LEXOLOGY
Getting The Deal Through

Public M&A

in Russia

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STRUCTURES AND APPLICABLE LAW

Types of transaction

How may publicly listed businesses combine?

The key forms of business combination are:

- private purchase of shares in the target;
- public offer for shares in the target (a tender offer), which can take the form of:
  - a voluntary tender offer (where there is an intention to purchase more than 30 per cent of the voting shares in the target);
  - a mandatory tender offer (where, as a result of a transaction, the acquirer, together with its affiliates, will hold 30, 50 or 75 per cent of the voting shares in the target);
  - a competing tender offer (can be made to compete with an existing voluntary or mandatory tender offer in the course of its duration);
  - minority shareholders' buy-out (where the minority shareholders have the right to sell their shares to the acquirer whose shareholding, together with its affiliates, exceeded 95 per cent as a result of a voluntary or a mandatory tender offer); or
  - minority shareholders' squeeze-out (where the acquirer of above 95 per cent of voting shares has the right to squeeze out the minority shareholders, subject to the purchase by such acquirer of at least 10 per cent shares in a tender offer);
- corporate reorganisations in the form of a merger or an accession;
- acquisition of shares of the target through subscription to shares; and
- asset deals.

Parties to a private deal would normally have enough flexibility to negotiate its terms, including the purchase price. Such business combination can be structured either through a direct acquisition of shares or an indirect acquisition (eg, through the acquisition of an equity interest in a shareholder).

Tender offers may be effected through a direct acquisition of shares only and are heavily regulated. Strict rules apply to the determination of a share purchase price. Voluntary tender offer rules are more flexible than the rules applicable to other forms of tender offers.

Business combinations in the forms of reorganisation or subscription to shares are rarely done in practice. Structuring a business combination through an asset deal is not common either due to regulatory and tax concerns.

Statutes and regulations

What are the main laws and regulations governing business combinations and acquisitions of publicly listed companies?

Business combinations and acquisitions of publicly listed companies are heavily regulated. The main laws include:

- the Russian Civil Code;
- Federal Law No. 208-FZ on Joint Stock Companies (the Stock Companies Law);
- Federal Law No. 39-FZ on the Securities Market (the Securities Market Law);
- Federal Law No. 160-FZ on Foreign Investments in the Russian Federation (the Foreign Investment Law);
- Federal Law No. 135-FZ on Protection of Competition (the Competition Law); and

- Federal Law No. 57-FZ on Foreign Investments in Business Entities of Strategic Importance for National Defence and State Security (the Foreign Strategic Investments Law).

The laws are supplemented with regulations of the governmental authorities. The Central Bank of the Russian Federation (the Central Bank) acts as the regulator of the financial and securities market. The Federal Antimonopoly Service (FAS) acts as the regulator overseeing economic concentration.

Industry-specific laws and regulations must also be taken into account.

Cross-border transactions

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

Cross-border transactions are structured generally in the same manner as domestic deals and are subject to similar considerations.

In cross-border transactions, parties often choose foreign law as the governing law of the transaction documents. The 2013–2015 reform of the Russian Civil Code made Russian contract law more flexible and introduced concepts similar to representations and indemnities. Still, the choice of English law is very common. It is also common that the key transaction documents are governed by English law, while the supporting documents (eg, documents required to effect the share transfer) are governed by Russian law.

Another issue relevant to a cross-border transaction relates to the Russian laws on arbitration. As part of its 2015–2017 reforms, the government limited the ability of parties to agree on the arbitration forum for the settlement of corporate disputes (which are broadly understood as disputes related to governance or shareholding in a Russian company). For instance, ad hoc arbitral tribunals cannot consider corporate disputes, only permanent institutions accredited by the Russian government may do so, and for a large scope of corporate matters the seat of arbitration must be in Russia. Also, some corporate disputes are non-arbitrable and must be litigated in Russian courts, for example in relation to ‘strategic companies’ (with some minor exceptions).

In cross-border transactions, parties should also pay heed to transaction completion mechanics. For example, it may be prudent to discuss the payment and share transfer mechanics with the parties’ banks and custodians in advance to ensure transfers are not blocked or delayed.

Sector-specific rules

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

Acquisition of companies conducting strategic activities and certain other companies might require a governmental approval.

An acquisition of above 1 per cent and up to 10 per cent in a credit institution requires post-transactional notification of the Central Bank, and direct acquisition of above 10, 25, 50, 75 per cent shares or an acquisition of indirect control over 10 per cent shares in a credit institution requires a prior consent by the Central Bank.

A prior consent by the Central Bank is required for any alienation to foreign investors of shares in an insurance organisation. This requirement applies both to the transactions with secondary shares and to subscriptions by foreign investors.

The Russian law on mass media prohibits any direct ownership in a Russian mass media company by foreign investors,

and indirectly foreign investors may own or control not more than 20 per cent; neither may they exercise any other means of control over a mass media company. By foreign investors the law means any foreign states, international organisations, foreign persons, Russian entities with foreign investment, Russian citizens holding citizenship of any other country, and stateless persons. Any transaction in violation of the relevant restrictions is void. Under Federal Law No. 149-FZ on Information, Information Technologies and Protection of Information, acquisition of certain internet-related businesses might require government approval. Currently, affected businesses include audiovisual services (eg, online cinemas).

Foreign investments are also restricted for companies engaged in diamonds mining, aviation and certain other industries.

Transaction agreements

Are transaction agreements typically concluded when publicly listed companies are acquired? What law typically governs the agreements?

It is common to conclude transaction documents when shares in a public company are acquired. Transaction documents depend on the type of a transaction.

In a private acquisition of shares, the parties enter into a sale and purchase agreement (SPA).

In an acquisition of shares from the target through subscription, the key documents are the formal decision on the share issuance and a securities prospectus (for public offers), both in statutory form, as approved by the target's board or the shareholders. These documents specify among other things the terms and procedures for entering into the SPA between the target and investors. They may envisage that the purchase of shares may be completed without entering into a separate SPA or may envisage execution of multiple documents (eg, a series of bids, a preliminary contract and an SPA).

In an acquisition through a tender offer, the offeror prepares the offer in statutory form. The offer acceptance by a shareholder means the conclusion of the transaction on the terms of the offer. The offer must be supported by an irrevocable bank guarantee as a security for the offeror's payment obligations arising out of the offer acceptance.

In a corporate reorganisation, the participating entities enter into a merger or accession agreement as approved by their shareholders.

All statutory form documents must be governed by Russian law. Private acquisition agreements, such as SPAs, may be governed by Russian law. Further, Russian rules on conflicts of law allow the use of foreign law as the governing law if the 'foreign element' exists (eg, if at least one of the parties is a foreign person). Accordingly, in private transactions with foreign investors, it is still very common to subject transaction documents to foreign law (most often, English; but we also see the use of laws of other jurisdictions that adopted English law principles but are considered more neutral to Russia in the current geopolitical environment, eg, Singapore or Hong Kong).

FILINGS AND DISCLOSURE

Filings and fees

Which government or stock exchange filings are necessary in connection with a business combination or acquisition of a public company? Are there stamp taxes or other government fees in connection with completing these transactions?

Prior approval from the Federal Antimonopoly Service (FAS) is required if the transaction involves:

- acquisition of voting shares in excess of 25, 50, or 75 per cent of the total number of voting shares of a stock company;
- acquisition of rights to determine the business of a Russian company (eg, through an indirect acquisition); or
- acquisition of fixed assets and intangible assets of a Russian company if the book value of the assets is above 20 per cent of the total book value of the Russian company's fixed assets and intangible assets.

The following must also apply in each case:

- (1) the combined book value of the worldwide assets of the buyer's corporate group and the target's corporate group as of the most recent reporting date exceeds 7 billion roubles; or (2) the combined worldwide revenues from the sale of goods and services of the buyer's corporate group and the target corporate group for the last calendar year exceeds 10 billion roubles (test 1); and
- the book value of the assets of the Russian target and its group exceeds 400 million roubles (test 2).

A corporate reorganisation may also require approval by the FAS if it meets similar monetary thresholds. Different monetary thresholds apply if a transaction involves financial institutions.

Any tender offer must be submitted for review to the Central Bank, which has the authority to suspend the offer in case it is not compliant with the applicable requirements.

Business combinations involving share conversion or share issuance require filing with the Central Bank. If applicable, a resulting change in the surviving company's share capital needs to be reflected in its charter and filed with the Russian companies' register. In certain cases, issuance of shares may also require registration of a prospectus by the target.

Further, depending upon the target's industry, certain other governmental filings might be required.

In Russia, no stamp duty applies to transfer of shares. Certain fees may be payable to registrars and custodians in connection with their processing of share transfers.

Information to be disclosed

What information needs to be made public in a business combination or an acquisition of a public company? Does this depend on what type of structure is used?

The Stock Companies Law and the Securities Market Law require certain information in relation to a business combination or an acquisition of a public company to be made public. Disclosure requirements are further detailed in the Central Bank's regulations.

Applicable laws and regulations may require public disclosures to be made by the target, parties to a business combination or by a regulatory authority.

The scope of disclosure depends on the form of a business combination. Private deals generally require less disclosure than public deals. In particular, the purchase price and specific terms of acquisition in a private deal would normally remain confidential.

Disclosures by the target

Generally, the disclosure requirements are rather extensive. A public company is required to disclose any information

that may materially affect the price of the securities, including, for example:

- information on a person who obtains or ceases to have control over the public company. Generally, for these purposes, a person has control if it directly or indirectly, independently or jointly with others (eg, on the basis of a shareholders' agreement) exercises more than 50 per cent of votes in the general shareholders' meeting, or has the right to appoint the chief executive officer or above 50 per cent members of a collegial managing body of a stock company;
- direct or indirect acquisition or disposal of by a person of voting rights in the company, each time when such person's voting rights exceed or fall below 5, 10, 20, 25, 30, 50, 75 or 95 per cent;
- a shareholders' agreement being entered into in respect of the target and voting arrangements thereunder;
- receipt of a tender offer; and
- recommendations of the board of directors concerning a tender offer.

A public company must also disclose its reorganisation and issuance of securities.

A public company must make public disclosures timely within statutory deadlines, through an information agency accredited with the Central Bank.

In addition, certain public companies must also notify the Russian central securities depository (the National Settlement Depository (NSD)), of the tender offers as part of their obligation to report any corporate actions that may affect the shareholders' rights. NSD puts details of these tender offers on its website.

Disclosures made by the parties

Parties to a private deal would normally have disclosure obligations towards the target, and, in some cases, towards the Central Bank. Such disclosure obligations generally correspond to or are generally similar to the target's disclosure obligations described above.

Disclosure requirements applicable to an offeror in a tender offer for listed shares are stricter. In addition to disclosure obligations towards the target and the Central Bank, the offeror must publicly disclose: the fact of submission of a tender offer to the Central Bank; and the contents of the tender offer, including the purchase price.

Other disclosures

The Competition Law requires the FAS to publish on its website the information on the submission of an application for a merger control clearance and the FAS' decision on such application, subject to certain exceptions.

Certain information relevant to a business combination (eg, reorganisation) is also notifiable to the 'register of actions of legal significance' and becomes publicly available at www.fedresurs.ru , pursuant to Federal Law No. 129-FZ on State Registration of Legal Entities and Individual Entrepreneurs.

Disclosure of substantial shareholdings

What are the disclosure requirements for owners of large shareholdings in a public company? Are the requirements affected if the company is a party to a business combination?

Generally, a public company is required to disclose substantial shareholders – holders of 5 per cent and more of voting shares, as well as any persons controlling these holders. A public company must also maintain and disclose the list of its affiliated persons and any changes in the list. Affiliated persons include, among others, holders of more than 20 per

cent of voting shares.

DIRECTORS' AND SHAREHOLDERS' DUTIES AND RIGHTS

Duties of directors and controlling shareholders

What duties do the directors or managers of a publicly traded company owe to the company's shareholders, creditors and other stakeholders in connection with a business combination or sale? Do controlling shareholders have similar duties?

Generally, the company's directors and officers have a duty to act reasonably in the interests of the company and in good faith. Similar obligations are imposed on any controlling person (ie, a person who has an ability to direct the company's activities or give instructions to the executives and the members of the management board).

In tender offers, the role of the board of directors is limited. Within 15 days of the receipt of a tender offer by the target, the board must assess the tender offer from the standpoints of its pricing and potential change of the share price as a result of the acceptance of the offer, as well as the offeror's plans in relation to the target and its employees, and make recommendations to the shareholders.

A business combination by way of a corporate reorganisation invokes statutory creditor protection, so that any creditor may claim acceleration of outstanding liability or termination of contract.

Approval and appraisal rights

What approval rights do shareholders have over business combinations or sales of a public company? Do shareholders have appraisal or similar rights in these transactions?

A sale of shares in a public company by its shareholder does not require the approval of the other shareholders.

However, shareholders have approval rights if the public company enters into a 'major transaction' as defined in the Stock Companies Law, which may be the case in a business combination.

Shareholders' approval is also required for a reorganisation and in general for the issuance of shares.

Shareholders who voted against or abstained from voting on a reorganisation or a 'major transaction' have the right to demand the buy-out of their shares at a fair market value.

In a public offer, shareholders do not have approval or appraisal rights other than in the case of a squeeze-out, where the shareholders who disagree with the squeeze-out purchase price have the right to bring an action for damages caused by improper determination of the price.

If shares of a public stock company are not listed, or listed for less than six months, the purchase price for the shares in a mandatory tender offer and during a minority shareholders buy-out cannot be less than the market value per share determined by an independent appraiser.

COMPLETING THE TRANSACTION

Hostile transactions

What are the special considerations for unsolicited transactions for public companies?

There is no concept of a hostile transaction under Russian takeover rules. An unsolicited takeover of a public company is generally possible through a successful tender offer or a series of tender offers. However, it is not widely used due to

the specifics of the market and cost considerations. In Russia, most public companies usually have a majority or a key shareholder, and the volume of free float is limited. Accordingly, most tender offers are made by the existing shareholders of the public companies who wish to increase their shareholding rather than by an independent offeror.

The role of the board of directors in a tender offer process is limited. There are no regulations expressly addressing any defence measures by the board.

Break-up fees – frustration of additional bidders

Which types of break-up and reverse break-up fees are allowed? What are the limitations on a public company's ability to protect deals from third-party bidders?

Neither break-up fee arrangements nor reverse break-up fee arrangements with a public company are common or regulated under Russian law. Break-up fees and exclusivity arrangements are, however, quite common in private acquisitions.

In addition to contractual protections that may be employed, Russian law provides for out-of-contract liability for negotiating in bad faith. The breaching party must reimburse the non-breaching party the costs incurred in connection with the negotiations and with the loss of an opportunity to enter into a contract with another person.

Contractual limitation of liability for negotiating in bad faith is null and void.

Government influence

Other than through relevant competition regulations, or in specific industries in which business combinations or acquisitions are regulated, may government agencies influence or restrict the completion of such transactions, including for reasons of national security?

In Russia, the state is actively influencing the M&A field, especially in the case of foreign investments.

Merger transactions involving a non-Russian acquirer and affecting 'strategic entities' require separate clearance under the Foreign Strategic Investments Law. Generally, a strategic entity is an entity that is engaged in a strategic activity listed in the Foreign Strategic Investments Law (including nuclear energy and waste, intelligence technologies, arms manufacturing, aviation and aerospace, telecommunications, natural monopolies) or in mineral resources exploration and production on a 'strategic' field.

Prior approval must be sought if a non-Russian investor acquires directly or indirectly (1) more than 50 per cent of the voting shares or other means of control over a strategic entity, (2) 25 per cent or more of its fixed assets or (3) 25 per cent or more of the voting shares of an entity engaged in mineral resources exploration and production on a strategic field. Certain post-transaction notification requirements also apply.

For foreign states, foreign state-controlled entities, international organisations or foreign investors that do not disclose to the Federal Antimonopoly Service (FAS) their controlling persons, beneficial owners and beneficiaries, the thresholds are lower: (1) 25 per cent for the acquisition of voting shares of a strategic entity; and (2) 5 per cent if a strategic entity is engaged in mineral resources exploration and production. Such foreign investors are generally prohibited from acquiring control over strategic entities.

Additional clearance requirements apply under the Foreign Investments Law if a foreign state, an international organisation or an entity under the control of either seeks to acquire more than 25 per cent of the voting rights or rights to block the decisions of managing bodies, with respect to any Russian business entity (even if the entity is not considered strategic).

Further, under article 6 of the Foreign Investments Law, the Chairman (the Prime Minister ex officio) of the Government Commission for Control of Foreign Investments (the Government Commission) may require prior clearance under the Foreign Strategic Investments Law for any transaction conducted by a foreign investor and affecting any Russian business entity. As a matter of practice, transactions affecting entities of strategic importance for the Russian economy or defence but not qualifying as strategic entities under the Foreign Strategic Investments Law may fall under this review process but there is no clear guidance.

Transactions that require prior approval under the Foreign Strategic Investments Law or the Foreign Investments Law must be cleared by the Government Commission. The foreign investor must apply for an approval through the FAS. In practice. The statutory review term is three months, which can be extended for additional three months. A transaction implemented in violation of this clearance requirement is deemed null and void.

Historically, many public companies in Russia have been state-owned, and following privatisation, in most cases, the state directly or indirectly continues to hold shares. Special protections may be available to the state in some of the companies known as a golden share. The special rights attaching to a golden share must be specified in the charter of the target and include veto rights in relation to certain corporate decisions and actions.

Conditional offers

What conditions to a tender offer, exchange offer, merger, plan or scheme of arrangement or other form of business combination are allowed? In a cash transaction, may the financing be conditional? Can the commencement of a tender offer or exchange offer for a public company be subject to conditions?

Any tender offer is subject to its prior clearance with the Central Bank.

No type of a tender offer may be conditional upon obtaining of financing by the offeror. On the contrary, except for a squeeze-out demand, any tender offer must be backed up by an irrevocable bank guarantee.

A squeeze-out is conditional upon (1) the upfront payment of the purchase price to the minority shareholders, and (2) depositing by an offeror of the cash amount with a Russian notary public at the location of the target public company that equals the purchase price for the shares held by persons whose bank details are unknown.

Any tender offer must be unconditional, except for a voluntary tender offer that, in all other respects, can be conditional. For example, a voluntary tender offer may be conditional upon the acquisition by the offeror of a certain number of securities through the offer.

The offeror must ensure the receipt of the applicable regulatory approvals in advance, including a prior antitrust clearance, if needed. However, there may be a limitation under the Foreign Strategic Investments Law on the maximum number of shares that a non-Russian offeror may purchase.

Financing

If a buyer needs to obtain financing for a transaction involving a public company, how is this dealt with in the transaction documents? What are the typical obligations of the seller to assist in the buyer's financing?

Cash consideration does not need to be guaranteed in a private transaction involving securities of a public company. However, the seller would often want to include certain contractual protections in the transaction documents securing the purchaser's payment obligations.

This becomes of particular concern for the seller when the buyer uses a special purpose vehicle or has insufficient funds to pay the purchase price. Such concern would normally be addressed in the transaction documents through a guarantee given by the parent company or its beneficial owner. Payment obligations may also be secured by a pledge of assets, but this is uncommon in share deals, unless there is a deferred payment for the shares. Sometimes parties agree on a cash deposit payable by the buyer to the seller at signing, which is set off against the purchase price at closing or serves as 'break-up fee' if the deal does not happen for certain reasons.

Tender offers must be backed up by an irrevocable bank guarantee. Details of the bank guarantee must be included in the tender offer and disclosed publicly.

There are no statutory obligations imposed on the seller to assist in the buyer's financing. Further, sellers would normally resist having the receipt of a financing by the buyer as a condition to closing.

Minority squeeze-out

May minority stockholders of a public company be squeezed out? If so, what steps must be taken and what is the time frame for the process?

The Stock Companies Law allows an offeror whose shareholding, together with its affiliate, exceeded 95 per cent in a public company to squeeze out the minority shareholders, but only if the offeror purchased at least 10 per cent shares via a tender offer.

The offeror can make a squeeze-out demand within six months after expiration of the tender offer period. The squeeze-out demand is served on the shareholders through the public company. The process is heavily regulated and takes up to three months.

The Stock Companies Law also requires a shareholder holding more than 95 per cent as the result of a tender offer to buy out the shares from the minority shareholders at their demand. The shareholder must notify the minority shareholders of their right to demand the buyout of their shares within 35 days of the 95 per cent threshold being achieved. The minority shareholders will have six months from the date of the notification to sell their shares.

If the offeror fails to make the buyout notification, the minority shareholders would still have the right to demand the buyout of their shares within one year from the date they learned of their right to sell the shares, but not earlier than the expiration of the 35-day period for the offeror to make the buyout notification.

The squeeze-out and the buyout may be for cash consideration only. The Stock Companies Law contains strict rules for determining the minimum share purchase price.

Shareholders who exercise their right to sell their shares in the buyout must transfer the shares free and clear of any encumbrances.

Encumbrances (other than arrest) over the shares that are transferred to the offeror in the course of a squeeze-out are automatically released at the moment of their transfer. Arrested shares cannot be transferred to the offeror until the arrest is released.

Waiting or notification periods

Other than as set forth in the competition laws, what are the relevant waiting or notification periods for completing business combinations or acquisitions involving public companies?

Apart from anti-monopoly filing waiting period, completion of a transaction may be delayed by the need to obtain other industry specific governmental approvals.

In a tender offer procedure, the Central Bank has 15 days to review the documents submitted by offeror intending to launch a tender offer. The Central Bank has the authority to suspend the offer in case it is not compliant with the applicable requirements, in which case the offeror must rectify the deficiencies and resubmit the offer. If the Central Bank does not notify the offeror of any deficiencies within such period, the offeror may proceed with the offer.

The period of the offer acceptance by the existing shareholders should be no less than 70 days and no more than 90 days in a voluntary tender offer, and no less than 70 days and no more than 80 days in a mandatory tender offer. All notices of the offer acceptance are deemed to be received on the last day of the offer acceptance period. A shareholder may withdraw its notice of acceptance at any time before the offer acceptance period expires.

Within 30 days after the acceptance period expires, the offeror must submit a report on the results of the tender offer to the target and the Central Bank. Such report, together with the documents confirming payment of the offer share price to the selling shareholders, serves as the basis for the recording of the share transfers.

If a business combination is effected by way of a corporate reorganisation, a number of statutory waiting periods apply, including notice periods for calling shareholders' meeting, notification of creditors and waiting periods in connection with the state registration of a share issuance (or conversion) and the report confirming the results of the same.

As corporate reorganisation ends in termination of at least one of the participating companies, authorities often initiate financial audit with respect to tax and other statutory payments. The tax audit may be quite lengthy, and in most cases its duration is difficult to predict.

Further waiting periods may apply in connection with the exercise of pre-emptive rights:

- while no statutory pre-emptive rights apply to private acquisitions of shares, these may be established by the applicable shareholders' agreement; and
- statutory pre-emptive rights are triggered in case of a closed subscription to shares, so that the shareholders who voted against or did not participate in the voting on the closed subscription may exercise their pre-emptive rights pro rata to their existing stake of the same type of shares. In such case, the period for exercising the pre-emptive right should be no less than 45 days.

OTHER CONSIDERATIONS

Tax issues

What are the basic tax issues involved in business combinations or acquisitions involving public companies?

The income derived from the sale of shares is subject to corporate profit tax payable by corporate sellers. Individual sellers are subject to personal income tax.

The corporate profit tax rate is 20 per cent and applies to Russian legal entities and non-Russian legal entities with a 'permanent presence' in Russia (eg, a branch in Russia will be deemed a permanent presence).

The income tax rate for individuals is set at 13 per cent.

Corporate and individual sellers may be exempt from the tax on the sale shares if as at the date of the disposal the sale shares were held by them for more than five years.

Share deals are exempted from the VAT, unless real property located in Russia constitutes more than 50 per cent of the assets of the target, in which case the VAT will apply both to direct and indirect acquisitions of such target.

From 1 January 2019, the VAT rate is set at 20 per cent and generally applies to the sale of assets. Asset deals are also subject to corporate profit tax and income tax, subject to certain exemptions.

Labour and employee benefits

What is the basic regulatory framework governing labour and employee benefits in a business combination or acquisition involving a public company?

Generally, under the Russian Labour Code, the rights of the employees do not depend on the type of the company for which they work and employee benefits generally are not affected by the acquisition or business combination transactions.

There is no change-of-control employment protection in Russia, as the transactions are not deemed to affect the employees unless there is a change in the employing entity. Employers generally have limited grounds for termination of employees. Multiple redundancy is associated with a lot of formalities, such as compliance with notice periods and severance payments.

Where a transaction involves reorganisation or privatisation, the new employer entity is entitled to terminate employment relations with the chief executive officer, his or her deputies and the chief accountant of the company being reorganised or privatised.

Restructuring, bankruptcy or receivership

What are the special considerations for business combinations or acquisitions involving a target company that is in bankruptcy or receivership or engaged in a similar restructuring?

Acquisition of shares in a public company that is subject to insolvency or similar proceeding is not prohibited under Russian law, albeit introduces certain additional matters for consideration.

Rights of shareholders of such company are substantially limited. For instance, if a public company is in the supervision procedure (first and compulsory stage of insolvency), any transaction aimed at acquisition or alienation of the company's assets, the book value of which exceeds 5 per cent of the book value of all its assets, must be approved by a court-appointed insolvency manager.

During the external management and the liquidation stages, the powers of the company's management terminate and all transactions on behalf of the company can only be entered into by a court-appointed insolvency manager. All transactions aimed at acquisition or alienation of the company's assets, the book value of which exceeds 10 per cent of the book value of all its assets, must be approved by the creditors' meeting or creditors' committee. Rights of shareholders are limited to approving such key transactions as voluntary arrangements between the company and its creditors. In the course of insolvency proceedings, payment of dividends is prohibited.

Shareholders have the last priority in the ranking of creditors.

Anti-corruption and sanctions

What are the anti-corruption, anti-bribery and economic sanctions considerations in connection with business combinations with, or acquisitions of, a public company?

Anti-corruption and anti-bribery

There is a broad legislative framework covering anti-corruption and anti-bribery issues. Russia is a party to numerous international conventions, including the United Nations Convention Against Corruption. The key local law is Federal Law No. 273-FZ on Counteraction of Corruption (the Anti-Corruption Law).

The key features of the Russian anti-corruption and anti-bribery local legislation are as follows:

- no de minimis for a bribe;
- anything of value may be a bribe;
- the liability is imposed both for giving bribes and taking bribes;
- legal entities are subject to administrative liability; and
- criminal liability applies to individuals only, both company's employees and individuals acting in the interest of a company may be held liable.

Under the Anti-Corruption Law, all organisations are required to develop and adopt measures aimed at counteracting corruption. These measures may include:

- formation of special anti-corruption departments and appointment of compliance officers;
- cooperation with law enforcement agencies;
- adoption of corporate ethics code and anti-corruption policies and procedures; and
- prevention of maintaining unofficial books and records (double-accounting) or using false documentation.

Risk-based compliance due diligence might be prudent.

Another important law is Federal Law No. 115-FZ on Countering Legalisation (Laundering) of Proceeds of Crime and Financing of Terrorism (the AML Law). Under the AML Law, a legal entity must obtain and keep, or must take certain measures to obtain, and update at least once a year, information about its beneficial owners (individuals who ultimately directly or indirectly own more than 25 per cent interest in, or have an ability to control the activity of, the legal entity), subject to certain exceptions. The legal entity must provide information on its beneficial owners, or on the measures it took to obtain this information, to the Russian tax authorities or the Russian anti-money laundering authority upon request.

Sanctions

Over the past few years, trade sanctions imposed against Russia and certain Russian persons by the United States, the European Union and other jurisdictions have significantly affected the Russian M&A market. As the sanctions, inter alia, prohibit dealings with the restricted persons and securities issued by the restricted persons, investors should be careful in considering the proposed transaction structures. It would be prudent not to enter into any negotiations before completing sanctions due diligence in respect of all parties involved.

UPDATE AND TRENDS

Key developments

What are the current trends in public mergers and acquisitions in your jurisdiction? What can we expect in the near future? Are there current proposals to change the regulatory or statutory framework governing M&A or the financial sector in a way that could affect business combinations with, or acquisitions of, a public company?

Russia has continued its efforts to improve its securities regulation. Effective from 1 January 2020, significant amendments to the Securities Market Law came into force. The amendments abolish classification of issuable securities into certificated and uncertificated, namely all issuable securities are uncertificated and share certificates no

longer exist. Other amendments aim to change and simplify issuance and registration of securities; for example, an option to register an issue of securities, in certain cases, through a registrar, a stock exchange or the central securities depository; fewer formalities in a consolidation or split of securities; and new time frames for the approval of securities issue documents and registration of share issuances by the Central Bank.

Russia has also amended its corporate laws to address the challenges brought on by the covid-19 pandemic. These amendments including the following:

- Domestic public companies are allowed to buy back their shares from the market using a simplified buy-back procedure if the company's average share price drops by 20 per cent or more in 2020.
- Securities issuers were granted extensions of deadlines for disclosing financial reporting in 2020.
- Along with certain other 'antivirus' supportive measures, a temporary freeze on the initiation of bankruptcy proceedings was introduced for the following entities: (1) companies whose business is specified in the list of industries most affected by the consequences of the pandemic; (2) companies included in the lists of companies systemically important for the national economy; and (3) enterprises deemed strategic for certain purposes. Certain restrictions apply to these companies, including restrictions on distribution of dividends. Companies may generally overcome the restrictions by waiving the moratorium.
- Certain types of corporate actions can be exercised remotely in 2020; for example, any type of a shareholders' meeting can be held by absentee vote. Development of remote procedures for corporate actions is a growing trend in general.

There is also a trend on strengthening state control over foreign investments in strategic enterprises. A draft law was introduced in April 2020 to include shares of strategic enterprises held by foreign investors in pledge or trust for the purposes of the thresholds triggering a prior approval under Foreign Strategic Investments Law. Previously, these shares were not counted if a foreign investor transferred its voting rights vested in shares to a third party – for example, a Russian bank or a trustee.

The government adopted a number of decrees in 2018 concerning persons or companies sanctioned by foreign states (sanctioned persons, sanctioned companies). For example, a sanctioned company may:

- choose not to disclose its financials and audit results, information on encumbrances of company's movable assets, independent guarantees and other matters or information on the pledgee of its real estate if the disclosure may result in sanctions against the pledgee; and
- limit the disclosure of, or not disclose, a related-party transaction that is connected with the state defence order or other military purpose or with a sanctioned person.

Further, in 2019 the government adopted a decree allowing certain issuers, including sanctioned companies, certain credit organisations and issuers engaged in transactions under the state defence order, not to disclose certain corporate information on, among others, persons that are members of management or supervisory bodies of the issuer, the issuer's affiliates, and shareholders and other controlling person of the issuers.

LAW STATED DATE

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Give the date on which the above content is accurate.

12 May 2020.