# Public M&A

*Contributing editor*
**Alan M Klein**

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# Public M&A 2018

*Contributing editor*

**Alan M Klein**

**Simpson Thacher & Bartlett LLP**

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# Preface

## Public M&A 2018

First edition

**Getting the Deal Through** is delighted to publish the first edition of *Public M&A,* which is available in print, as an e-book and online at www.gettingthedealthrough.com.

**Getting the Deal Through** provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured.

**Getting the Deal Through** titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.gettingthedealthrough.com.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

**Getting the Deal Through** gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Alan M Klein of Simpson Thacher & Bartlett LLP, for his assistance in devising and editing this volume.

London
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# Russia

**Vasilisa Strizh, Dina Kzylkhodjaeva, Philip Korotin, Valentina Semenikhina, Alexey Chertov and Dmitry Dmitriev**

**Morgan, Lewis & Bockius LLP**

### 1 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 (ie, 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.

### 2 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' (Stock Companies Law);
- Federal Law No. 39-FZ 'On the Securities Market' (Securities Market Law);
- Federal Law No. 160-FZ 'On Foreign Investments in the Russian Federation' (Foreign Investment Law);
- Federal Law No. 135-FZ 'On Protection of Competition' (Competition Law); and
- Federal Law No. 57-FZ 'On Foreign Investments in Business Entities of Strategic Importance for National Defence and State Security' (Foreign Strategic Investments Law).

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

Industry-specific laws and regulations must also be taken into account, as described in question 17.

### 3 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 document is the formal decision on the share issuance, as approved by the target's board or the shareholders. Such decision specifies the terms and procedures for entering into the SPA between the target and investors. The decision may envisage that the purchase of shares may be completed without formalising an agreement in writing or, alternatively, envisage execution of multiple documents (for example, a series of bids, a preliminary contract and an SPA).

In an acquisition by way of 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.

Acquisition documents are usually governed by Russian law. However, Russian rules on conflicts of law allow the use of foreign law as the governing law 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 (usually, English).

### 4 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?**

A prior approval by the 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; or



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- acquisition of rights to determine the business of a Russian company (eg through an indirect acquisition);

provided that in each case (i) the combined book value of the worldwide assets of the buyer's corporate group and the target's corporate group exceeds 7 billion roubles, or (ii) 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 and the book value of the assets of the Russian target and its group exceeds 400 million roubles.

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. The Central Bank 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.

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.

## 5 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 tender offers. 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 such public company.
  Note: 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.

Certain information relevant to a business combination (for example, 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'.

## 6 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 such holders. A public company must also maintain and disclose the list of its affiliated persons and any changes in such list. Affiliated persons include, among others, holders of more than 20 per cent of voting shares.

## 7 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 from 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 such 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.

## 8 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 buyout of their shares at a fair market value.



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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.

### 9 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 as described in question 7. There are no regulations expressly addressing any defence measures by the board.

### 10 Break-up fees – frustration of additional bidders

**Which types of break-up and reverse break-up fees are allowed? What are the limitations on a 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.

### 11 Government influence

**Other than through relevant competition (antitrust) 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 case of foreign investments.

Under the Foreign Strategic Investment Law, a special Governmental Commission considers transactions involving foreign investment into companies of 'strategic significance for assurance of the country's defence and national security'. The Foreign Strategic Investment Law has been amended over the past years to gradually expand the list of industries and transactions covered. To-date, the list of strategic activities comprises 46 items and includes nuclear energy and waste, intelligence technologies, arms manufacturing, aviation and aerospace, telecommunications, natural monopolies, subsoil development, etc.

Among others, the following transactions by foreign investors require prior approval by the Governmental Commission:

- acquisition of over 50 per cent of shares in a strategic company; and
- acquisition of 25 per cent or more of shares in a company engaged in development of mineral resources on a subsoil field that is considered strategic in accordance with the Foreign Strategic Investment Law.

For foreign states, foreign state-controlled entities or international organisations the relevant thresholds are lower, 25 per cent and 5 per cent respectively.

The foreign investor has to apply for an approval through the FAS, which undertakes an initial review of the application materials. In practice, consideration of an application takes about six months or longer.

Further, under the Foreign Investment Law, an acquisition by a foreign state or a state-controlled entity of any blocking rights or an interest above 25 per cent in any Russian company (even if such company is not considered strategic) is also subject to state control. In practice, it means that an investor must make a full application in accordance with the Foreign Strategic Investment Law, and the FAS will consider whether the proposed investment relates to any strategic activity. If not, within 14 days from the filing, the investor will be issued an official statement that no prior approval of the transaction by the Governmental Commission is required.

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. This has resulted in special protections available to the state as a shareholder 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, as well as anti-dilution protections.

### 12 Conditional offers

**What conditions to a tender offer, exchange offer, mergers, plans or schemes of arrangements 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, as discussed in question 16.

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

A squeeze-out is conditional upon (i) the upfront payment of the purchase price to the minority shareholders, and (ii) 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, save 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 such 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.

### 13 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.



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### 14 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 such 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. Such 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.

### 15 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 (see question 11, for example).

In cross-border transactions, parties often choose foreign law as the governing law of the transaction documents. The recent reform of the Russian Civil Code made the 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. In a recent reform, Russia has limited the room for the parties to agree on the arbitration forum for the settlement of corporate disputes. For instance, corporate disputes in relation to strategic companies are non-arbitrable, save for minor exceptions. Disputes related to title to shares, including disputes arising from SPAs, may be only arbitrated by an institution accredited by the Russian authorities.

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.

### 16 Waiting or notification periods

**Other than as set forth in the competition laws, what are the relevant waiting or notification periods for completing business combinations 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 as described in questions 11 and 17.

**Update and trends**

As a result of the recent reform of the Civil Code, the Russian contract law has become more flexible and business oriented. This has contributed to a wider use of the Russian law by the parties even in cross-border transactions. At the same time, the LCIA in London and ICC in Stockholm are no longer the most popular arbitration venues – arbitration in Singapore or Hong Kong has become a more frequent choice.

As in other countries, the latest legislative effort has been aimed at improving regulation of the digital markets and telecommunications. IT sector has been named the main focus of the proposed anti-monopoly reform ('5th anti-monopoly package').

Trade sanctions also remain an important factor for transactional activity in the Russian market.

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.

### 17 Sector-specific rules

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

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.

Since 2016, 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. By foreign investors the law means any foreign states, international



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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.

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

### 18 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 'permanent presence' in Russia (eg, having a branch in Russia will be deemed '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.

The VAT rate is set at 18 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.

### 19 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 CEO, his or her deputies and the chief accountant of the company being reorganised or privatised.

### 20 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 of 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 of 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.

It is noteworthy that shareholders have the last priority in the ranking of creditors.

### 21 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 the Federal Law No. 273-FZ 'On Counteraction of Corruption' (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.

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

- formation of special anti-corruption departments and appointment of compliance officers;
- cooperation with law enforcement agencies; and
- adoption of corporate ethics code.

Risk-based compliance due diligence might be prudent.

**Sanctions**

Over the past few years, trade sanctions imposed against Russia and certain Russian persons by the US, EU 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.



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