



Mergers & Acquisitions

in 44 jurisdictions worldwide

2005



Published by
GETTING THE DEAL THROUGH
in association with:

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1 Form

What form do business combinations take?

The three main business combination categories can be defined as:

- reorganisation;
- acquisition; and
- acquisition of decisive influence.

Reorganisation of companies

Merger

In accordance with Commercial Law, a merger of companies by way of reorganisation can be carried out as follows:

- By takeover, a procedure where one company transfers all its assets to another company
- By amalgamation, where two or more companies transfer all their assets to a newly established company

Dissolution

Commercial Law defines two forms of dissolution:

- Split dissolution, where the company transfers all its assets to two or more other companies
- Spin-off dissolution, where the company transfers part of its assets to one or more companies

Change of legal form

A company in one form is reorganised into one of another form.

Acquisitions

Acquisitions of shares can be either by private acquisition or public takeover.

Acquisition of decisive influence

Decisive influence is acquired either on the basis of the group of companies' agreement or on the basis of participation. In a group of companies' agreement, one company applies its management to another company or undertakes to transfer any portion of its profit to another company. Decisive influence, on the basis of participation, is acquired if the company holds majority voting rights in another company and if the company as a shareholder has the right to appoint or dismiss the greater part of the company's management. The decisive influence can be direct or indirect.

2 Statutes and regulations

What are the relevant regulations and statutes governing business combinations?

Business combinations in Latvia are primarily regulated by the following:

- Commercial Law
- Competition Law

- Group of Companies Law
 - Law on Financial Instruments Market
 - Law on Limited Liability Companies
 - Law on Joint Stock Companies
 - Law on Capital Shares and Companies of the State and Local Governments
 - Law on Foreign Investments in the Republic of Latvia
- Depending upon the specific situation, other Latvian regulatory enactments may be also applicable

3 Legal documentation

What type of contracts or other legal documentation are entered into by parties to a business combination?

The relevant documentation will differ, depending on the form of business combination. In the case of reorganisation, Commercial Law specifies what documents are to be prepared by the parties (internal decisions, minutes of shareholders meetings, auditor's opinions, etc), and also sets forth the procedure for reorganisation, in order that the interests of the shareholders and creditors of the companies are observed. The documents which are needed in the case of acquisitions depend on whether it is a private acquisition or a public takeover. In most private acquisitions a share purchase agreement is executed. In the case of public takeovers, the necessary documentation and procedure is determined by the Law on Financial Instruments Market.

4 Filings and fees

What governmental or stock exchange filings are required to be made in connection with a business combination? Are there stamp taxes or other governmental fees in connection with completing a business combination?

In practically all cases there is an obligation to inform the Commercial Register that, amongst other things, performs registrations of reorganisation, transfers of shares, group of companies' agreements and decisive influence. Depending on the type of business combination, the state registration fees at the Commercial Register may vary from LVL10 up to LVL250.

There is an obligation, in accordance with Competition Law, on parties that have decided to merge, as well as on a party that has acquired decisive influence prior to merger, to submit a notice to the Competition Council if one of the following conditions exists: (a) the combined turnover of the merger participants during the previous financial year was LVL25 million or more; and (b) at least one of the merger participants was in dominant position (market share at least 40 per cent) in the relevant market prior to the merger. If notice is not given, then, in accordance with the Competition Law, the merger is illegal.

The Latvian Central Depository registers publicly traded

shares. A person wishing to acquire ownership of the publicly traded shares of a company in an amount which ensures more than 10 per cent of all votes at the shareholders' meeting must inform the market organiser and the public traded company to that effect in advance.

5 Information to be disclosed

What information are public companies required to make available to the public in connection with a business combination?

All documents which are registered with the Commercial Register are publicly available. Furthermore, the Commercial Register must publish information in the official newspaper regarding changes in the composition of the company's shareholders, acquisition of decisive influence, reorganisation and other essential changes in the company. The companies themselves have an obligation to publish official information on commencement of reorganisation (merger, dissolution), in order to ensure that the interests of the company's creditors are observed.

With regard to the public offer of shares, prior to commencement of their public trading, the issuer must publish information in the official newspaper containing legal details of the issuer, information regarding the shares (type, category, number, nominal value, price, etc), and information regarding the place and time of distribution of the issue prospectus. All interested persons are entitled to familiarise themselves with the issue prospectus free of charge.

6 Disclosure requirements for shareholders

What are the disclosure requirements for large shareholders in a company? Are the requirements affected if the company is a party to a business combination?

In accordance with the Group of Companies Law, if the shareholding of a shareholder in the company surpasses 10, 25, 50, 75 or 90 per cent or falls below these percentage thresholds, the company must, within two weeks of receipt of the shareholder's notice, submit the notice for registration with the Commercial Register.

In the case of an acquisition of decisive influence, the shareholder has an obligation to give written notice to the company and to the Commercial Register regarding the acquisition, if, based on the agreement with other shareholders, the acquiring shareholder alone controls the majority of votes in the company. If the dependant company is a public joint stock company, then the dominant company (shareholder) has the obligation to inform the Commercial Register regarding the acquisition of decisive influence on the basis of participation and also regarding any termination of such influence.

7 Duties of directors and controlling shareholders

What duties do the directors and managers of a company owe to the company's shareholders in connection with a business combination?
Do controlling shareholders have similar duties?

In general, Latvian laws provide that the members of the board of directors and the supervisory board of the company must perform their duties with the due care of an honest and diligent owner. The members of the board of directors and the supervisory board are jointly liable for losses which they have caused to the company. In cases where the business combination is performed by way of reorganisation, the board of directors of the company to be acquired or dissolved has the obligation to inform the shareholders' meeting and the acquiring company regarding all material changes in the financial standing of the company to

be acquired or dissolved which have occurred before expiration of the term of authority of the board of directors or before the effective date of reorganisation.

If the shareholder (dominant company) has decisive influence on the company on the basis of participation, then this shareholder has the obligation to compensate losses incurred by the dependant company in cases where the dominant company has induced the dependant company to enter into any unfavourable transaction or to engage in any other unprofitable activity.

In other cases it is necessary to analyse each situation on an individual basis. To a great extent the law imposes the main burden of responsibility on the board of directors and the supervisory board, as these institutions carry out the day-to-day management of the company.

8 Approval and appraisal rights

What approval rights do shareholders have over business combinations?
Do shareholders have appraisal or similar rights in business combinations?

The reorganisation provisions of Commercial Law state that in case of merger, dissolution or reorganisation, the decision on commencement of the business combination is adopted by the shareholders meeting of each company. Until the time of the shareholders meeting all shareholders are entitled to familiarise themselves with the draft agreement, reorganisation prospectus, auditor's opinion and financial accounts of the company. The shareholders of the companies are entitled to request from the board of directors explanations on the draft agreement and prospectus, legal and economic effects of the business combination, as well as information regarding other companies which are involved in the business combination process. The shareholders of each company are also entitled to submit claims to court to declare the decision on reorganisation invalid if it is adopted in violation of law or the articles of association of the company.

9 Hostile transactions

What are the special considerations for unsolicited (hostile) transactions?

There is no distinction between friendly and hostile transactions in Latvia. However, in the case of reorganisation, when the company is merged, dissolved or reorganised, for example, a shareholder of the company that does not agree to the business combination has the right, within two months following the effective date of the business combination, to apply to the company with a request to redeem its shares for money.

The Group of Companies Law imposes an obligation on a shareholder who acquires more than 10 per cent of the company's shares to give written notice to the company regarding the total number of its shares and voting rights adherent to these shares. The shareholder is also obligated to inform the company regarding each further acquisition of shares which increases its shareholding in the company in successive increments of five per cent of the company's shares. If the shareholder acquires 90 per cent or more then the other shareholders have the right to request that the aforementioned shareholder redeem the shares held by the minority shareholders. The majority shareholder then has the obligation to make an offer to the minority shareholders regarding execution of share purchase agreement not later than one month following the date of receipt of such request. If the minority shareholder declines the offer of the majority shareholder, then the price for which the shares are to be redeemed is determined by court based on the claim submitted by the minority shareholder.

10 Break-up fees – frustration of additional bidders

Are break-up fees allowed? Are other types of mechanisms allowed to potentially frustrate additional bidders? Describe any 'financial assistance' restrictions and how they can affect business combinations.

There are no special provisions on the application of break-up fees. In order to apply any special provisions with respect to frustration of additional bidders, such provisions, for example, can be included in the combination agreement. The company can also include in its articles of association special provisions with respect to the manner of sale of shares. It is often provided that there are pre-emption rights in favour of the existing shareholders.

11 Governmental influence

Other than (i) through relevant competition (antitrust) regulations, or (ii) in specific industries in which business combinations are regulated, can governmental agencies influence or restrict the completion of business combinations?

Except for cases which follow from the antitrust regulations and supervision of special sectors, the state authorities cannot influence or prohibit business combinations which are carried out in accordance with law.

12 Conditions permitted

What conditions to a tender offer, exchange offer or other form of business combination are allowed? In a cash acquisition, can the financing be conditional?

The issuer of public traded shares may itself freely determine the terms and conditions of the issue of securities; however, prior to commencement of the public trading of shares, the issue prospectus must be registered with the Finance and Capital Market Commission. Under certain circumstances the Commission may refuse registration.

The holder of closed issue shares must first submit their shares to the board of directors of the company together with a notice on sale. If within a certain period of time the shares are not sold to the existing shareholders, then the shareholder may freely sell them at their own discretion.

The terms of the share offer of a limited liability company are mainly regulated by the articles of association of the company, which may provide for the right of a shareholder to freely dispose of shares or state that the sale or transfer of shares requires the consent of the meeting of shareholders.

13 Minority squeeze-out

Can minority stockholders be squeezed out? If so, what steps must be taken to do so and what is the timing of the process?

If the shareholder (dominant company) has acquired 90 per cent of shares or more, then in accordance with the Group of Companies Law, the shareholders' meeting of the company can adopt a decision on inclusion of the company into the dominant company. Inclusion is subject to mandatory audit by an independent auditor. Upon registration of inclusion with the Commercial Register, the shares which do not belong to the dominant company are transferred to the dominant company. In this event the rejected shareholder of the company is entitled to receive appropriate compensation for its lost shares.

However, the law also provides a protection mechanism for minority shareholders. If a company has directly or indirectly acquired 90 per cent or more of another company's shares, then each minority shareholder of the dependant company is entitled to require that the dominant company redeem the shares held by the minority shareholder.

14 Cross-border transactions

What additional legal and regulatory framework, if any, governs cross-border transactions?

In accordance with the Reorganisation Chapter of the Commercial Law, business combinations can be carried out among companies which are registered in Latvia.

The decisive influence provided for in the Group of Companies Law can be acquired either by a Latvian company or by companies which are situated outside Latvia.

In accordance with the Commercial Law, foreign companies may register their branches in Latvia.

15 Legal form

Can the legal form of the entity involved in a business combination have an impact on the manner in which it is structured? Do such factors have an impact on cross-border transactions involving entities organised in your jurisdiction?

Companies which are involved in the reorganisation (merger, dissolution) process can be of the same type or different types, unless the law states otherwise.

16 Waiting or notification periods

Other than competition laws, what are the relevant waiting or notification periods for completing business combinations? Are companies in specific industries subject to additional regulations and statutes?

Notification and waiting periods for the completion of business combinations (merger, dissolution, reorganisation) are specified in the registration procedure provided for in Commercial Law. If two or more companies are involved in the process they must prepare a draft agreement and submit notification to the Commercial Register on the commencement of the business combination, and request the appointment of an auditor for review of the draft agreement. Following the receipt of auditor's opinion and at least one month prior to the shareholders meeting of the company, the shareholders of the companies which are involved in the business combination process must be provided with the opportunity to review the draft agreement and financial documentation. The shareholders meeting approves the draft agreement and adopts a decision on the business combination. Within 15 days of the date of adoption of the decision, each company must inform its creditors and publish a notice of the decision in the official newspaper. Following publication, creditors are given the term for submission of their claims, which shall not be less than one month. All necessary documents for registration of the business combination may be submitted by each company no earlier than three months after the date of publication of the notice.

With regard to a business combination resulting from the public trading of shares, the terms stated by the Law on Financial Instruments Market must be complied with. The Finance and Capital Market Commission reviews the application and issues a prospectus of the company within 15 days and adopts a decision on registration of the issue prospectus. The issuer has to submit the application on inclusion of the financial instruments in the market to the market organiser within three months from the decision of the Commission. Within 10 days following the issuer's application, the market organiser adopts a decision on the inclusion of the financial instruments in the market. The issuer commences public trading of the shares only after they have been registered in the Central Depository of Latvia.

17 Tax issues

What are the basic tax issues involved in business combinations?

The following taxes are applicable during the business combination process:

- Corporate income tax
- Value added tax
- Real property tax
- Income tax of residents

The rates of these taxes are from 18 per cent up to 25 per cent, deducted from the taxable amount.

It is necessary to separately assess which taxes and rates are applicable according to the circumstances of each specific business combination.

18 Labour and employee benefits

What is the basic regulatory framework governing labour and employee benefits matters in a business combination?

Within the process of merger or dissolution of companies the employees of the merging company are automatically transferred to the receiving company. The merging company has the obligation to inform the receiving company regarding all rights and obligations with respect to the employees. The receiving company must continue to comply with the pre-existing collective employment agreement (if any) which is in effect at the time of the business combination until termination of this collective employment agreement or execution of another collective employment agreement. Within a period of one year following the completion of the business combination, the provisions of the collective employment agreement may not be amended to the detriment of the employees.

The transfer of the company itself cannot serve as the basis for the termination of employment contract. However, this provision does not limit the rights of the employer to give notice of termination of the employment contract, if the notice is related to the performance of economic, organisational, technological or similar arrangements in the company.

Both the merging company and the receiving company have the obligation to inform the representatives of their employees, or the employees directly, regarding the date or planned date of transfer of the company, the reasons for the transfer of the company, the legal, economic and social consequences of the transfer of the company and the arrangements which will be made with respect to the employees.

19 Restructuring, bankruptcy or receivership

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

If the company is insolvent then any decisions on settlement of the insolvency of the company are adopted by the meeting of the company's creditors. Only the creditors' meeting is entitled to adopt or reject the draft settlement agreement, recovery plan or decision on bankruptcy. 'Recovery' means legal arrangements which are aimed at returning the insolvent company to solvency. One of these arrangements could be a business combination; however, in this event, the recovery plan must be approved by the creditors' meeting, which in this case would evaluate whether the creditors' claims and other obligations of the insolvent company will be satisfied as a result of the proposed business combination. If an agreement is reached between the receiving company and the creditors of the insolvent company on settlement of debt liabilities, then the recovery plan will be approved and submitted to the Commercial Register for registration. The decision of the Commercial Register on registration of the recovery plan is submitted to court. If the debt liabilities of the insolvent company are settled, then the application concerning termination of insolvency may also be submitted to court.

The reorganisation provisions of the Commercial Law state that the receiving company is responsible for all the obligations of the merged or reorganised company. All companies which are involved in the dissolution of the company are jointly liable for the obligations of the dissolved company which have arisen prior to the business combination.

20 Current proposals for change

Are there current proposals to change the regulatory or statutory framework governing business combinations?

The amended Competition Law and the new Commercial Law have only recently entered into force; therefore no major changes or amendments are currently planned. Current practice under this new legislation is being monitored and different proposals are being developed in order to address some of the shortcomings of the Commercial Law that have been exposed during the early stages of its application.

There is also intensive work in progress to coordinate the existing business law with EU directives and regulations.

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