Private mergers and acquisitions in Bulgaria: overview

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Country Q&A | Law stated as at 01-Mar-2019 | Bulgaria

Q&A guide to private mergers and acquisitions law in Bulgaria.

The Q&A gives a high level overview of key issues including corporate entities and acquisition methods, preliminary agreements, main documents, warranties and indemnities, acquisition financing, signing and closing, tax, employees, pensions, competition and environmental issues.

To compare answers across multiple jurisdictions, visit the *Private Acquisitions Country Q&A tool*.

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Corporate entities and acquisition methods

1. What are the main corporate entities commonly involved in private acquisitions?

The main types of corporate entities commonly involved in private acquisitions are limited liability companies (LLC) and joint stock companies (JSC). These types of companies are the most widely used business vehicles in Bulgaria. Shareholders in both an LLC and a JSC can be local or foreign natural persons or legal entities, and the liability of a shareholder is limited to its shareholding participation in the company.

An LLC has a simpler corporate structure and the required minimum registered capital is only BGN2. A JSC must have a minimum registered capital of BGN50,000 and can have a one-tier (a board of directors) or a two-tier (a management board and a supervisory board) system of corporate governance. A JSC allows greater flexibility in terms of issuance and transfer of shares, allocation of shares and differentiation of the rights attaching to them, as compared to an LLC.

2. Are there any restrictions under corporate law on the transfer of shares in a private company? Are there any restrictions on acquisitions by foreign buyers?

Restrictions on share transfer

LLCs. A transfer of shares in an LLC to an existing shareholder is done freely. A transfer of shares to a new shareholder requires a resolution of the general meeting of shareholders (or single shareholder), approved by more than three quarters of all the shares, unless a higher majority is imposed in the company's articles of association (*see Question 24*).

JSCs. Shares in a JSC can be tradeable. The company's bye-laws can provide for other restrictions and conditions on a transfer of registered shares (*see Question 24*). Upon a capital increase through an issuance of new shares, each existing shareholder can acquire such portion of the new shares which corresponds to his/her share in the company's capital before the capital increase. The statutory pre-emption rights of existing shareholders can be restricted or excluded with a resolution of the general meeting of shareholders, approved by more than two thirds of the represented shares.

Foreign ownership restrictions

In principle, investments by foreign entities are subject to the same provisions applicable to investments by Bulgarian investors.

Bulgarian law imposes certain prohibitions on:

- Companies registered in jurisdictions with a preferential tax regime, and persons/entities controlled by them and their true owners, from directly or indirectly participating in procedures to obtain licences under certain specific laws (such as for credit institutions and insurance activities).
- Acquisition of a shareholding participation above certain percentages in certain regulated sectors (such as radio and television and energy), subject to some exceptions.

3. What are the most common ways to acquire a private company? What are the main advantages and disadvantages of a share purchase (as opposed to an asset purchase)?

Share purchases: advantages/asset purchases: disadvantages

The most common ways to acquire a private company are through a share purchase or a purchase of the entire business of the company as a going concern. A major advantage of a share purchase is that it is not subject to VAT. Similarly, a going concern purchase is also not subject to VAT. An asset purchase is subject to VAT, except for certain specific assets.

In a going concern transfer, a disadvantage may be the legal requirement to submit, at least two months before the completion date, a notification to the tax authorities and to the company's employees about the intended going concern transfer.

Share purchases: disadvantages/asset purchases: advantages

A disadvantage of a share purchase is that the buyer may inherit all liabilities in the target. The scope of liability should be identified by legal and financial due diligence and addressed in the transaction documents.

In a going concern transfer, an advantage is that, unless otherwise agreed with the creditors, the seller is jointly and severally liable with the buyer for the liabilities transferred as part of the going concern, up to the amount of the transferred assets.

4. Are sales of companies by auction common? Briefly outline the procedure and regulations that apply.

According to law, tenders and auctions are used in the privatisation process. They are privatisation methods by which the state or a municipality sells shares it holds in a private company. The tender or auction procedure is regulated by the Law on Privatisation and the subordinate acts on its implementation.

In private deals (not involving the participation of the state or a municipality), auctions are not commonly conducted in Bulgaria.

Preliminary agreements

5. What preliminary agreements are commonly made between the buyer and the seller before contract?

Letters of intent
A letter of intent/heads of terms (also referred to as a term sheet) sets out the main terms and conditions agreed between the seller and buyer. A term sheet usually governs issues such as:

- The subject matter of the proposed transaction.
- The purchase price, applied method for its calculation and any price adjustment mechanism.
- Payment terms and escrow.
- Any due diligence and pre-transaction reorganisation matters.
- Conditions precedent to completion.
- Completion date and mechanics.
- Warranties of each of the parties.
- Liability.
- Interim period management.
- Non-competition, confidentiality and exclusivity clauses.
- Governing law and dispute resolution.

Despite its usually detailed nature, a term sheet normally provides that, except for clauses relating to costs, confidentiality, exclusivity and governing law and dispute resolution, it is not binding and does not create any rights or obligations of the parties, and each party reserves the right to terminate the negotiations without any specific reason.

Exclusivity agreements

An exclusivity agreement is usually executed between the seller and a prospective buyer to grant the latter a certain period of exclusivity to carry out due diligence on the target. The seller will undertake not to conduct negotiations with any other person in relation to the proposed transaction, and to provide the prospective buyer with access to information about the target and to negotiate and agree in good faith transaction documentation.

An exclusivity agreement will usually provide that if the seller breaks its obligations during the exclusivity period, the seller must reimburse the potential buyer for the costs and expenses incurred in connection with the proposed transaction.

Non-disclosure agreements

A non-disclosure agreement will usually be executed between the seller and the buyer (and the buyer's advisers). It will normally set out obligations of each of the parties to keep confidential information and documents disclosed by the other party, particularly information and documents disclosed by the seller in relation to the target.

A non-disclosure agreement will usually provide for the liability of the defaulting party to compensate loss or damages caused to the non-defaulting party.

Asset sales

6. Are any assets or liabilities automatically transferred in an asset sale that cannot be excluded from the purchase?

In a going concern purchase, the going concern transfers as a pool of assets, liabilities and factual relationships. It is also possible to transfer a self-standing unit of a company's going concern. In this case, the self-standing unit should be defined in a way evidencing that it is a unit capable of performing an independent activity.

In a going concern purchase, the employment relationships with the employees automatically transfer to the buyer as the new employer (*see Question 32*).

7. Do creditors have to be notified or their consent obtained to the transfer in an asset sale?

An agreement for a going concern transfer must be executed in writing, notarised and registered in the Commercial Register. The going concern transfer is effective against bona fide third parties as of the date of registration in the Commercial Register. In addition, under the Law on Commerce, in a going concern transfer, the transferor must notify creditors and debtors about the transfer. Notification is usually made after the transfer is registered in the Commercial Register, as there is no particular notification period imposed by law.

Share sales

8. What common conditions precedent are typically included in a share sale agreement?

Typically, a share sale agreement will provide for obtaining unconditional merger control clearance from the Competition Protection Authority or the European Commission (if the transaction requires a prior concentration approval).

If the transaction is subject to other prior regulatory approvals or notifications, such as acquiring shares above certain thresholds in a bank or insurance company, the share sale agreement will provide for obtaining such approvals as conditions precedent.

Other common conditions precedent include:

- Obtaining the consent of counterparties to commercial contracts with change of control clauses.
- Repayment of debt and removing registered encumbrances over assets.
- Warranties remaining true and correct.

Seller's title and liability

9.Are there any terms implied by law as to the seller's title to the shares in a share sale? Is any specific wording necessary and do buyers normally impose a higher standard than is implied by law?

There are no specific terms implied by law as to the seller's title to the shares in a share sale. Buyers normally impose a higher standard than that implied by law. The seller's title to the shares is usually subject to full legal and financial due

diligence, which will usually focus on the target's operations (corporate status, regulatory regime, assets, material agreements, financing and security, IP & IT, employment, environmental, data protection, and so on).

The share acquisition agreement normally includes wording that the seller sells the shares with full title guarantee and free from any encumbrances, and the buyer buys the shares with all rights attaching to them as at or after the completion date.

In a share transfer in an LLC, by law the buyer is jointly and severally liable with the seller for any due contributions to the company's capital relating to the transferred shareholding participation, as of the transfer date.

In a JSC, the seller is jointly and severally liable with the buyer for registered shares that are not fully paid-in or that give rise to other obligations to the company. The seller's liability expires two years as of the date of registration of the share transfer in the company's shareholder book.

10. Can a seller and its advisers be liable for pre-contractual misrepresentation, misleading statements or similar matters?

Seller

A seller can be liable for pre-contractual misrepresentation, misleading statements or similar matters. Under the Law on Obligations and Contracts, the parties must act in good faith when conducting negotiations and executing contracts.

Upon a breach of this obligation, the defaulting party owes compensation to the other party for damage incurred. Further, the transaction agreement usually provides for liability of the seller and indemnity to the buyer for breach of the seller's representations and warranties.

Advisers

In principle, the seller's advisers can be liable for pre-contractual misrepresentation, misleading statements or similar matters. For example, under the Law on Advocacy a lawyer must, among other matters:

- Protect the rights and lawful interests of his/her client in the best possible way.
- Not allow the interests of a represented legal entity to be negatively affected by the conflicting interests of a shareholder, manager, director or other affiliated person.
- Maintain confidentiality.
- Not represent or protect both opposing parties simultaneously or subsequently, unless both parties do not have conflicting interests and have consented to such representation.

A lawyer is liable for damages caused to his/her client if he/she breaches his/her obligations under the Law on Advocacy, the Lawyers Ethic Code and regulations adopted by the Supreme Bar. Further, a lawyer must keep professional liability insurance with mandatory minimum coverage as determined by the Supreme Bar Council.

Main documents

11. What are the main documents in an acquisition and who generally prepares the first draft?

The main documents in an acquisition are the sale and purchase agreement and related documents, such as an escrow agreement, transitional services agreement, and a shareholder loan agreement.

The first draft of the documents can be prepared by the seller or the buyer. If the process is structured as a competitive tender, the first draft of the documents is usually prepared by the seller.

Title to the relevant assets is transferred through separate transfer of title documents, which must be executed in a specific form (*see Question 20*).

Acquisition agreements

12. What are the main substantive clauses in an acquisition agreement?

The main substantive clauses in an acquisition agreement include:

- Sale and purchase.
- Subject matter of the agreement.
- Sale and purchase consideration and rules (if any) relating to determination and adjustment of the consideration and/or retaining part of it in escrow.
- Conditions to completion.
- Pre-completion actions.
- Completion mechanics and documents.
- Buyer's and seller's warranties.
- Liability and indemnification.

- Post-completion undertakings.
- Termination.
- Governing law and jurisdiction.
- Miscellaneous clauses (such as announcements, notices, assignment, costs, and so on).

A going concern acquisition agreement will also usually include a clause on the automatic transfer of employees.

13. Can a share purchase agreement provide for a foreign governing law? If so, are there any provisions of national law that would still automatically apply?

In principle, a share purchase agreement can provide for a foreign governing law. However, certain mandatory legal provisions of Bulgarian law will still apply, for example, relating to the form or validity of the agreement, mechanics to transfer shares, and corporate governance requirements.

Warranties and indemnities

14. Are seller warranties/indemnities typically included in acquisition agreements and what main areas do they cover?

Seller representations and warranties and indemnities are typically included in acquisition agreements. Generally, the seller warrants to the buyer that:

- It is validly constituted and not insolvent, over-indebted or in liquidation (for a legal entity).
- It has legal capacity to enter into the transaction and has obtained and/or secured all corporate and other approvals required for entering into the transaction.
- It has the requisite corporate power and authority to perform the transaction.

In a share sale, the seller usually warrants that the shares are:

- Fully and exclusively owned by their registered owners.
- Free from any encumbrances.

- Duly and validly issued, and fully paid-in.
- Not subject to any agreement granting rights to a third party.

In a going concern transfer, corresponding representations and warranties are granted in relation to the assets and liabilities forming the going concern.

15. What are the main limitations on warranties?

Limitations on warranties

Warranties can be limited in certain aspects and as agreed by the parties. For example, liability for losses resulting from breaches of the representations and warranties can be limited for a certain time following execution of the agreement, or a maximum liability amount can be set.

Time limits are usually set according to the applicable statute of limitations. The time limit within which a party can claim damages for a breach or non-performance of a contractual obligation is three years.

Further, it can be provided that:

- No claim can be made for loss or damage suffered due to any laws or administrative practice not in force at the date of the agreement, or due to alteration of applicable legislation.
- The parties are not liable for any contingent liability unless and until it becomes an actual liability.

Qualifying warranties by disclosure

The parties can qualify their warranties by disclosure made by each party. For example, the seller not being liable for a claim by the buyer if the subject matter of the claim or liability arises from any fact, matter or circumstance disclosed to the buyer.

A disclosure letter can be part of the transaction documents, or disclosure can refer to information and documents disclosed during the buyer's due diligence on the target company.

16. What are the remedies for breach of a warranty? What are the time limits for bringing claims under warranties?

Remedies

Each party is entitled to claim damages for breach or inaccuracy of a warranty given by the other party. The parties usually agree in the acquisition agreement on an indemnification mechanism and a procedure for settling disputes amicably, or by reference to arbitration or litigation if agreement is not reached.

Time limits for claims under warranties

The time limit within which a party can claim damages for a breach or non-performance of a contractual obligation is three years.

Consideration and acquisition financing

17. What forms of consideration are commonly offered in a share sale?

Forms of consideration

The form of consideration is usually cash. Sometimes the consideration can be securities or other assets, or the assumption of debt.

Factors in choice of consideration

The choice of consideration depends on the parties' preferences and final goals.

18. If a buyer listed in your jurisdiction raises cash to fund an acquisition by an issue of shares, how is the issue typically structured? What consents and regulatory approvals are likely to be required?

Structure

Cash can be raised to fund an acquisition by increasing the target's share capital. In a listed company the procedure is more formal and includes a public offering of the securities on a regulated market.

Consents and approvals

A resolution to increase the target's share capital must be approved by the general meeting of shareholders, unless the board of directors (or management board, in a two-tier management system) is authorised to adopt the resolution under the company's bye-laws.

The capital increase must comply with special disclosure requirements about the shares to be issued and terms and conditions for their subscription. The process is closely monitored by the Financial Supervision Commission and fines are imposed in case of violations.

The capital increase is completed on its registration with the Commercial Register. The increase is also recorded in the company's shareholders' book kept by the Central Depository.

Requirements for a prospectus

The drafting and publication of a prospectus is part of the public offering procedure (with certain limited exceptions expressly listed by law). The prospectus must contain all information necessary to enable potential investors to make an accurate assessment of the:

- Economic situation and financial position, assets and liabilities, profit and losses, and development prospects of the issuer and the guarantors of the securities.
- Rights attaching to the securities.

A prospectus must not contain untrue, misleading or deficient data. The prospectus must be approved by the Financial Supervisory Commission before it is published.

19. Can a company give financial assistance to a potential buyer of shares in that company?

Restrictions

A JSC is prohibited from providing loans or granting security for the purposes of the acquisition of its shares by a third party. There is no such prohibition on an LLC.

Exemptions

There is an exception to the financial assistance prohibition for a JSC with respect to banks and financial institutions, under strict conditions imposed by law.

Signing and closing

20. What documents are commonly produced and executed at signing and closing meetings in a private company share sale?

Signing

Signing usually involves execution of the acquisition agreement. Depending on the financial aspects and payment mechanism, the parties may also execute:

- An escrow agreement with an escrow agent.
- A credit facility agreement if financing is needed.
- A guarantee agreement.

The transaction may also require obtaining corporate approvals, legal opinions or other subordinate documents supporting the signing.

Closing

At closing all actions required to complete the transaction are undertaken, provided that all closing conditions have been met. The parties may execute a closing protocol.

In a share sale, on closing the parties will execute the document required to transfer title to the shares (*see Question 24*). Additionally, depending on the type of shares, the parties may need to execute other supporting documents, such as a corporate resolution approving the transfer of the shares in an LLC and accepting the buyer as a shareholder in the company.

In a going concern transfer, the parties execute a notarised going concern transfer agreement and the transfer is registered in the Commercial Register, in the name of both the transferor and the transferee. The parties also perform any actions required to transfer assets. These could include executing a notarised deed to transfer title to real estate or a notarised agreement to transfer title to a vehicle, and actual delivery of movables.

21. Do different types of document have different legal formalities? What are the formalities for the execution of documents by companies incorporated in your jurisdiction?

Generally, documents are issued in writing with simple signatures Bulgarian law requires specific formalities in a number of cases.

For example, certain corporate resolutions in an LLC must be notarised, including resolutions on:

- Appointment and release of a general manager.
- Transfer of shares and removal or admittance of a new shareholder.
- Increase or decrease of the company's capital.

- Acquisition or disposal of real estate assets and rights *in rem*.

Additionally, a special form is required to transfer certain assets (*see Question 20*).

22. What are the formalities for the execution of documents by foreign companies?

Foreign companies must comply with their local requirements to execute documents. If a document is notarised outside Bulgaria, the document may need to be stamped with an apostille if the country of signing and notarisation is a party to the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents 1961, or otherwise legalised.

In any case, notarised documents and official documents issued in a foreign country must be officially translated into Bulgarian by an authorised translation agency, and certified for use in Bulgaria under the Rules on the Legalisation, Certification and Translation of Documents and other Paperwork.

23. Are digital signatures binding and enforceable as evidence of execution?

Subject to certain conditions and restrictions, e-signatures are generally binding and enforceable. In principle, only a qualified electronic signature has the same legal effect as a handwritten signature. Under Regulation (EU) No 910/2014, a qualified electronic signature means an advanced electronic signature that is created by a qualified electronic signature creation device, and which is based on a qualified certificate for electronic signatures. The parties can recognise other forms of electronic signature (such as simple or advanced). This must be expressly stipulated and is only enforceable among the parties, not against third parties.

Electronic signatures are not allowed where the law requires a special form, such as a notarised deed or agreement.

24. What formalities are required to transfer title to shares in a private limited company?

LLCs

Shares in an LLC are transferred to a new shareholder through execution of a notarised share transfer agreement. Additionally, the buyer must be accepted as a shareholder by a notarised resolution of the general meeting of the shareholders, approved by more than three quarters of all the shares, unless a higher majority is imposed in the company's articles of association. A number of additional supporting corporate documents must also be executed (*see Question 20*). The transfer must then be registered with the Commercial Register to bind third parties.

JSCs

Registered shares (or the interim share certificates issued in evidence of the shares) are transferred by endorsement in transfer. The endorsement must be written on the back of the share or the interim share certificate, or on a slip of paper attached to it (alonge). The endorsement cannot be partial or conditional.

A transfer of book-entry shares requires registration of the transfer with the Central Depository.

A transfer of registered shares in a JSC must be registered in the company's shareholder book in order to bind the company.

By recent amendments, effective as of 23 October 2018, to the Law on Commerce, the possibility for joint stock companies and limited partnerships with shares to issue bearer shares was removed. Accordingly, joint stock companies and limited partnerships with shares are no longer able to issue bearer shares and bearer shares issued so far must be replaced by registered shares.

Tax

25. What transfer taxes are payable on a share sale and an asset sale? What are the applicable rates?

Share sale

No transfer tax applies on a share sale. However, a transfer of shares in an LLC must be made through a notarised share transfer agreement, which triggers notary fees and a small state fee to register the share transfer in the Commercial Register.

Asset sale

A sale of whole or part of a going concern is not subject to transfer tax. However, a sale of a going concern must be made through a notarised agreement, which triggers notary fees and a small state fee to register the sale in the Commercial Register.

Transfer tax is levied on acquiring real estate assets, limited rights *in rem* and motor vehicles, at rates ranging between 0.1% to 3% of the sale price, depending on the municipality. In case of real estate assets and limited rights *in rem*, if the sale price is lower than the tax valuation, the tax will be calculated on the basis of the tax evaluation.

Similarly, in case of vehicles, if the sale price is lower that the value for insurance purposes, the tax will be calculated on the basis of the value for insurance purposes.

26. What are the main transfer tax exemptions and reliefs in a share sale and an asset sale? Are there any common ways used to mitigate tax liability?

Share sale
No transfer tax applies on a share sale.

Asset sale
In a going concern transfer, transfer tax exemptions include the following:

- A transfer of motor vehicles not registered in Bulgaria is not subject to transfer tax.
- In-kind contributions of real estate assets, limited rights *in rem* and motor vehicles for a subscription of shares are exempt from transfer tax.

27. What corporate taxes are payable on a share sale and an asset sale? What are the applicable rates?

Share sale
Capital gains from the sale of shares form part of the accounting financial result of a resident company, which, if positive after adjustments, is taxed at the normal corporate income tax rate of 10%.

Capital gains of a foreign company realised from a disposal of shares issued by a Bulgarian company are subject to withholding tax at a rate of 10%, unless exempted from tax by a double tax treaty.

Asset sale
Profits from the sale of a going concern or separate assets of a resident company are taxed at the normal corporate income tax rate of 10%.

Profits of a foreign company realised from a disposal of a going concern or separate assets of its Bulgarian permanent establishment are subject to corporate tax at a rate of 10%. Capital gains from a sale of real estate assets are subject to withholding tax at a rate of 10% where no treaty relief applies.

28. What are the main corporate tax exemptions and reliefs in a share sale and an asset sale? Are there any common ways used to mitigate tax liability?

Share sale

Capital gains from the transfer of certain financial instruments (including shares in collective investment schemes and national investment funds, and shares, rights and government securities) performed on a regulated market under the Law on Financial Instruments Markets are not subject to corporate income tax.

When realised by foreign companies, such capital gains are exempt from Bulgarian withholding tax.

Asset sale

Not applicable.

29. Are other taxes potentially payable on a share sale and an asset sale?

A share purchase and a going concern purchase is not subject to VAT.

An asset purchase is subject to VAT at the rate of 20%, except for certain specific assets. Assets subject to VAT when transferred in a typical asset purchase include computers, office equipment, inventory, intellectual property rights like trade marks, and buildings or parts of buildings for which a use permit is issued before more than 60 months.

30. Are companies in the same group able to surrender losses to each other for tax purposes? For example, can interest expenses incurred by a bid vehicle incorporated in your country be set off against profits of the target before tax?

The transfer of losses or expenses from one group company to another is not allowed under Bulgarian tax law.

Employees

31. Are there obligations to inform or consult employees or their representatives or obtain employee consent to a share sale or asset sale?

Asset sale
Employers in Bulgaria must inform and consult trade union representatives (if any), elected employee representatives (if any) or employees on:

- A number of matters concerning the employer's economic and financial situation.
- Employees' rights and duties (for example, a transfer of undertaking and the structure and probable development of employment in the enterprise).

In a going concern transfer, both the seller and the buyer, as the existing and future employer, is subject to information or consultation obligations set out in the Labour Code. These requirements do not apply in a share sale or a transfer of separate assets.

An employer's failure to comply with information or consultation requirements can lead to fines. However, the employees' consent is not required for the going concern sale.

Share sale
The information and consultation requirements do not apply to a share sale.

32. What protection do employees have against dismissal in the context of a share or asset sale? Are employees automatically transferred to the buyer in a business sale?

Asset sale
Bulgaria has implemented Directive 2001/23/EC on safeguarding employees' rights on transfers of undertakings, businesses or parts of businesses (Transfer of Undertakings Directive).

If an employer changes due to a certain event (including a transfer of a self-standing part of an entity, change of ownership of an enterprise or a self-standing part of it, and a transfer of activities including assets), the affected

employees will automatically transfer from the transferor to the transferee, on the existing terms and conditions of their employment.

Transferred employees cannot object to the transfer. The seller as the old employer and the buyer as the new employer are jointly and severally liable for any outstanding obligations to the employees as of the date of the transfer.

Share sale

A share sale does not usually lead to a change of the employer and transfer of employees.

Transfer on a business sale

A transfer of a going concern or self-standing part of it does lead to an automatic transfer of employees (*see above, Asset sale*).

Pensions

33. Do employees commonly participate in private pension schemes established by their employer? If an employee is transferred as part of a business acquisition, is the transferee obliged to honour existing pension rights or provide equivalent rights?

Private pension schemes

Although private pension schemes (voluntary pension schemes separate from the mandatory schemes regulated by law) exist in Bulgaria, contributions to them by employers are not common. In recent years, some employers have provided this as part of benefit packages for employees.

Pensions on a business transfer

There is no express statutory provision specifically governing private pension schemes for employees in a transfer of an undertaking. It could be argued that a transferee should honour existing pension rights of the transferred employees. Under the Transfer of Undertakings Directive, all rights and obligations under the employment relationships are transferred to the new employer on an as is basis.

The general requirements for application of benefits policies must be complied with. In particular, the equal work-equal pay principle, and the prohibition on discrimination (the provision and allocation of benefits must be based on objective criteria and not lead to discrimination against certain employees). It could be argued that a difference in benefits resulting from a transfer of undertaking does not violate either provision. However, due to the lack of statutory rules or definitive court practice, there is a risk of employees bringing claims for unequal treatment or discrimination if pension schemes applied to transferred and existing employees are different. Therefore, employers often harmonise pension rights after closing.

Competition/anti-trust issues

34. Outline the regulatory competition law framework that can apply to private acquisitions.

Triggering events/thresholds

The merger control procedure is regulated by the Protection of Competition Act. A transaction that results in a lasting change of control over an undertaking or part of it must be notified to the Commission on Protection of Competition (CPC) if the statutory thresholds are met, that is, if the total aggregate Bulgarian turnover of all undertakings concerned for the preceding calendar year exceeds BGN25 million and either:

- The total Bulgarian turnover of at least two of the undertakings exceeds BGN3 million.
- The Bulgarian turnover of the target exceeds BGN3 million.

Notification and regulatory authorities

The undertaking acquiring control must notify the transaction to the CPC if the thresholds are met. Notification must be submitted following execution of the relevant agreement, but before any actions are taken to implement it.

Substantive test

The substantive test for assessment is whether the concentration will result in the establishment or strengthening of a dominant position which would significantly impede competition on the relevant market.

There is no specific market share threshold indicating a dominant position. The CPC has accepted that a post-merger market share below 40% indicates low potential for establishing a dominant position. Market share is just one factor taken into consideration. The CPC evaluates the entire effect of the concentration on the relevant market.

Environment

35. Who is liable for clean-up of contaminated land? In what circumstances can a buyer inherit and a seller retain liability in an asset sale and a share sale?

In principle, the condition of the environment must not be altered to result in significant or substantial damage, where natural resources (soils) can no longer be used or their use is materially diminished. This is an obligation for landowners, tenants and/or other users under the Law on Soils.

The general liability regime is fault-based liability under the Law on Protection of the Environment. The polluter is liable to cease the infringement and compensate damage caused.

In addition, no-fault liability may also apply. Landowners sustaining damage from contaminated soils can request the cessation of pollution (a no-fault action in nuisance under the Law on Property).

A no-fault liability/strict liability regime also applies under the Law on Liability for Prevention and Remediation of Environmental Damage, which is essentially an administrative law regime rather than a civil liability regime. A polluter (including a landowner) can be ordered by the Ministry of Environment to clean up contaminated sites, remove any source of pollution and reinstate the environment to its previous condition, irrespective of fault.

Environmental due diligence is often carried out as part of the general due diligence on the target. In addition, the transaction agreement usually includes environmental warranties and indemnities to protect the buyer against liability for environmental damage caused in the past by the seller or its predecessor.

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Recent transactions

- P.P.F. a.s. on the EUR810 million acquisition of the Bulgarian assets of Telenor.

- British American Tobacco on the EUR100 million acquisition of the Bulgarian cigarette maker Bulgartabac's main range of tobacco brands in the country and its retail business.
- Thunder Software Technology Co., Ltd. on the EUR31 million acquisition of the Bulgarian software development company Multimedia Solutions AD.

Languages. English, German, Bulgarian

Professional associations/memberships

- Sofia Bar.
- International Bar Association.
- South-Western Legal Foundation, Dallas, US.
- German-Bulgarian Lawyers' Association, Hamburg.
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Topics

Cross-border - Acquisitions
Asset Acquisitions
Share Acquisitions - Private
Acquisitions - Auctions

Country Q&A

Employment and employee benefits in Bulgaria: overview • Law stated as at 01-Nov-2018
Merger control in Bulgaria: overview • Law stated as at 01-Jul-2018