Chapter

Latvia

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1 Relevant Authorities and Legislation

1.1 What regulates M&A?

The public stock exchange market in Latvia is rather underdeveloped and a considerably small number of companies have decided to become publicly traded (currently around 40). Therefore, a major part of M&A transactions in Latvia take place as private acquisitions and public takeover transactions are almost non-existent (due to the comparably small public shareholders base of such publicly traded companies). Most public companies are the companies which were "forced" to become public by means of and through the privatisation procedure. Thus far public takeover mechanisms like voluntary share buy-out offer have been used by the market players primarily to increase their already existing shareholding and to decrease/eliminate the minority shareholders base.

Private acquisitions are primarily regulated by the Commercial Law (*Komerclikums*) and Group of Companies Law (*Koncernu likums*). The public takeover process is primarily regulated by the Financial Instruments Market Law (*Finanšu instrumentu tirgus likums*), Finance and Capital Market Commission Law (*Finansu un kapitala tirgus komisijas likums*) and the Commercial Law. Some aspects of the public takeover process are regulated by the regulations of the Riga Stock Exchange (*Rigas Fondu birza*) and the regulations of the Latvian Central Depository (*Centralais depozitarijs*).

1.2 Are there different rules for different types of public company?

No legal distinction has been drawn and there are no different rules applicable regardless of whether the company is/has been traded in Latvia or outside Latvia.

1.3 Are there special rules for foreign buyers?

There are no special rules or restrictions for foreign buyers.

1.4 Are there any special sector-related rules?

Different rules may apply depending on the business sector the company is engaged in. For example, financial market participants like credit institutions, insurance services providers, etc. will be subject to a specific regulatory framework under the Credit Institutions Law (*Kreditiestazu likums*), the Insurance Companies' and the Supervision Law (*Apdrosinasanas sabiedribu un to uzraudzibas likums*) setting forth special thresholds and criteria for the determination of significant participation (which triggers necessity to obtain approval from the Financial and Capital Market Commission ("FCMC")), and special qualifying criteria for the shareholders of such targets, etc.

1.5 What are the principal sources of liability?

The Financial Instruments Market Law prohibits insider dealing, as well as market manipulations (including distribution of false information misleading in relation to the target's price). In case of a breach, FCMC, *inter alia*, may, among other things, suspend trading with the target's shares; suspend the operations of financial instruments and market participation for up to 6 months; or impose a penalty of up to 10,000 lats. The person liable for insider dealing or market manipulations can also become subject to civil liability - the investors may claim compensation of damages in civil proceedings under the Financial Instruments Market Law and the Civil Law (*Civillikums*). In relation to consequences of failure to comply with the notification requirements or requirements to make a mandatory share buy-out offer see question 5.1 below.

2 Mechanics of Acquisition

2.1 What alternative means of acquisition are there?

In some cases a merger can be considered as an alternative to an acquisition. Thus far, however, there have been no cases of a merger where Latvian publicly traded companies have been involved. The merger procedure is more complex and subject to high thresholds of shareholders consent (at least a ¾ majority vote is required). Minority shareholders voting against the merger shall be entitled to claim buy-out of their shares (to be requested within 2 months after the date of merger).

2.2 What advisers do the parties need?

There are no established rules to follow. Normally, the bidder will act through its investment bankers/brokers. Depending on the scope of the transaction, external legal and financial advisers may be involved as well.

2.3 How long does it take?

The first stage is the preparation of the document package and application for approval of the voluntary buy-out offer with the FCMC. Formally, the FCMC has to provide its approval or rejection within 10 days after all the necessary documents are submitted by the potential offeror. In practice the timing may vary depending on a variety of factors (like scope of the planned takeover transaction, the target, identity of the potential offeror, etc.).

Within 5 business days after the receipt of FCMC approval the offeror has to publish the offer with the official gazette "Latvijas Vestnesis". The term of the offer can be determined between 30 and 70 days at the discretion of the offeror. The share purchase transactions must be closed within 5 days from the expiry of the offer term.

Important factors that may affect timing is clearance from the competition authorities (e.g., clearance from the Latvian Competition Council may take up to 4 months), as well as receipt of approvals from the other (sector specific) regulatory authorities, if any.

2.4 What are the main hurdles?

General approval by the FCMC and, where necessary, clearance by the competition authorities.

2.5 How much flexibility is there over deal terms and price?

The law or regulations do not set forth any requirements regarding the minimum or maximum offer price; therefore, it is fully at the discretion of the bidder. Please see the specific requirements in respect of a mandatory share buy-out offer described in question 5.1.

The principal requirements to be observed are as follows:

- the validity term of the offer may not be less than 30 days and may not exceed 70 days;
- the offeror must set forth either the maximum or minimum number of target shares subject to buy-out offer; and
- the minimum (qualifying) target of the voluntary share buy-out offer is to reach 10% participation share in the target.

Where the offeror sets forth the maximum number of target shares and the number of shares offered for sale is higher than the maximum, the offeror shall buy the shares in proportion from all persons whose shares are up for sale.

Where the offeror indicates the minimum number of target shares subject to a buy-out offer, it must be clarified whether the offer remains valid if the minimum threshold is not achieved. The offeror may refuse to purchase the shares offered for sale only in case it has clearly indicated that the buy-out offer becomes invalid if the minimum threshold is not reached.

2.6 What differences are there between offering cash and other consideration?

There are no major differences. If other financial instruments are offered as consideration, the prospectus should contain the description of such financial instruments (e.g., bonds) and the respective transfer/exchange procedures.

2.7 Do the same terms have to be offered to all shareholders?

The offeror has to offer equal terms for all target shareholders holding shares of the same category (i.e., terms can be different only in relation to different categories of shares).

2.8 Are there any limits on agreeing terms with employees?

There are no specific statutory employee consultation and approval requirements applicable in the context of public takeover transactions. The offeror, *inter alia*, is required to describe in the offer prospectus its plans in relation to the employment matters of the target company [i.e., whether or not it plans to reduce the staff, what (if any) will be the potential consequences of successful transaction on the employment issues in the target, etc.].

2.9 What documentation is needed?

The person intending to make a voluntary share buy-out offer has to apply to the FCMC submitting respective application accompanied by the following documents:

- offer prospectus;
- copy of the offeror's registration certificate (in case of legal entity - non-resident); and
- document(s) certifying sufficiency of funding for the offer (for example, commitment letter issued by a credit institution or insurance company certifying availability of funding necessary to comply with the offeror's commitments against the target's shareholders).

The primary document is the offer prospectus containing the terms and conditions of the offer (term, price, procedure for the acceptance of offer, applicable law, etc.).

2.10 Are there any special accounting procedures?

There are no particular financial disclosure and reporting procedures that should be complied with by the bidder to make a voluntary share buy-out offer.

2.11 What are the key costs?

Generally, the key costs would be the consultants'/advisors' fees. There are no material state duties or similar payments to the authorities to be made for the purposes of the share buy-out offer.

2.12 What consents are needed?

The share buy-out offer can be made only after receipt of approval of the FCMC. If the transaction is subject to clearance by the competition authorities, the respective approval should be obtained from the Latvian Competition Council prior to implementation and/or, where applicable, competition authorities of other countries/EU authorities.

2.13 What levels of approval or acceptance are needed?

Generally, no statutory target shareholders approval or acceptance is required in the case of acquisition. Merger is subject to approval of the target shareholder's decision by at least a ¾ majority of shares with voting rights represented at the meeting (unless the charter of the target company provides for a higher threshold, in which case such higher threshold shall apply).

2.14 When is the consideration settled?

As a general rule the payment of consideration in relation to public emission shares takes place simultaneously with the transfer of shares. The same rule is respectively applied to the transfer of closed emission shares to the effect that title to the shares passes from the seller to the purchaser by payment of consideration. The Management Board of the target makes the respective entry in the shareholders register on the basis of the documents certifying payment. Details of payment procedures shall be provided in the offer prospectus.

3 Friendly or Hostile

3.1 Is there a choice?

The Latvian law does not distinguish between friendly or hostile transactions. In both cases the bidders will be subject to and will have to abide by the same regulatory framework.

3.2 How relevant is the target board?

Formally, the target's board opinion is not essential for making a successful buy-out offer; however, in practice its opinion and activities may to some extent influence the process and outcome of the planned transaction. Thus, the board is required to prepare and publish its opinion on the offer (within 5 business days after the respective offer is announced), the estimate/evaluation of the offer (and its potential results) on the interests of the company (in particular - employment issues), as well as opinion on the offeror's strategic plans in relation to the target company and the effects of those plans on the company and employment issues. The board may summon the extraordinary shareholders meeting to decide on potential counter-measures; it may also (without summoning the general meeting) take actions to seek alternative offers. Apart from that, however, the board of the target is prohibited from any actions or omissions that may hinder the buy-out offer process.

3.3 Does the choice affect process?

In practical terms the consequences of a hostile approach would result in higher likeliness of efforts of potential counter-measures launched by the board/shareholders of the target (e.g., alternative/competing offer).

4 Information

4.1 What information is available to a buyer?

In the case of a public takeover, where no information is provided by the target, the scope of information would primarily be limited to "public information", i.e., information required to be disclosed by the applicable laws (e.g., annual accounts of the company), information contained in public registries (Commercial Register of the Republic of Latvia containing all material corporate information on the company, Land Register containing information on the real estate owned, etc.), and the information disclosed by the company to the market organiser in accordance with its respective regulations, and published by the market organiser (e.g., interim financial/business reports, information on any material events/circumstances affecting the target/its business, etc.).

4.2 Is negotiation confidential?

The laws do not contain any specific guidelines as to the rights and responsibilities of the Management Board to engage in and conduct negotiations with the potential offeror/purchaser of the company's shares. Whereas the board is subject to the general duty of care and the potential takeover may qualify as a material event affecting the interests of the target company and its shareholders, it can be expected that the board would elect to take a careful approach, i.e., it would not engage in any confidential negotiations regarding the potential takeover transaction.

Generally, there are no restrictions regarding the negotiations with the shareholders of the target (provided insider dealing rules are complied with), and, as a general rule, shareholders are not subject to mandatory disclosure requirements (unless the respective shareholder is a public company itself).

4.3 What will become public?

There are no specific requirements regarding disclosure of the information about prior negotiations or transfer of information between the bidder and the target.

4.4 What if the information is wrong or changes?

The Latvian law does not provide for an option to cancel or otherwise invalidate the share buy-out offer on the basis of incomplete or false information on the target. The offeror may, however, apply to the FCMC with the request to cancel buy-out offer on the basis of breaches of legal requirements/law or on the basis of circumstances out of control of the offeror qualifying as force majeure (i.e., the share buy-out offer can be cancelled but only by the decision of FCMC).

In any case such circumstances may serve as the basis for a civil-liability claim for the compensation of damages.

5 Stakebuilding

5.1 Can shares be bought outside the offer process?

The shares can be bought outside the offer process. Generally, there are no limitations. However, at reaching certain thresholds the acquirer of shares becomes subject to certain statutory obligations:

1) When the total amount of target shares, whether directly or indirectly acquired, **reaches thresholds of 5%, 10%, 15%, 20%, 25%, 30%, 50%, 75%, 90% or 95%** from the total amount of shares with voting rights, the acquirer should within 4 trading days notify the target and FCMC. This requirement applies irrespective of whether the shares acquired are fully or partially public emission shares or closed emission shares. The target company within one trading day after the receipt of notice makes it publicly available to the investors by publishing it in the system for the central storage of regulated information, sending it to the market organiser and making it available to the mass media which will ensure the distribution of information to as large a community as possible in Latvia and other Member States. The market organiser immediately publishes such information on its Internet homepage.

2) When the total amount of target shares, whether directly or indirectly acquired, **exceeds 50%** from the total amount of shares with voting rights, the acquirer (or acquirers collectively, if two or more persons are acting in concert) **must issue** to other shareholders of the target company **a mandatory share buy-out offer**. This requirement applies irrespective of whether the shares acquired are fully or partially public emission shares or closed emission shares. This requirement does not apply if the shares are acquired as a result of a voluntary share buy-out offer.

The mandatory share buy-out offer is subject to regulated price. Namely, the price per share may not be lower than either:

- the price at which the offeror has acquired the shares of the company (where the offeror has acquired shares at different prices, the highest price applied during the period of the last 12 months prior to the date when circumstances triggering offer have occurred will be used); or

- the average weighted stock price in the regulated market during the period of the last 12 months prior to the date when circumstances triggering offer; or
- the value of the share determined dividing the net asset value of the company by the total number of shares issued. The net asset value shall be determined through reducing the total asset value of the company for the value of the own shares and liabilities. (For the purposes of this method the data indicated in the last annual accounts of the company as approved by sworn auditor(s) and the shareholders meeting of the company shall be used. The last quarterly accounts shall be used instead of annual accounts if it would result in at least 10% higher price).

All the above methods must be used and the highest price shall apply. If the offeror, during the period between 'the date when circumstances triggering offer' and the last date of the offer term, enters an agreement on the purchase of the company's shares at a price higher than the price of the offer, the price used in such transaction becomes the price of the offer.

For 6 months after the closing of the mandatory offer procedure, the offeror may purchase the target company's shares at a price higher than the price used in the mandatory offer only if the offeror compensates all sellers within the mandatory buy-out process; the offeror must do so by paying the difference between the new purchase price and the purchase price used in the mandatory offer.

3) When the total amount of target shares, whether directly or indirectly acquired, **reaches or exceeds 90%** from the total amount of shares, each of the minority shareholders of the company may request that the majority shareholder purchases its shares at the price that is not lower than the price determined according to the methods used for the purposes of the mandatory share buy-out offer. Such request is binding for the majority shareholder.

A person that fails to comply with the respective notification requirements and/or to issue a mandatory buy-out offer potentially faces the following negative consequences:

- such person is not entitled to exercise the voting rights attached to the shares it owns, as well as indirectly acquired voting rights. The decisions of the shareholders meeting taken in violation of the above mentioned principle shall be considered invalid; and
- the FCMC is entitled to issue a warning or impose a penalty of up to 10,000 lats.

The latter applies also in the case of a failure to comply with the request of the minority shareholder to purchase its shares by the majority shareholder holding at least 90% of the total amount of shares.

5.2 What are the disclosure triggers?

The person extending a voluntary offer is subject to a general requirement to notify and publish the results of the offer process. Thus, within 5 business days of the expiry of the offer term it is required to:

- submit detailed notice to the market organiser and to the management board of the target company; and
- publish a detailed announcement with the official gazette "Latvijas Vestnesis".

Any person acquiring at least 5%, 10%, 15%, 20%, 25%, 30%, 50%, 75%, 90% or 95% of the shares with voting rights is required to notify the market organiser and the management board of the target company (see question 5.1 above for further details).

5.3 What are the limitations?

There are no limitations on the ability to accumulate shareholdings outside the general (voluntary) bid process (provided the acquirer complies with the respective notification obligations and, where applicable, requirement to issue mandatory share buy-out offer).

6 Deal Protection

6.1 Are break fees available?

There are no rules specifically addressing availability of "break fees" or similar payments. Where any agreement is entered (e.g., in case of merger process or in case of any separate share purchase transaction) the principle of contractual freedom can be used to include such provisions.

6.2 Can the target agree not to shop the company or its assets?

Under the Latvian law it is not possible to require the target company/its board not to seek alternative/competing offers. The management board is entitled to do so without approval of the shareholders meeting.

6.3 Can the target agree to issue shares or sell assets?

Decisions on share issuing under Latvian law are within the competence of the general meeting rather the Management Board of the company (or target, itself). As a general rule, the management and supervisory board members of the company are prohibited from any activities or omissions that may hinder the offer process; however, there is no such prohibition in relation to the decisions of the general meeting of shareholders of the target except for the below.

After the public announcement of the buy-out offer the company may not issue new shares or convertible bonds which may result in change of distribution of voting rights in the shareholders meeting. Furthermore, the company may not decide on the distribution of dividends, nor change the nominal value of shares or to merge or split share emissions of the target. These restrictions apply until the expiry of the offer term.

6.4 What commitments are available to tie up a deal?

There are no specific rules established or specific legal instruments available.

7 Bidder Protection

7.1 What deal conditions are permitted?

The Latvian law does not provide for conditional buy-out offers, i.e., it is not expressly permitted to include in the offer any provisions other than those listed in the law (e.g., price, term of the offer, payment/exchange procedures, procedure for acceptance of the offer, etc.).

7.2 What control does the bidder have over the target during the process?

Unless the offeror already has some control over the target (as a shareholder or otherwise) there are no specific legal mechanisms to allow the offeror to exercise any control over the target before or during the offer process. The offeror has limited rights to change the offer (subject to approval of the FCMC); for example, to extend the term of the offer, to increase the price, etc. to the extent it does not harm the shareholders of the target who have already accepted the offer. The offeror may also request the FCMC to cancel the offer provided it can demonstrate sufficient grounds (please see question 4.4 above).

7.3 When does control pass to the bidder?

The bidder can exercise direct control over the target only through the shares and respective voting rights in the shareholders meeting, i.e., the bidder can take effective control of the target earliest when the first shareholders meeting takes place after the bidder has acquired sufficient percentage of shares to exercise respective control.

7.4 How can the bidder get 100% control?

When the bidder has acquired at least 95% of shares with voting rights it is entitled to make "final share buy-out offer", i.e., to request the minority shareholders to sell their shares to the majority shareholder. In such case other shareholders are obliged to sell their shares.

The price is determined using the same methodology as in the case of a mandatory share buy-out offer (please see question 5.1 above). If the bidder has reached the 95% threshold as a result of voluntary share buy-out offer, it is entitled to make the final buy-out offer at the same price as determined in such voluntary buy-out offer.

Final buy-out offer can be made within 3 months after the date the bidder has acquired at least 95% from the total number of shares with voting rights. As a precondition for such offer the target must pass a decision to leave the regulated market.

8 Target Defences

8.1 Does the board of the target have to tell its shareholders if it gets an offer?

The person intending to make a voluntary share buy-out offer has to notify the target as soon as the decision to extend an offer is passed. Details of the offer and offer prospectus should be provided to the target only after the bidder has received approval of FCMC. The target is in turn required to disclose information on the offer to the public by virtue of the offer qualifying as a material event, i.e., an event related to the target of which it is aware and which may affect the price of the shares or the decision of the investors to purchase or sell the shares. The Management Board of the target is also committed to prepare and publish its opinion on the offer after the offer is approved by the FCMC.

8.2 What can the target do to resist change of control?

There are no explicit rules regulating available defences. As soon as the board receives information on the planned offer the board is entitled to seek for alternative offers at its own initiative. Any other activities that may potentially upset the planned offer process or outcome are subject to approval of the shareholders meeting.

8.3 Is it a fair fight?

No specific legal framework has been established to address and regulate situations with a preferred bidder and a hostile bidder.

9 Other Useful Facts

9.1 What are the major influences on the success of an acquisition?

Currently there are no Latvian based public companies having a large base of public shareholders. Normally, there are one or several major shareholders exercising control over the target. Thus, any takeover attempt aimed to obtain control over the target will primarily depend on soliciting the majority shareholder(s) to sell their shares. Such sale-purchase transaction generally would be treated on an individual basis and not within the scope of a regulated buy-out offer.

9.2 What happens if it fails?

The Latvian law does not provide for any specific adverse legal consequences for the bidder that fails in an attempted takeover.

10 Updates

10.1 Please provide, in no more than 300 words, a summary of any new cases, trends and developments in M&A Law in your country.

On 29 March 2007 amendments to the Financial Instruments Market Law were passed which modified, *inter alia*, the provisions regarding notification of the acquisition or disposal of major holdings (including the applicable thresholds). The amendments implemented Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC. The amendments took effect as from 1 May 2007.

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