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1 Types of transaction

How may businesses combine?

There are several forms of business combinations in Slovakia:

- Merger – a transaction in which the assets and liabilities of one or several companies are transferred to another, existing company participating in the merger, which becomes the legal successor of the merged companies (takeover merger), or the assets and liabilities of two or more companies are transferred to a newly established shell-company, which becomes, upon its incorporation, the legal successor of the merged companies (merger).
- Demerger – a transaction in which the assets and liabilities of a company are transferred to another, already existing companies, which become the legal successors of such de-merged company (demerger by takeover) or newly established companies which shall become, upon their incorporation, the legal successors of the de-merged company.
- Acquisition of shares (of joint stock companies) and transfer of ownership interests (of limited liability companies) – the most common forms of business combinations in Slovakia. Share acquisitions are made under and pursuant to a share purchase agreement in accordance with the Securities Act (see below). Ownership interest transfers are made under and pursuant to an Ownership Interest Transfer Agreement in accordance with the Commercial Code (see below). In either type of transaction, the existence of the acquirer and target remain intact, but the shareholder structure changes.
- Sale of an enterprise – a transaction undertaken under and pursuant to a sale of enterprise contract in which a seller transfers to a buyer title to all of the assets, other rights and other tangible values which are utilised in operating the enterprise. If only part of an enterprise is transferred, it must be an independent organisational unit.
- Transfer of assets – a transaction under which either all or some assets of one company are sold or transferred to another company through special sub-contracts required to validly transfer ownership of such assets. For example, tangible assets are sold through a purchase contract while receivables are transferred through an assignment contract.
- Silent partnership – is based on a contractual relationship between a silent partner and a target. A silent partner invests money or other asset required for business operations into a target and participates in the target's profits and losses. A silent partner is not registered in the public register as a shareholder of the target. The silent partner is liable for the target's obligations only if the silent partner's name is included in the business name of the target or if the silent partner declares that the silent partner jointly undertakes business activities with the target.

2 Statutes and regulations

What are the main laws and regulations governing business combinations?

Generally, business combinations are governed by Act No. 513/1991 Coll, the Commercial Code, as amended (the Commercial Code). Share purchase agreements are governed by Act No. 566/2001 Coll, on securities and investment services (the Securities Act), as amended.

If combining companies reach certain turnover thresholds, the provisions of Act No. 136/2001 Coll on Protection of Competition, as amended will apply. If a combination can affect the European market, the provisions of the Council Regulation (EC) No. 139/2004 on the control of concentrations between undertakings (the EC Merger Regulation) will come into play.

If shares of a Slovak joint stock company are listed, special provisions of the Securities Act regarding takeover bids, or mandatory takeover bids and Bratislava Stock Exchange rules may apply.

If business combination is part of a restructuring, the provisions of Act No. 7/2005 Coll on bankruptcy and restructuring apply.

Act No. 92/1991 Coll on transfer of state property applies to privatisations of companies owned by the Slovak Republic.

Other special acts and regulations may apply with respect to business combination of regulated entities such as banks, insurance houses and energy companies.

3 Governing law

What law typically governs the transaction agreements?

Transaction agreements between Slovak parties are usually governed by Slovak law. If there is a non-Slovak party in a transaction, the parties often agree that a foreign law will govern transaction documentation. One of the most common neutral laws governing transaction agreements is English law. When foreign law governs an acquisition agreement involving a Slovak target or merger agreement involving a Slovak participant, however, mandatory provisions of Slovak law apply.

4 Filings and fees

Which government or stock exchange filings are necessary in connection with a business combination? Are there stamp taxes or other government fees in connection with completing a business combination?

All Slovak companies must be registered with public register of companies known as the Commercial Register of the Slovak Republic (the Commercial Register). Most forms of business combinations require filings and registrations with the Commercial Register. The respective filing must attach all relevant documentation related to a particular business combination such as the respective agreements and corporate approvals.

A €66 fee is payable to register changes with the Commercial Register. If the corporate structure is changed, a €331.50 fee is payable to the Commercial Register. These fees are reduced by 50 per cent if the changes are submitted electronically.

Book-entry shares of Slovak joint-stock companies must be registered with the Central Securities Depository of the Slovak Republic (CDCP). Parties to a transaction must file the share transfer with the CDCP. Various fees are payable to the CDCP, as set forth in the CDCP's pricelist.

A €5,000 fee is payable if the transaction requires notification to the Slovak Competition Authority – Antimonopoly Office of the Slovak Republic.

Takeover bids require filings with the National Bank of Slovakia. National Bank's approval of the takeover bid is subject to an administrative fee ranging from €350 to €1,000.

There is no stamp tax. Other costs include notary public's fees, which might be required under the Commercial Code to notarise certain agreements, minutes of general meetings, signatures and documents.

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5 Information to be disclosed

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

The scope of information to be made public varies depending on the form of business combination and on the form of the companies involved.

In case of a merger or demerger, an execution version of the merger agreement or demerger project must be filed with the Collection of Deeds, which is a publicly available database of certain corporate documents maintained by the Commercial Register. Additional public disclosure obligations apply in case a joint stock company is involved in the merger or demerger or in case of a cross-border merger. In those cases, draft merger agreement or demerger project must be published before the merger or demerger is approved by the participating companies' shareholders.

Executed version of sale of enterprise agreement must also be submitted to the Collection of Deeds.

6 Disclosure of substantial shareholdings

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

Disclosure requirements vary depending on the company form. Shareholders (or partners) of all company forms other than joint stock company are published in the commercial register irrespective of the size of their shareholding. Joint stock company allows shareholders to remain anonymous provided that there are at least two of them. If the joint stock company has only one shareholder, his or her identity is published in the commercial register.

Special rules on disclosure of large shareholdings apply to listed joint stock companies. If a shareholder acquires or disposes of shares of a listed joint stock company, the shareholder must notify the issuer of the proportion of voting rights of the issuer held by the shareholder as a result of the acquisition or disposal where that proportion reaches, exceeds or falls below the thresholds of 5 per cent, 10 per cent, 15 per cent, 20 per cent, 25 per cent, 30 per cent, 50 per cent and 75 per cent.

The prior approval of the National Bank of Slovakia is required in order to acquire a qualifying holding in banks, stock brokerage firms and insurance companies (the qualifying holding is defined as holding exceeding 20 per cent, 30 per cent or 50 per cent of share capital) and pension funds management companies (the qualifying holding is defined as holding exceeding 5 per cent, 10 per cent, 20 per cent, 33 per cent, 50 per cent, or 66 per cent). The prior approval of the National Bank of Slovakia is also required for the CDCP to acquire an equity interest exceeding 33 per cent of the share capital in an entity.

7 Duties of directors and controlling shareholders

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

Generally, executives of limited liability companies and directors of joint stock companies must exercise their powers with professional care and in accordance with the interests of the company and all of its shareholders. If the executives or directors breach their duty of professional care in relation to a business combination, they are obliged to jointly and severally compensate the company for the damages. The claims for damages that a company has against executives or members of the board of directors may be exercised by any of the shareholders or by a creditor of the company (acting in its own name and on its account) if the creditor is unable to satisfy its claim from the company's property.

In case of a merger or demerger, directors of a joint stock company and executives of a limited liability company must prepare a report for the shareholders explaining in detail the legal and economic aspects of the merger or demerger. Shareholders may waive the right to receive such report by a unanimous decision.

Controlling shareholders do not have any duties similar to those of the executives and directors. However, any shareholder may be liable for damage caused by exercising its shareholder rights to the detriment of other shareholders.

8 Approval and appraisal rights

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

Usually, business combinations are subject to prior approval by shareholders of the companies concerned.

For example:

- mergers and demergers of joint stock companies require a two-thirds majority of the votes of attending shareholders of each company;
- mergers and demergers of limited liability companies require two thirds of all votes of each company;
- transfer of an ownership interest in a limited liability company requires two thirds of all votes of each company has to be approved by (at least) simple majority of attending shareholders; and
- sale of an enterprise (or a part of it) of both, joint stock companies and limited liability companies has to be approved by (at least) a simple majority of attending shareholders.

Memoranda of association or by-laws may require a higher number of votes for the approval of various types of business combinations. However, even if a business combination is approved, outvoted shareholders may challenge the approval before the court on the grounds of its illegality or conflict with memoranda of association or by-laws.

Appraisal rights apply with respect to mergers, demergers and takeover bids. In a merger or demerger involving a joint stock company, the exchange ratio and its calculation as well as the amounts of any additional payments to shareholders have to be appraised by an independent expert appointed by court. The appraisal right may be waived by a unanimous decision of all shareholders. In a merger or demerger involving a limited liability company, such appraisal is necessary only if requested by at least one of the shareholders. In a takeover bid, an independent expert appointed by the National Bank of Slovakia must appraise the offer price of shares. Appraisal of the purchase price may also be required with respect to a squeeze-out.

9 Hostile transactions

What are the special considerations for unsolicited transactions?

In practice, hostile transactions are very sporadic particularly because there are only a handful of listed companies in Slovakia. Every takeover bid concerning listed shares must be notified to the board of directors of the target company and the National Bank of Slovakia.

Following the notification on the takeover bid and until the results of the takeover bid are published, the members of the supervisory board, board of directors and other executive bodies of the target company may not take any action that is likely to prevent the shareholders of the target company from making an informed free decision on the takeover bid. Furthermore, the board of directors, in cooperation with the supervisory board, must prepare a common position paper on the takeover bid (except for any such members who are involved in making a takeover bid). The position paper must include (among other things) a statement on whether the selling under the terms and conditions of the takeover bid is in the interests of the shareholders, employees and creditors of the target company.

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 company's ability to protect deals from third-party bidders?

Break-up fees and reverse break-up fees are generally permitted under Slovak law. They are usually structured as penalties to be paid by the party backing out of the transaction. There are no limits on the amount of the fees because penalty provisions are not prohibited under Slovak law. However, courts are entitled to reduce the amount of the penalty if they are deemed to be disproportionately high compared with the value and importance of the secured obligation (in this case the obligation to pursue the transaction). Nevertheless, such reduction is limited by the amount of the damages.

Companies may use a wide range of deal protection methods such as no-shop clauses. Legal regulations do not specify any particular limitations in respect of deal protection forms. However, the directors and executives must assess whether agreeing to such clause is in the best interest of the

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company and its shareholders or not. Should the executives or directors agree to such a provision in the latter case, they could breach the duty of professional care and be liable for any damages.

Financial assistance rules apply to joint stock companies and do not apply to limited liability companies. Under the Commercial Code, joint stock companies may not provide advances, loans, credits or securities to third parties in connection with the acquisition of the joint stock company's own shares.

11 Government influence

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

The National Bank of Slovakia is authorised to suspend a takeover bid of a listed company if all statutory requirements are not met to its satisfaction.

Generally, the parties' failure to comply with Slovak laws may constitute a reason to restrict a business combination that is subject to registration in the commercial register.

12 Conditional offers

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

The Securities Act permits conditional takeover bids (cash or exchange) for securities of listed joint stock companies. However, the offeror's undertaking to acquire the shares may only be conditioned on a minimum number of acquired shares.

Financing may be conditional in a cash acquisition. It is very common for financing documentation in acquisition deals to contain conditions precedent that are linked to the acquisition. There are no specific rules for such conditions.

13 Financing

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

Normally, the acquisition of financing would be a condition precedent to completion. The seller would normally not be required to assist with the buyer's financing, unless in a more typical joint venture situation in which the seller was to remain with the company.

14 Minority squeeze-out

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

Minority stockholders of publicly listed Slovak companies may be squeezed out for an adequate consideration. Only a stockholder holding 95 per cent or more of the target's registered capital and voting rights may squeeze out minority shareholders. The squeeze-out must be for all of the remaining shares and cannot be conditional. The squeeze-out must be executed within three months following the takeover bid.

Squeeze out is subject to approval by the National Bank of Slovakia which shall be issued within 10 business days after receiving the required notification.

15 Cross-border transactions

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

Cross-border transactions are typically structured according to the governing law of the documentation governing the transaction. For example, if English law governs a cross-border transaction, the deal will generally be structured in accordance with English law principles, except to the extent that mandatory provisions of Slovak commercial law must be complied with. Accordingly, if a Slovak company is a target in an acquisition, the completion of the share transfer or interest ownership transfer will necessarily involve Slovak law transfer requirements. In addition to specific transfer requirements, Slovak law could also affect cross-border transactions, for example, in respect of anti-monopoly rules or general transaction rescission rules.

The Commercial Code contains special provisions on cross-border mergers. A cross-border merger is a takeover merger or a merger which involves at least one Slovak company and at least on company based in other member state of the European Union or European Economic Area. Rules on cross-border mergers require that a number of formal steps is carried out (public disclosure obligations, employee participation rules, assessment of merger's impact on employees, etc) before the merger can be completed. If a Slovak company is involved in a cross-border merger or demerger, respective provisions of the Commercial Code must apply. These rules, however, do not apply to other types of cross-border transactions (eg, acquisition of shares).

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?

There are no mandatory waiting periods in case of transfer of shares. A transfer of listed shares is completed by their handover. A transfer of order shares requires endorsement. Transfer of book-entry shares must be notified to and registered with the CDCP.

Transfer of ownership interest must be registered with the respective commercial register. Registration takes two business days. However, the transfer of ownership interest is effective between the contractual parties upon the signature of the transfer agreement, toward the target upon delivery of the transfer agreement to the representative of the target and towards third parties upon registration in the commercial register. Transfer of majority ownership interest (more than half of voting rights) is effective only upon the registration in the commercial register.

Registration of cross-border mergers with the commercial register takes 21 days.

17 Sector-specific rules

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

Special regulations apply in financial sector where approval of the National Bank of Slovakia with respect to completion of business combination may be required (see question 6).

In media sector, certain business combinations between broadcasters (as well as between a broadcaster on the one side and a publisher of periodicals on the other side) are restricted in order to protect the pluralism of media within the Slovak Republic.

No governmental approval of business combinations in the energy sector is required; however, ownership unbundling rules according to the EU's Third Energy Package and Slovak energy legislation must be followed.

18 Tax issues

What are the basic tax issues involved in business combinations?

In case of sale of shares (joint-stock company), ownership interest (limited liability company) and assets, a seller is subject to income tax. Currently, corporate income tax is 22 per cent. Dividends are not subject to tax, except for dividends paid to a partner or a silent partner of the general commercial partnership, and to general partners of the limited partnership. In addition to corporate income tax, some other taxes may apply in the transformation process, such as property transfer tax or VAT. Slovakia is also a party to double taxation treaties with 65 countries.

19 Labour and employee benefits

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

Rules on employment implications of business combinations are contained in the Labour Code and Commercial Code. The impact of business combinations on employees depends on the form of transaction. Transfers of shares and ownership interests have no effect on employees. In an asset deal, the rights and obligations arising from an employment relationship

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Update and trends

In Slovakia, M&A transactions are generally structured as simple acquisitions of one company (target) by other company (buyer). Mergers, hostile takeovers or LBOs are rare. Since the Slovak capital markets are underdeveloped, most M&A activity involves only privately held companies. We do not see a change in these trends coming anytime soon.

Based on our experience, the credit crisis slowed down M&A activity and its effects continue to linger in Slovakia. However, we are seeing that M&A activity is increasing in both mid-market and large deals. We believe that the continued fall in interest rates (resulting in cheaper borrowing) will boost mid-market M&A activity in the coming months.

with a company are automatically transferred to its legal successor. The terms of such employment relationship must remain unaffected. A business combination must not result in collective redundancies without economical, technical or organisational reasons. An employee not willing to work for the acquirer may terminate his or her employment.

The Labour Code imposes certain obligations on the employer to consult various issues related to business combinations with representatives of the employees. At least one month before the transfer, target companies must inform the employees' representatives (or the employees directly) of the intended date of completion of the transaction, the reasons for the transaction, the labour, economic and social consequences for the employees and the planned measures which will affect the employees.

Pursuant to the Commercial Code, the employees of the surviving company of a cross-border takeover or merger have the right to participate in the company's management under certain conditions.

20 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?

A company in restructuring proceedings may not enter into a business combination without prior approval from the company's creditors and the bankruptcy court. A company in restructuring may be merged with other companies or demerged as a part of the restructuring. In such case, approvals of the shareholders, creditors and bankruptcy court are required.

A company involved in bankruptcy proceedings or its assets cannot be purchased or sold without the consent of the bankruptcy trustee. The bankruptcy trustee may sell the assets of the company individually or through a sale of enterprise contract.

21 Anti-corruption and sanctions

What are the anti-corruption, anti-bribery and economic sanctions considerations in connection with business combinations?

Generally, persons who take a bribe or offer a bribe may suffer criminal sanctions under the Criminal Code. However, specific regulations may apply as well.

According to the Act on Protection Against Legalisation of Income from Criminal Activities, certain types of persons (such as banks, financial institutions, post offices, executors, auditors, trustees, notaries and attorneys) are obliged to provide 'basic care' towards their clients if they are entering into a commercial relationship (regardless of its value), or they are executing an occasional non-commercial relationship worth €15,000 or more, or such persons are suspicious or have doubts regarding identification data of their clients, or such persons are suspicious or have doubts that the client is executing a transaction which could lead to legalisation of incomes from criminal activities. 'Basic care' includes identification of a client and final user and their verification, obtaining information on the purpose and nature of the business relationship and conducting ongoing monitoring of the business relationship. In cases where higher risk is envisaged, provision of 'increased care' is required.

Moreover, the Security Act requires the CDCP or the stock exchange to identify the origin of funds of any person undertaking a transaction in an amount of €15,000 or more.

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