign elements to avoid loss of time in the state courts and eliminate the concerns about the validity of certain provisions specific to M&A documents. It is possible for parties to choose the law applicable and the location of the arbitration institution. The main arbitration institution in Turkey is Istanbul Arbitration Center (ISTAC), but the parties can also choose other arbitration centers around the world like ICC International Court of Arbitration, 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 is required to 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.

In the acquisitions realized by the foreigners, please note that the signatories of the parties generally provide a power of attorney to their legal counsels to execute/sign the agreements on behalf of themselves. For a power of attorney to be valid, the person providing a power of attorney should be present at the notary public for the issuance of the power of attorney. However, if a power of attorney is already issued abroad, such document must be apostilled.

Basic e-signatures on contracts are not accepted 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.

A secure electronic signature has the same legal effect as a handwritten signature under Turkish law. Secured electronic signatures (which can only be provided by an electronic certificate service provider established or recognized in Türkiye) and e-signature cannot 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, the use of e-signatures is mostly used in documents provided by public institutions and organizations 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?

The current trends that we see in M&A market is acquisition by equity or capital firms and acquisition of mostly start-up companies. In accordance with Deloitte's Annual Turkish M&A Review for 2022 the Turkish M&A market demonstrated a sustained level of activity with a total c.US$11.5 billion volume through 450 deals. Technology, mobile and internet, e-commerce and gaming were the most attractive sectors for venture capitals in the year 2022.

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

Up until the presidential elections that took place in May 2023, the market was mostly static and most of the transactions were waiting the results. Financing was difficult in that period as well. Following the presidential elections, the transactions started coming alive and there is now more mobility in the market.

UKRAINE

INTEGRITES

Illya Tkachuk
Senior Partner
Illya.Tkachuk@integrites.com

Inna Kostrytska
Counsel
Inna.Kostrytska@integrites.com

Vasyl Yurmanovych
Counsel
Vasyl.Yurmanovych@integrites.com

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 (appr. EUR 33,500)
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, if such acquisition results in obtaining (1) 25% or more (2) 50% or more votes in the highest governing body of an entity.

The acquisition of less than 25% of shares in a company does not require a merger control clearance if such minority interest does not ensure 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.).

Even if a minority interest (in the range of 25-49% that does not ensure control) is acquired, such a transaction is still subject to approval by the AMCU.

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 the target or at least one of the founders of a joint venture 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?

2021 was an extremely good year for the M&A market in Ukraine. However, the war dropped down the market in 2022 and there are not many chances that the situation will improve in 2023.

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 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

GREENBERG TRAURIG, LLP

Shibeer Ahmed
Shareholder
shibeer.ahmed@gtlaw.com

Luke Robinson
Senior Associate
luke.robinson@gtlaw.com

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**") 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 three and eleven 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 is 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 cross-border insolvency**: the UAE does not have specific regulations for cross-border 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.4 of 2012 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.
- **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. This review process can take up to 30 working days, which may be extended to 60 working days for complex cases.
- **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% of the parties' total annual revenue, or AED10 million, whichever is higher. In extreme cases, the Competition Authority can order the dissolution of companies found to be in violation of the Competition Law.

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 Thresholds**
  - the company's market share in the relevant market exceeds 40%
  - the parties have a combined annual turnover in the UAE exceeding AED 500 million
- **Market Share Thresholds**
  - the market share of the buyer and the target exceeds 30% in the relevant market
  - the combined market share of the parties exceeds 50% in the relevant market

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 are 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 is 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 non-disclosure 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 suffers 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 is 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.
- **Post-pandemic**: the economic uncertainty caused by the COVID-19 pandemic is expected to lead to new opportunities for M&A activities as companies look to diversify their revenue streams and improve their financial positions.

Supporting this increase in activity is the impact of the UAE's foreign ownership reforms which is expected to drive increased foreign investment, however, factors such as the continuing situation in Ukraine, rising inflation, and lingering supply chain issues could result in a slowdown in the UAE M&A market in the near future.

UNITED KINGDOM

LINKLATERS

Daniel Cousens
Partner
daniel.cousens@linklaters.com

Michal Szperzynski
Managing Associate
Michal.szperzynski@linklaters.com

A. General

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

The primary source of English company 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
- 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 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 applying to private 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 the 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 £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 31 December 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 £10.2 million;
- balance sheet of more than £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 private 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, private 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 private 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 which 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 generally 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 private 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 private 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 year in 2022 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). Despite that, 2022 was still a pretty good year for M&A in the UK.

In particular, private equity funds are still sitting on a lot of dry powder and they remained pretty active and this will likely remain the case in 2023. ESG, energy and infrastructure, telecoms and technology 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.

UZBEKISTAN

CENTIL LAW

Maksud Karaketov
Senior Associate
maksud.karaketov@centil.law

Diyora Muslimova
Associate
diyora.muslimova@centil.law

Kamilla Muminova
Junior Associate
kamilla.muminova@centil.law

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 1 March 1997, Law of the Republic of Uzbekistan No.310-II "On Companies with Limited and Additional Liability" dated 6 December 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 6 May 2014 ("**JSC Law**") and the Law of the Republic of Uzbekistan No.77-II "On Foreign Economic Activity" dated 26 May 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. We should note, however, that this law is rather declarative in Uzbekistan, yet we may not remove this risk off the table.

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 330,000 UZS, or approximately USD 28. 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 9,900,000 UZS, approximately USD 846.

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 330,000 UZS, approximately USD 28 for highly qualified specialists, and a state fee of 2 BCV, which is 660,000 UZS, approximately USD 56 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 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 GMSP.

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?

Audit requirements in LLC.

An internal audit service is mandatory only for LLCs with a state share of 50 percent or more. 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 2,820,000) or proceeds from the sale of products (works, services) of more than 200 000 BCV (approximately USD 5,641,000), the average annual number of employees is over one hundred 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 if the balance value of a company's assets is more than 1,000,000,000 UZS (approximately USD 85,470). 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 GMPS.

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.

The right to veto certain issues. 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 t. 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.

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 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.

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 founders 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 84 up to 141 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 141 up to 282 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.

Non-monetary contribution. 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.

Antimonopoly approval. in the case of acquiring a company by increasing the charter capital, there is no need to obtain the consent of the antimonopoly committee, when as in the case of acquiring a participatory interest in the company or transfer of a participatory interest as a contribution to the charter capital of the company may require the approval of the Antimonopoly Committee of the Republic of Uzbekistan ("**Antimonopoly Committee**").

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.
- Preemptive 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 loan agreements. If the terms of the loan 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 loan agreements before such a transfer.

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

Under Uzbek law obtaining the consent of the Antimonopoly Committee for transactions on acquisition of participatory interest in the charter capital of companies might be required. 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 an Uzbek LLC is necessary in cases where (provided that the transaction simultaneously meets the following requirements):

- such company or group of companies acquires the right to dispose of more than 50 percent of the said participatory interest; and
- the total balance sheet value of assets or the total proceeds from the sale of goods for the last calendar year of the parties participating in the transaction exceeds 100,000 BCV (33,000,000,000 UZS, approximately USD 2,820,000), or if one of the participants in the transaction is an economic entity that holds a dominant position in the commodity or financial market.

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 28) 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 (2,310,000 UZS, approximately USD 197) and not more than 1,000 BCV (330,000,000, approximately USD 28,200).

The Antimonopoly Committee considers the application within 8 business days and informs the applicant of the decision in writing.

Note. The President of the Republic of Uzbekistan has recently approved the "Law on Competition" No. ZRU-850 dated 3 July 2023 ("**New Law**"). The New Law will come into force on October 4, 2023.

The New Law introduces a broader definition of "economic concentration," which now encompasses various transactions and actions that result in one business entity or a group of entities gaining dominance and influencing competition in both commodity and financial markets.

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. Notably, the New Law has decreased the threshold for acquiring shares (participatory interest) upon which the preliminary consent from the Antimonopoly Committee is required. Thus, 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.

Furthermore, the New Law has relaxed additional criteria for transactions related to economic concentration. 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 (82,500,000,000 UZS, approximately USD 7,050,000); 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 (165,000,000,000 UZS, approximately USD 14,100,000).

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).

Obtaining the consent of the Antimonopoly Committee. 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 where (provided that the transaction simultaneously meets the following requirements):

- such company or group of companies acquires the right to dispose of more than 50 percent of the said participatory interest; and
- the total balance sheet value of assets or the total proceeds from the sale of goods for the last calendar year of the parties participating in the transaction exceeds 100,000 BCV (33,000,000,000 UZS, approximately USD 2,820,000), or if one of the participants in the transaction is an economic entity that holds a dominant position in the commodity or financial market.

The Antimonopoly Committee considers the application within 8 business days and informs the applicant of the decision in writing.

Note. The New 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 effect 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).

In the LLC. 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 New 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?

There is no legal requirement in regards to the setting of the price of the participatory interest when selling such participatory interest. Thus, the seller of the participatory interest has the right to set the price at his own request. In practice, the participatory interest may be sold at a nominal, market, or contract value.

- Nominal value. The nominal value of the participant's 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;
- Market value (actual value); and
- Contract value.

If the market and contract value of the selling participatory interest is higher than the nominal value, then the seller will have income from the sale of the participatory interest, which will be subject to income tax in the amount of 20% of the value exceeding the 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 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?

The procedure of transfer of the participatory interest 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.

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.

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 18, 2022, Presidential Decree No. PP-168 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 55 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 in 2023. The code is expected to combine 9 existing laws, 2 new drafts of legislation, and more than 10 legal acts aimed at regulating all processes from starting a business to its termination.

Also, in accordance with the draft of the new Civil Code, the introduction of the concept of "corporate agreement" is expected to be introduced. 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.

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