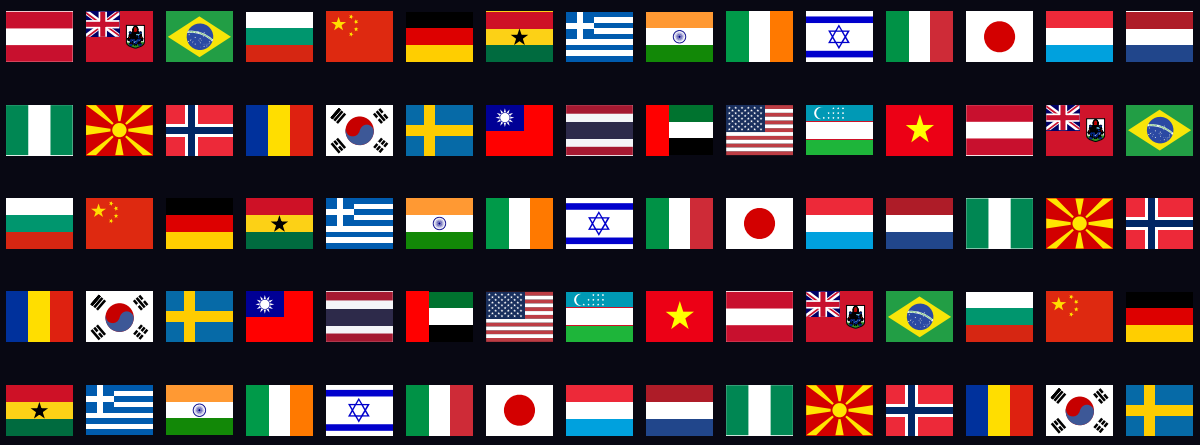
PUBLIC M&A

North Macedonia



LEXOLOGY
Getting The Deal Through

Consulting editor
Simpson Thacher & Bartlett LLP

Public M&A

Consulting editors

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Quick reference guide enabling side-by-side comparison of local insights into public M&A issues worldwide, including types of business combination; principal laws and regulations; cross-border and sector-specific considerations; governing laws; filing and disclosure requirements; duties of directors and controlling shareholders; shareholder approval and appraisal rights; hostile transactions; break-up fees and frustration of additional bidders; government influence; conditional offers; financing; minority squeeze-outs; waiting and notification periods; tax; labour and employee benefits; restructuring, bankruptcy or receivership; anti-bribery, anti-corruption and sanctions issues; and recent trends.

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STRUCTURES AND APPLICABLE LAW

Types of transaction

How may publicly listed businesses combine?

According to Macedonian legislation, a company is considered publicly listed if it has been incorporated as a joint-stock company and its stocks are publicly listed on a stock exchange. A business combination of publicly listed companies can be achieved by way of:

- acquisition;
- status changes, which include, among other things, merging and conjoining; or
- a cross-border merger.

In the latter area of law, Macedonian legislation is harmonised with the EU acquis communautaire.

According to the Macedonian Law on Trade Companies, consolidated annual accounts are prepared when a company has a controlling influence (holding directly or indirectly, an amount of shares as a part of the basic capital that gives a majority of the votes at the shareholders' meeting; owns a majority of votes in another company on the basis of a contract concluded with the shareholders or practically determines, through the votes at its disposal, which decisions will be adopted at the shareholders' meeting in the company) over another company.

The most common type of business combination in North Macedonia is the direct acquisition of a company's shares or assets. Acquisition of more than 25 per cent of the shares of publicly listed companies is regulated by the Macedonian Law on Takeover of Joint-Stock Companies (the Takeover Law) and may be done solely by way of a binding takeover bid. However, a combination of business may also be done by way of a merger and conjoining, which may be performed in accordance with the procedure regulated in the Law on Trade Companies; namely, one or more companies may be conjoined (companies subject to acquisition) by way of transfer of all the assets and liabilities to another existing company (acquiring company), in exchange for shares in the acquiring company. Similarly, two or more companies may merge without conducting a liquidation procedure, by transferring all their assets and liabilities to a newly founded company, in exchange for shares of the newly founded company (beneficiary) (terms conjoining and merger hereinafter referred to as merger).

Further, in accordance with the Law on Trade Companies, the following companies may merge by way of a cross-border merger: joint-stock companies registered in North Macedonia and limited liability companies registered in the European Union. A cross-border merger is possible only between Macedonian joint-stock companies and limited liability companies registered in the European Union, excluding investment fund management companies and other similar types of companies with their main business of acquisition of funds for financial investment.

Additionally, business combination is possible through public-private partnerships in accordance with the Law on Concessions and Other Forms of Public-Private Partnership. A public-private partnership is a venture undertaken by a private partner for the needs and benefit of the public partner with a paid contribution. In accordance with this law, the public partner may be the Republic of North Macedonia, the municipalities or the city of Skopje, public enterprises and other public institutions, trade companies established either by the state, the municipalities or the city of Skopje, companies where the state or the bodies of the municipalities and the city of Skopje control them (namely, if any of them own a significant amount of the capital of the company, if they have a majority of the shareholders' votes and more than half of the members of the management board of the company), as well as other legal entities that execute public duties following public authorisation. In these cases, the private partner can be a foreign or domestic natural or legal entity, or a consortium, to which the public-private partnership contract is awarded.

Law stated - 04 April 2022

Statutes and regulations

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

In general, the following laws and regulations govern business combinations:

- the Law on Trade Companies;
- the Takeover Law;
- the Securities Law;
- the Rules for Trade on the Macedonian Stock Exchange; and
- the Law on Obligations.

Depending on the business activity of the companies subject to acquisition or the size of the transaction, or both, some particular rules may apply, including but not limited to the ones contained in the following laws and regulations:

- the Competition Law;
- the Banking Law;
- the Investment Funds Law; and
- the Insurance Supervision Law.

Further, provisions of other laws may have significant effect on the transaction, especially provisions of the following laws:

- the Foreign Exchange Operations Law;
- the Profit Tax Law;
- the Labour Law; and
- the Law on Concessions and Other Forms of Public-Private Partnership.

Law stated - 04 April 2022

Cross-border transactions

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

Cross-border transactions are regulated by the Law on Foreign Exchange Operations. According to this Law, cross-border transactions are defined as current and capital transactions.

Current transactions are defined as transactions between residents and non-residents, the objective of which is not a transfer of capital. The payments and transfers for current transactions must include:

- payments due on the basis of goods and services exchanges, as well as the usual short-term banking payment instruments and credit instruments connected with an exchange of goods and services;
- interest payments for credit and net income payments from other investments;
- repayment of a reasonable balance of credit or payments arising from depreciation of direct investments; and
- reasonable remittances for covering the costs of living.

Capital transactions are defined as transactions between residents and non-residents with the aim of transferring capital, as follows:

- direct investments;
- investments in real estate;
- securities operations;
- transactions with documents for participation in investment funds;
- credit operations,
- sureties and guarantees;
- deposit operations; and
- transfers in performance of life assurance and credit insurance.

Direct investments are defined as investments by an investor with the aim of establishing lasting economic links or realising a right to manage the trade company or other legal entity in which he or she is investing. The following shall be deemed as direct investments:

- establishment of a trade company or increase of the basic share capital of a trade company in full ownership of the investor, establishing branches, or the acquisition of full ownership of the existing company;
- participation in a new or existing trade company if the investor holds or acquires more than 10 per cent of the basic share capital of the trade company, that is, more than 10 per cent of the voting rights;
- a long-term loan with a maturity period of five years, when it is a matter of a loan from the investor and it is intended for a trade company in his or her full ownership; and
- a long-term loan with a maturity period of five or more years, when it is a loan intended for establishing lasting economic links and if the loan has been granted between economically associated entities.

Direct investments of non-residents in North Macedonia are free, unless otherwise provided by a separate law. Within 60 days of the performance of the capital transactions serving a legal basis for a direct investment in North Macedonia, non-residents are obliged to report the investment and all subsequent changes thereof to the Direct Investments Register in scope of the Central Registry of the Republic of North Macedonia.

The Central Registry shall register the investment and all subsequent changes thereof in the Direct Investments Register of non-residents in the Republic of North Macedonia. The Central Registry shall keep the registry of direct investments of non-residents in North Macedonia and will issue to the non-residents' certificates for registration of the investments, and a certificate for every subsequent registered change to the investment as well.

In accordance with the latest changes in the Law on Foreign Exchange Operations, Macedonian residents are allowed to invest in securities abroad and may issue or register domestic securities abroad.

Law stated - 04 April 2022

Sector-specific rules

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

Some regulated activities may be subject to additional prior approvals or subsequent additional notifications with regard to mergers and acquisitions. For example, for a merger or acquisition of a bank, the National Bank of the Republic of North Macedonia must issue a prior permit for the merger before it is carried out or a prior approval for

acquisition of the bank. The relevant regulatory body for insurance companies is the Insurance Supervision Agency, which must give prior consent for direct or indirect acquisition of qualified participation in an insurance company. Other sectors that are regulated include fund management companies, financial leasing companies and other non-banking financial companies, etc.

Law stated - 04 April 2022

Transaction agreements

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

In general, acquisition of a small amount of shares of publicly listed companies is realised through transactions on the Macedonian Stock Exchange. The Stock Exchange market is divided into two segments:

- the official market, consisting of four segments where stock companies are publicly traded:
  - super listing;
  - stock-exchange listing;
  - mandatory listing; and
  - listing of small joint-stock companies; and
- the regular market (the free market) where joint-stock companies are registered, but their shares are not publicly listed.

Purchase and sale of shares in publicly listed companies on the official market may be performed only through an authorised member of the Macedonian Stock Exchange (a brokerage house, a bank or a representative office of a foreign brokerage house admitted to membership of the Macedonian Stock Exchange).

Usually, regular trade of stocks on the Macedonian Stock Exchange requires a one-sided instruction to the authorised member of the Macedonian Stock Exchange (an order) by the client. Regular trading on the official market does not require conclusion of a transaction agreement between the seller and the purchaser of stocks.

In acquisitions of more than 25 per cent of any publicly listed company, the transaction is, therefore, not performed on the Macedonian Securities Exchange market; instead; transactions are directly registered in the Central Securities Depository (with brokerage of the authorised person – usually an attorney-at-law or any other person authorised to act on behalf of the bidder in the procedure).

As an exception, conclusion of a transaction agreement is obligatory for administrators' block transactions, which are usually done outside the regular stock-exchange trade and have a limited number of participants (transactions exceeding 60 million denars), and must reach a minimum value (exceeding 5 million denars). The governing law of the transaction agreements may be agreed upon by the parties' will; however, the application of a foreign governing law is possible only when the transaction has a foreign element (one of the parties is a non-resident) and it is not possible when both parties are residents.

Law stated - 04 April 2022

FILINGS AND DISCLOSURE

Filings and fees

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

In the case of an intent for acquisition of more than 25 per cent of the total number of stocks with voting rights in a publicly listed company, the potential acquirer must adhere to the binding public offering procedure as prescribed in the Macedonian Law on Takeover of Joint-Stock Companies (the Takeover Law). The procedure of public offering prescribes an obligation of notification for the intent to acquire. The potential acquirer would have to:

- notify the management body of the target company, the Securities and Exchange Commission and the Central Securities Depository;
- submit a notification to the Commission for Protection of Competition (the Competition Commission); and
- make a public announcement of the intent.

Additionally, the potential acquirer would have to obtain prior approval for the public offer from the Securities and Exchange Commission before its public announcement. The notifying party will be obliged to pay the deposit amount for the takeover of the shares (for the potential acquisition of all 100 per cent of the issued stocks) on a separate account of the Central Securities Depository at the National Bank of the Republic of North Macedonia, where the funds will be kept until the completion of the takeover procedure in accordance with the Takeover Law.

The mandatory regulations prescribe an obligation to pay administrative fees. The total amount of certain administrative fees of the takeover procedure varies depending on the value of the shares that are subject to the takeover procedure; in other words, the paid deposit for the shares (0.1 per cent of the deposit amount is paid as an administrative fee to the Central Security Depository, and a fee of 0.35 per cent of the value of the stocks exceeding the control threshold of 25 per cent of the issued stocks is paid as a fee to the Securities and Exchange Commission). Additional fixed fees are paid to the Securities and Exchange Commission for issuing the approval for takeover (approximately €800).

A public offer is not compulsory in cases when the potential acquirer intends to acquire less than 25 per cent of the company's basic share capital or shares. A transaction made by way of a public offering is not performed on the stock exchange market, but directly in the Central Securities Depository.

When a business combination involves the merger of public companies, the procedure is quite similar and includes two phases:

- Phase I is the pre-registration or announcement phase; and
- Phase II concerns closing of the transaction; namely, the adoption of a decision for confirmation of the agreement by the shareholders' assembly.

After the transaction agreement has been signed (an agreement for a merger of companies by the management bodies of the companies involved), a compulsory pre-registration procedure must be carried out. The parties are obliged to notify and report the conclusion of the agreement to the Macedonian Stock Exchange reporting system immediately after the signing of the agreement.

During Phase I, the agreement shall be reviewed by one or more certified auditors. An auditor will be appointed separately for each company by the management bodies of the companies that are participating in the merger. However, the audit may be performed by one audit firm for all the companies involved if appointed by the court upon

their joint request.

One month prior to the adoption of the decision for confirmation of the transaction agreement, the management bodies of the companies that concluded the agreement shall, no later than one month prior to the adoption of the final decision on the merger (adopted by the shareholders' meeting), jointly publish a public announcement on the concluded agreement in the Official Gazette of the Republic of North Macedonia (the Official Gazette) and in at least one daily newspaper. Where a company is aware of creditors whose claims exceed €10,000 in denars counter-value, each of them shall be notified separately in writing. Additionally, the conclusion of the transaction agreement must be registered in the Central Register of Trade Companies within the same term.

Once the agreement has been entered, a notice shall be published in the Official Gazette stating that the pre-registration has been entered in the commercial register and that the agreement is available for inspection by any interested third parties (shareholders or creditors).

Additionally, within the same term (namely, at least 30 days prior to the scheduled shareholders' meeting), the companies involved must make a public announcement and, thereby, invite the shareholders to participate and to vote on the shareholders' meeting.

Each company participating in the merger shall enable its shareholders to review the documents relevant to the merger for a period of at least one month prior to the date on which the shareholders' meeting is scheduled.

Phase II starts after expiry of the compulsory 30-day period. The shareholders' meetings of all companies involved shall adopt a decision for approval of the transaction agreement with a simple majority vote. The agreement shall become effective once the shareholders' general meetings of the companies involved in the transaction approve it.

The procedure may be simplified if the acquiring company owns at least 90 per cent of the parts or shares represented by the share capital of the target company in a way that the approval of the shareholders' meetings shall not be required.

The merger procedure includes costs for administrative fees payable to the Central Register of Trade Companies ranging from €10 to €150, depending on the subject of registration.

If the business combination qualifies as a concentration pursuant to the Competition Law, a notification to the Competition Commission is compulsory.

A concentration shall be deemed to arise where a change of control on a lasting basis results from the merger of two or more previously independent undertakings or parts of undertakings or the acquisition, by one or more persons already controlling at least one undertaking, or by one or more undertakings, whether by purchase of shares or assets, by contract or by any other means prescribed by an order of law, of direct or indirect control of the whole or parts of one or more other undertakings.

The following thresholds shall apply when the concentration is subject to compulsory notification to the Competition Commission:

- the aggregate income of all participating undertakings, generated by the sale of goods or services on the world market, was more than the equivalent of 10 million denars in the business year preceding the concentration and provided that at least one participant is registered on the territory of North Macedonia;
- the aggregate income of all participating undertakings, generated by sales of goods or services on the territory of North Macedonia in the business year preceding the concentration, is more than the equivalent of 2.5 million denars counter-value; or
- the market share of one of the undertaking participants exceeds 40 per cent or their joint market share on the market exceeds 60 per cent.

The administrative fees for notification in front of the Competition Commission may vary from €100 to approximately €600.

Law stated - 04 April 2022

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 type of public announcement depends on the type of procedure; namely, whether the business combination occurs by way of acquisition of a public company with a public offering or by way of a merger of public companies. If the business combination involves any legal entity that has conducted a public offering of securities, that legal entity has to notify the Securities and Exchange Commission of the results of the public offering and any changes in the ownership of the company that occurs shall be registered in the Central Securities Depository.

A compulsory public announcement is to be made on the proposal for a cross-border merger, with the conditions thereof, in the Official Gazette and on the official website (if any) of the company at least one month before taking the decision of shareholders' meeting of the company for accepting or refusing the cross-border merger.

In cases of takeover procedures, formal publication is made through the Official Gazette, public newspapers, the acquirer's and target's web pages and the Macedonian Stock Exchange, in accordance with the takeover law regarding the state of the takeover procedure.

Law stated - 04 April 2022

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?

When any legal entity or natural person purchases or otherwise acquires securities issued by a publicly listed company in an amount such that the owner, directly or indirectly, owns in aggregate more than 5 per cent of any class of security issued by the reporting company, the owner shall file a report with the Securities and Exchange Commission and the issuer disclosing the ownership within five business days after the settlement of a contemplated transaction. Any legal entity or natural person who, directly or indirectly, owns more than 5 per cent of any class of security issued by a reporting company shall report to the Securities and Exchange Commission all subsequent acquisitions and dispositions of all securities issued by the company and the issuer within five business days, regardless of the legal grounds of the change.

The requirements are not affected if the company is a party to a business combination.

Law stated - 04 April 2022

DIRECTORS' AND SHAREHOLDERS' DUTIES AND RIGHTS

Duties of directors and controlling shareholders

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

The transaction agreement, and all elements deemed as constituent parts of it, is to be made available to all members or shareholders in the registered office of the companies participating in the merger. This notification is to specify the time frame and other details significant for each member or shareholder in regard to the inspection.

The creditors of whom the company is aware, whose claims exceed the equivalent of €10,000 in denars, are to be notified in writing, individually, at their place of residence or at their registered office if the creditor is a legal person.

Creditors of the companies involved in the merger whose claims are still not matured and who consider that the merger could endanger the settlement of their claims, are authorised to file a request to obtain security for their claims. If the companies involved in the merger fail to respond to the creditor's request within 15 days of the date of the filed request or fail to provide the required security, the creditor may, within the next eight days, submit a claim to the court to stop the procedure for merger. If the court determines that in the course of the procedure for merger, the creditor's request was not considered or that the required security was not provided, it may stop the procedure, until the companies involved in the merger submit evidence to the court that the claim of the creditor has been secured.

The management bodies that have concluded the transaction agreement should prepare a written report, which is to be made available to the shareholders at least one month prior to the meeting of the shareholders, explaining the following in detail:

- the reasons, or the objective to be achieved by the merger;
- the legal and business issues, as well as the proposed legal and economic grounds for the merger;
- the criteria and methods that determine the exchange ratio of the parts or shares and the criteria for their distribution;
- the contents of the documents and the draft agreements for merger;
- any difficulties that occurred in the course of the procedure for the appraisal of the assets and liabilities;
- the non-monetary contributions transferred, as well as any problems that arose from the appraisal carried out in accordance with article 35 of the Law on Trade Companies and a reference to the reports on the basis of which they were appraised and the manner in which such reports have been made available;
- any change in the assets and liabilities that occurred between the date of execution of the agreement and the date of the shareholders' meeting at which a resolution for merger shall be decided upon; and
- any amendments made in the agreement due to an obligation to act in accordance with the recommendations of the auditors.

The management body of a Macedonian company in a cross-border merger, as well as the proposal with the conditions thereof, is obligated to announce the following details:

- the form, name and registered seat of each company involved in the merger;
- the register where each of the companies that are involved in the merger is registered and their registration number; and
- for each company involved in the merger, the terms and conditions under which minority shareholders are acquiring their rights, form of settlement for the creditors and the address where information concerning the above can be obtained free of charge.

Also, the management body must prepare a report for cross-border mergers that includes an explanation justifying the legal and economic aspects of the cross-border merger and the possible consequences for and influence over the shareholders, creditors and employees.

Law stated - 04 April 2022

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?

In a takeover of a public company by way of a takeover bid, it is a basic principle of the procedure that the shareholders of the target company must be fully and accurately informed of the takeover bid in a timely manner to have enough time to properly evaluate the bid, define their interests and make a decision to accept or reject the takeover bid. However, the price of the stocks is determined based on the listed price in the previous 12 months, or on the basis of the price of a certified appraiser. In any case, the shareholders do not have any right to request appraisal or any other similar rights.

When the business combination occurs by way of a merger of public companies, the final decision on the merger is made by the shareholders at the shareholders' meeting (who give approval to the transaction agreement signed by the managing bodies of the companies involved). The decision is usually adopted by a simple majority of the votes; however, if the combination would result in increasing the obligations of the shareholders, the decision on the business combination must be made unanimously by all shareholders. The agreement shall have legal effect once the shareholders' meetings of the companies involved in the business combination approve it.

The approval of the transaction agreement by the shareholders' meeting of the acquiring company is not required if the acquiring company owns at least 90 per cent of the shares represented in the basic share capital of the target companies, involved in the merger.

If any of the shareholders do not approve the transaction, they are entitled to request a buy-out of their shares. The price of the shares is determined as stated in the decision adopted at the shareholders' meeting. If the acquiring company does not accept the buy-out offer, the shareholder may request a buy-out of its shares by initiation of a court procedure and on a price determined by the appointed appraiser.

In a cross-border merger, the proposal with the terms and conditions of the merger is subject to a compulsory appraisal by an authorised appraiser, who will prepare an official report.

Law stated - 04 April 2022

COMPLETING THE TRANSACTION

Hostile transactions

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

In accordance with some of the latest changes to the Macedonian Law on Takeover of Joint-Stock Companies (the Takeover Law), during the takeover procedure, the managing board and the supervisory board of the target company must act in the interests of the company as a whole, and must not deter the owners of the shares from taking a decision regarding the takeover bid.

The management bodies of the target company must prepare a report in which they express their opinions on the influence and the business operations of the takeover bid on the target company and the reasons on which their opinions are founded. The fact that the management must not deter the owners of the shares from taking a decision on the takeover bid suggests that the management must be neutral and cannot take any actions to stop or impede the takeover.

Moreover, the laws prescribe limitations imposed on the management board during the time the procedure is active. In accordance with the Takeover Law, once the takeover bid is published, from this moment to the moment of publishing

the outcome of the takeover bid, the managing body cannot take the following steps without a resolution of the shareholders' meeting:

- increase the basic capital of the target company;
- take actions that do not form part of the ordinary course of business of the target company;
- take actions that could endanger the further working of the target company;
- take actions to acquire own shares or other types of own securities by the target company itself, from which a right to swap or acquire own shares arises; and
- take actions whose only purpose is to prevent or to make the acceptance of the takeover bid more difficult.

The takeover bid may be followed by other takeover bids (competitive bids). Competitive bids may be made at least 15 days before the end of the initial takeover bid.

Based on the information published by the offeror on whether the purchase offer was successful, the Securities and Exchange Commission brings a resolution on the success of the purchase offer.

The offeror cannot make new purchase offers and cannot purchase the securities to which the purchase offer referred in the 12 months following the resolution of the Securities and Exchange Commission, if those stocks, along with the remaining stocks that the offeror had already possessed, gave him or her more than 25 per cent of the stocks with voting right if the takeover bid is:

- unsuccessful;
- revoked by the potential acquirer;
- conditioned with and thereby terminated as a result of a required approval, permit or other consent by another authorised body (in addition to the Securities and Exchange Commission); or
- conditioned and thereby terminated as a result of non-fulfilment of any of the conditions.

Law stated - 04 April 2022

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?

No fees are prescribed when the offeror decides to cancel the intention to purchase. However, in this case, the offeror cannot make a new offer before the expiry of a one-year term from the date of the cancellation. The new offer can be made in a shorter period if cancellation of the intent is made with the consent of the Securities and Exchange Commission.

In the case of traditional bidders (a competitive bid), the Takeover Law prescribes an option that the bidder can withdraw the acceptance takeover bid. This can be done in the period from the publishing of the purchase prospect until the expiry of the term for the acceptance of the bid. The bidder is to publish the withdrawal within one day of the date of the withdrawal and inform the Securities and Exchange Commission and the Central Securities Depository of the withdrawal of the offer.

Competitive bids can only be made by a person who is not connected with the person who made the initial bid and is not a bank or a brokerage house making the bid in the name and on behalf of the initial bidder.

Law stated - 04 April 2022

Government influence

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

In general, apart from the competition regulations, legislation in North Macedonia imposes no restrictions on business combinations. Official bodies can object to cross-border mergers only if they breach competition law and other regulations concerning the public interest.

Special provisions are only defined for financial institutions, as well as the legal entities performing activities of transfer of real estate, revision and accounting, and other similar activities through which real estate is acquired.

In accordance with the Law on Prevention of Money Laundering and Financing of Terrorism, the entities that are obliged to reveal and prevent money laundering or financing of terrorism are obliged to undertake measures of prevention such as:

- know-your-customer procedures: the entities are obliged to perform an analysis of the purpose and the intention of the activities and they must prepare a written report for the analysis;
- risk-assessment procedures: the entities must determine the risk of money laundering and financing terrorism before introducing new technologies or technologies in development, and new products or services – they must also determine the risk of using the new technologies for money laundering and financing terrorism;
- the procedure on recognition of complex and unusual transactions or suspicious transactions that are performed in an unusual way, which does not have obvious economic justification or evident lawful purpose; and
- special-reporting procedures: reporting (including insider reporting) to the Financial Intelligence Office (FIO).

It is a general rule that any transaction that exceeds €15,000 should be reported to the FIO by the end of the day that the transaction takes place. If there is suspicion over the performance of a criminal act (money laundering or financing of terrorism), the FIO may request that the transaction be withheld. Also, the Securities and Exchange Commission may reject the issuance of a permit for a competitive bid if it determines that it is an offer whose sole intent is to alter the price of the target company's stocks to which the bid refers.

Law stated - 04 April 2022

Conditional offers

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

The takeover can be conditioned by the smallest quantity of securities to which the takeover bid refers, which must be accepted for the takeover bid to be considered successful.

With regard to conditional financing in a cash acquisition, the purchase offer must specify the price and conditions of purchase or, where the case is an exchange offer, the exchange ratio. The offeror cannot change the offer or the conditions in the purchase offer apart from the cases where it is approved by the Securities and Exchange Commission.

Law stated - 04 April 2022

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?

Financing for a transaction can be made by a financial institution. A possible way of performing the financing is to open an escrow account, with documentation that explains the purchase transaction. After several conditions are met, and upon joint approval of the parties, a financial transaction can be closed successfully. Also, the buyer can obtain a loan from the financial institution, strictly for the transaction to be made, so the payment can be made directly from the financial institution. The conditions for obtaining a loan depend on the rules and regulations of the financial institutions separately.

Generally, the seller does not have an obligation to assist the buyer in the financing; however, if this is agreed upon, it shall depend on the mutual agreement between the seller and the buyer, as this issue is not regulated by law.

Law stated - 04 April 2022

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?

Yes, but only in certain cases. According to article 63 of the Takeover Law, when the bidder in a takeover procedure acquires a minimum of 95 per cent of the shares with voting rights of the target company, the bidder has the right to buy out the shares from the remaining shareholders that do not accept the takeover bid. This additional buying must be done according to the same terms and conditions that refer to the takeover bid. The possibility to use the squeeze-out option should be provided in the prospectus regarding the takeover procedure.

If the bidder uses this right, it must submit a request to the Central Securities Depository to purchase the shares of the minority shareholders that did not accept the takeover bid in the acceptance term, under the same terms and conditions for buying the shares as those set in the public takeover bid (namely, the prospectus). The amount necessary for buying these shares would already be provided within the deposit amount paid prior to the commencement of the takeover procedure and, in the case of a squeeze-out, the Central Securities Depository will distribute them accordingly to the shareholders whose shares are subject to the squeeze-out procedure. The Central Securities Depository will then inform all remaining shareholders of the submitted request for the offered purchase and ask them to provide the data for the bank account to which the payment will be conducted. The latter will not effect the transfer of the remaining shares to the acquirer, ultimately leading to the acquisition of 100 per cent of the shares of the public company.

The request for an offered purchase of shares of the shareholders that do not accept the takeover bid must be announced by the bidder in the Official Gazette of the Republic of North Macedonia (the Official Gazette), as well as in one national newspaper. The request must be submitted by the bidder in a time frame of 90 days from the date of announcement of the decision regarding the success of the takeover bid by the Securities and Exchange Commission in the Official Gazette. One of the alternatives for the payment of the shares must be cash payment, disregarding any other method of payment offered and used in the takeover bid. The Central Securities Depository performs the payment of shares on behalf of the bidder and the transfers of the shares on behalf of the bidder; all costs for these transactions shall be borne by the bidder.

According to article 64 of the Takeover Law, when the bidder in a takeover procedure buys a minimum of 95 per cent of

the shares with voting rights of the target company, it has the obligation to buy the shares from the remaining shareholders that do not accept the takeover bid, if those shareholders submit a request for the forced purchase of shares in front of the Central Securities Depository. All of the above-stated terms and conditions for conducting the procedure when the bidder states the offered purchase apply to the procedure when the remaining shareholders request a forced purchase.

Law stated - 04 April 2022

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?

An obligation for notification is imposed on the president of the managing board, who is obliged to notify the Central Securities Depository of the merger within eight days of the date the new company is recorded (or the merger or the division of the joint-stock company). A warrant is to be given in this term for the changes to be recorded in the shareholders' book, namely, for opening a new shareholders' book.

In addition, each company must submit an application for recording the merger in the Central Register.

The submission of the application to the Central Register must be accompanied by a statement given by the members of the managing board that all the decisions for the merger have not been challenged in the prescribed period, or that the challenge has been refused with a final court decision.

In cross-border mergers, a period of at least one month is set forth between announcing the proposal for a cross-border merger and the decision by the shareholders' assembly. After taking the decision for accepting the proposal for the cross-border merger, the merger company must submit a request for a certificate for the pre-merger from the Central Register. The certificate must be issued by the Central Register within three days, counting from the date that the completed documents together with the request are received. The Central Register shall issue a final decision on registering the completed cross-border merger within eight days of the date of submitting the completed documents of the new company.

The legal consequences of the combination occur from the date of publishing the recording of the inscription of the combination in the trade register.

Law stated - 04 April 2022

OTHER CONSIDERATIONS

Tax issues

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

In accordance with the Value Added Tax Law, no value added tax is paid on trading with securities. However, when the seller of the securities is a legal entity, corporate tax shall be paid on the amount of income generated by the sale of securities, and this amount is included in the tax basis of the company selling the securities.

Capital income represents the difference between the sale price of the securities and their purchase price. The capital income made from the selling of securities is included in the tax basis at 70 per cent.

Law stated - 04 April 2022

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?

Business combinations related to labour and employee benefits are regulated by the Law on Trade Companies and the Law on Labour Relations. The Law on Trade Companies prescribes certain elements that the merger settlement and the division plans are to contain, such as the conditions under which the working relationship will be continued with employees of the company subject to takeover. This settlement is made between the managing bodies of the company subject to the company combination, and the division plan is made by the managing body of the company that is subject to division.

Pursuant to the Law on Labour Relations, all rights and obligations concerning employment agreements are transferred to the new employer resulting from a business combination. The new employer is obliged to retain the employees for at least one year. In a business combination, if the rights of the employees are reduced and this results in the cancelling of the employment contract, it shall be considered that the employer cancelled the employment contract for business reasons.

Further, the Macedonian Law on Takeover of Joint-Stock Companies prescribes that in an acquisition of a publicly listed company, the employees must be notified of the proposed acquisition. However, the obligation to notify the employees or the authorised representatives of the employees' organisation within the target company lies with the management body of the target company. The employees are authorised, but not obliged, to state their own opinion on the takeover bid and the procedure for a takeover of the target company.

Law stated - 04 April 2022

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?

Mergers of companies can be conducted for a target company that is in bankruptcy on the condition that the open bankruptcy procedure will be stopped for the reorganisation of the company when it has been prescribed in the reorganisation plan of the bankruptcy manager.

Macedonian laws do not prescribe any legal limitations to make a takeover bid for acquiring shares in a company currently in a bankruptcy procedure.

Law stated - 04 April 2022

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?

Although significant enforcement practices in relation to white-collar crime have yet to be established in North Macedonia, the Financial Intelligence Office, following the adoption of the first anti-money laundering law (2018), has stronger authorisations, which mainly refer to wider control of certain entities and increased cooperation with the Public Prosecutor and the relevant institutions.

On 4 July 2022, the new AML law was published in the Official Gazette of the Republic of North Macedonia, which

entered into force on 12 July 2022. With the adoption of the new AML law, the country had taken a step towards harmonising local legislation with relevant international standards (namely, the Financial Action Task Force guidelines) and with the Fifth Anti Money Laundering Directive (Directive (EU) 2018/843 of the European Parliament and of the Council amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU).

The new AML law provides for a strict compliance regime when it comes to measures and activities that subjects under the law have to undertake, whose compliance is encouraged by severe monetary misdemeanour sanctions (which do not exclude potential criminal responsibility), which can range up to €120,000, depending of the size of the entity and the type of misdemeanour, not excluding potential ban on operations.

Law stated - 04 April 2022

UPDATE AND TRENDS

Key developments

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

Currently, there are no proposals that could significantly change the financial sector and the business combination or acquisition of publicly listed companies. However, as North Macedonia recently entered into Phase II of the Stabilisation and Association Agreement with the European Union, which means that Macedonian issuers are now allowed to issue securities abroad, it is expected that the financial market will improve and eventually experience growth.

Law stated - 04 April 2022

Jurisdictions

Austria	Schindler Attorneys
Bermuda	BeesMont Law Limited
Brazil	Loeser e Hadad Advogados
Bulgaria	Kambourov & Partners, Attorneys at Law
China	HJM Asia Law & Co LLC
Germany	GSK Stockmann
Ghana	Kimathi & Partners Corporate Attorneys
Greece	Karatzas & Partners Law Firm
India	Khaitan & Co
Ireland	Mason Hayes & Curran LLP
Israel	Barnea Jaffa Lande
Italy	Nunziante Magrone
Japan	Hibiya-Nakata
Luxembourg	Bonn & Schmitt
Netherlands	AKD
Nigeria	G Elias
North Macedonia	Debarliev Dameski & Kelesoska
Norway	Aabø-Evensen & Co
Romania	Mușat & Asociaţii
South Korea	Lee & Ko
Sweden	Advokatfirman Hammarskiöld
Taiwan	Lee and Li Attorneys at Law
Thailand	Weerawong, Chinnavat & Partners Ltd
United Arab Emirates	IN'P Ibrahim & Partners
USA	Simpson Thacher & Bartlett LLP

Vietnam	Bizconsult Law Firm