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Mergers and Acquisitions 2023

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Expert Analysis Chapters

Q&A Chapters

Q&A Chapters Continued

Montenegro

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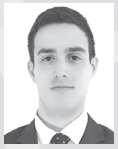

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1 Relevant Authorities and Legislation

1.1 What regulates M&A?

General regulations

The general procedure applicable to M&A transactions is primarily regulated by the Companies Act. This piece of legislation was enacted in 2020 and entered into force in July of the same year as a thoroughgoing codification of Montenegrin Corporate Law harmonised with European *acquis communautaire*. Although the Companies Act was adopted fairly recently, the Government is already working on entirely new legislation in this area. Moreover, in the case of mergers and acquisitions pertaining to joint-stock companies, additional general rules that apply are provided in the Takeover Act and the Capital Markets Act.

Other applicable regulations

Depending on the type of transaction, other regulations may apply, such as:

(i) The Protection of Competition Act (PCA): the PCA is applicable to transactions subject to merger clearance.

(ii) The Regulations of the Capital Markets Commission (CMC), the Central Clearing Depositary Company (CCDC) and the Montenegrin Stock Exchange (*Montenegroberza a.d.*) (MSE): these are applicable to joint-stock companies.

If transactions relate to state-owned companies, the procedure is regulated by the Privatisation Act.

The provisions of the Contracts and Torts Act set the general bases of contract law and the responsibilities associated therewith.

The Labour Act applies with regard to the effects of mergers or acquisitions on employment relations

If a transaction is executed within a regulated industry (e.g. banking, insurance, energy, telecommunications, gambling), additional rules may apply.

Authorities

Depending on the type of M&A transaction, the relevant authorities are the following:

(i) The Central Register of Economic Entities (CREE) – for registration of the transaction.

(ii) The CMC – for approval of the prospectus and takeover bid in the case of joint-stock companies.

(iii) The Competition Protection Agency – for providing merger clearance.

(iv) The CCDC – for transactions involving joint-stock companies.

(v) The MSE – for transactions involving the trading of shares on the MSE.

Other authorities may have competencies in respect of M&A transactions involving regulated entities (e.g. the Central Bank of Montenegro (CBoM) or the Insurance Supervision Agency).

1.2 Are there different rules for different types of company?

The rules applicable to M&A transactions may be divided into the following two groups: (i) general rules, i.e. rules applicable to any type of M&A transaction; and (ii) rules applicable to a specific type of company or specific sector (i.e. regulated industry).

The general rules applicable to merger transactions are rules provided by, e.g., the Companies Act (for procedure of the merger) and the PCA (for obtaining the merger clearance).

Specific rules apply additionally to joint-stock companies listed on the regulated market (for example, the transactions involving listed joint-stock companies have to be executed via the MSE; therefore, they are subject to MSE rules) as well as regulated industries such as banking, insurance, etc.

1.3 Are there special rules for foreign buyers?

Reporting requirements

The Current and Capital Transactions Act prescribes reporting obligations for the target in relation to foreign investors' business connected to the target.

Rules applicable depending on investor domicile

Depending on the domicile of the foreign buyer, it would be advisable to review the benefits prescribed by international agreements, such as double taxation avoidance treaties (43 such treaties are currently in place) or investment promotion and protection treaties (26 bilateral investment treaties and six treaties with investment provisions are currently in force). Please note that Montenegro, as a legal successor of the former Yugoslavia, has re-ratified most of the treaties entered into by the former Yugoslavia. Montenegro has also ratified the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention) in order to foster foreign investments. Foreign investors must take into consideration the applicable rules on the legalisation of documents. It should be noted that Montenegro is also a signatory to the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents (the Apostille Convention). Foreign buyers should, therefore, consult bilateral treaties on the exemption from legalisation (if any).

Foreign investments stimulations
Foreign investors should observe the provisions on the stimulation of foreign investments laid down in the Foreign Investments Act.

1.4 Are there any special sector-related rules?

Yes, there are sector-related rules, such as rules applicable to the banking, insurance, leasing and gambling sectors. These rules are imperative for M&A transactions within the relevant sector, and their breach may result in: (i) nullity of the transaction; (ii) suspension of acquired voting rights; (iii) revocation of licences; or (iv) fines, etc.

For example, the banking sector is strictly monitored by its regulator, the CBoM. Therefore, any direct or indirect acquisition of qualified ownership in a bank is subject to prior approval by the CBoM.

1.5 What are the principal sources of liability?

In general, the principal liability arises out of breaches of: (i) the Takeover Act; (ii) regulations applicable to regulated industries; (iii) the prohibition of insider trading; (iv) market manipulation rules; or (v) the merger clearance procedure (if applicable).

In cases of non-compliance with the rules, the buyer is exposed to (i) fines, (ii) protective measures (e.g. suspension of voting rights), and (iii) other penalties.

2 Mechanics of Acquisition

2.1 What alternative means of acquisition are there?

Typically, M&A transactions are done through asset and share deals. These deals are usually executed against cash compensation, while other types of compensation, such as share-to-share, are not common.

The following options could be considered:

(i) Spin-offs (*odvajanje*) and demergers (*podjela*) followed by a share deal are usually used when the acquirer is interested in buying only a part of the assets or business of the target.
(ii) Mergers (*spajanje* or *pripajanje*) of two or more companies, which can be executed by: (a) transferring all assets and liabilities of one company to an existing company that, in exchange, issues shares to the shareholders of the company being merged; or (b) forming a new company that then issues its shares to the shareholders of the companies being merged.

2.2 What advisers do the parties need?

Generally, the investor should engage local legal, tax and investment advisers in order to cover all of the aspects of the contemplated M&A transaction.

Additionally, environmental and/or technical advisers may be required.

2.3 How long does it take?

The duration of a transaction may be several months, and depends on various factors, the most important of which are the following: (i) legal form of the target (limited liability or joint-stock company – LLC or JS); (ii) structure of the transaction (asset or share deal or combined); (iii) competition filings (whether the transaction is subject to merger clearance); (iv) regulatory approvals (whether the transaction is subject to approval by a regulator, e.g. the CBoM); and (v) takeover bid (whether the transaction is subject to a mandatory takeover bid).

2.4 What are the main hurdles?

The main hurdles depend on the type of transaction:

(i) If the transaction is executed on a regulated market, it will be subject to strict requirements/notifications/deadlines of the Takeover and Capital Markets Act and the CMC by-laws.
(ii) If the transaction is executed in a regulated industry (e.g. the banking sector), it may be subject to approval by a regulator (e.g. the CBoM). This would entail additional disclosures, as well as close discussions with the regulator.
(iii) If the acquisition relates to a state-owned company, it may be subject to the Privatisation Act with the process carried out in the form of an open and competitive tender.
(iv) If the transaction is subject to merger clearance, the parties must disclose a number of documents/information to the Competition Protection Agency.

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

There is more flexibility in those transactions involving LLCs. In these transactions, parties have greater discretion in arranging the terms and conditions and the price of the transaction. On the other hand, transactions involving joint-stock companies tend to be stricter, since they must abide by the provisions of the Takeover Act, the Capital Markets Act and MSE rules.

According to the Takeover Act, all the shareholders of the same class must be provided with equal terms.

The Takeover Act prescribes the following mechanism for price determination in a mandatory takeover bid:

(i) The lowest offered price cannot be lower than the highest price at which the acquirer or associated person acquired the issuer's shares in the period of 10 months prior to the submission of notification on the takeover bids to the CMC.
(ii) If the issuer's shares have been subject to transactions for at least 15 trading days in the three months prior to the submission of notification on a takeover bid to the CMC and if the average price of issuer's shares realised in the 10 months prior to notification to the CMC is higher than the highest takeover price, the acquirer is obliged to offer the average price of the issuer's shares, which is determined as the quotient of the total value of all share transactions and the number of shares subject to those transactions.
(iii) If the issuer's shares have been subject to transactions for fewer than 15 trading days in the three months prior to the submission of notification on a takeover bid to the CMC, the acquirer is obliged to engage an authorised auditor to create an elaborate fair share value.

In the case of a voluntary takeover bid, the acquirer is free to set the price.

The acquirer is also free to determine the price in transactions involving LLCs.

However, the acquirer should bear in mind that, in cases where the price determined does not constitute an adequate compensation for the acquired shares (i.e. the price is exceedingly low), the transaction is exposed to potential challenges in the bankruptcy proceedings against the seller (the maximum period for challenging the transaction in bankruptcy can be up

to five years – where the transaction is executed with the intention to cause damage to creditors) and potential challenging by the creditors through *actio pauliana* (the procedure can be initiated within a period of one to three years, depending on the circumstances of the case).

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

Generally, there is no difference between offering cash and other consideration, but transactions are usually performed against cash consideration.

In transactions executed on the basis of a mandatory takeover bid, the price may be settled in cash or securities or combined (cash and securities). In any case, the price must be determined in accordance with question 2.5 above. If the bidder intends to offer securities for settlement of the price, it is obliged to also offer cash for the shares as an alternative.

The price must be determined for each class of shares referred to in the mandatory takeover bid.

In other cases, such as LLC transactions, the parties may agree on the consideration and the rules are not as strict.

In the case of mergers, de-mergers and spin-offs, monetary compensation for shareholders may be agreed, aside from in share deals, under the condition that the total amount of such compensation is not greater than 10% of the nominal value of shares issued for the assets that were taken over.

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

In the case of joint-stock companies, the Takeover Act explicitly prohibits launching a bid that is not addressed to all shareholders under the same terms and conditions. In a takeover bid, all shareholders must be offered the same terms and conditions and receive the same information about the deal.

2.8 Are there obligations to purchase other classes of target securities?

The Takeover Act envisages the possibility for the acquirer to launch a bid for the preferred shares of the target as well. However, there is no obligation to buy preferred shares.

2.9 Are there any limits on agreeing terms with employees?

According to the Labour Act, in the case of a merger or acquisition, the acquirer must (i) take over the employees of the target, and (ii) keep and apply all rights and obligations determined under the employment contracts and by-laws existing on the date of the merger.

Employees who oppose their employment agreements being taken over are entitled to payment of severance.

Furthermore, the bargaining agreement with the previous employer, i.e. the target, must be observed for one year as of the start of the transaction date.

2.10 What role do employees, pension trustees and other stakeholders play?

Generally, employees may not have any impact on the transaction.

Employees have the rights described under question 2.9 above and the target and acquirer are obliged to inform the workers' union (or employee representatives if there is no workers' union) of the planned transaction at least 30 days before it is effective (including on the consequences and planned measures aimed at the employees). Transactions involving state-owned companies usually involve massive lay-offs; therefore, the acquirer is typically obliged to offer a social security scheme.

Creditors may challenge transactions as indicated under question 2.5 above.

The shareholders who did not vote in favour of a decision, as well as the company's management/directors, may challenge the merger/de-merger/spin-off decision before a court within one month from being informed about it and, at the latest, six months from its enactment, if the procedure was not complied with.

2.11 What documentation is needed?

The type and scope of documentation depends on the type of the intended transaction.

In each case, the applicable regulation provides a list of documents necessary for the completion of the intended M&A transaction.

For example, in the case of a merger, the following documents will be required at least: the decisions/approvals of the boards and shareholders' meeting; merger agreement; demerger or spin-off plan (if applicable); and supporting corporate documents (the new memorandum, articles of association and financial statements).

The transfer of shares in an LLC requires, *inter alia*, the signing and notarisation of a share transfer/purchase agreement, waiver of pre-emption rights (if applicable), and new statutes and articles of association.

Transactions involving a mandatory takeover bid require, *inter alia*, the following documents: the takeover bid; takeover prospectus; agreement with the CCDC; preparation of an opinion on the takeover bid; decision on takeover; and notifications and announcements indicated in the answer to question 2.12 below.

2.12 Are there any special disclosure requirements?

There are a number of disclosure requirements depending on the type of transaction.

Disclosure of documents to the Competition Protection Agency

If there is a need to obtain merger clearance, the parties would be obliged to disclose an exhaustive list of documents requested by the Competition Protection Agency (the transaction agreement, information on the parties involved, financial statements, the parties' business activities in the territory of Montenegro, information on the main suppliers of the parties involved, financial data in relation to the parties' business activities, etc.).

Disclosure pursuant to the Takeover Act

If the transaction involves a joint-stock company and is subject to the Takeover Act, the CMC will require the disclosure of documentation that is needed for the approval of the takeover bid.

Disclosure requirements pursuant to the Companies Act

In the case of a merger, each of the parties involved is obliged to notify its (i) shareholders, and (ii) creditors on the upcoming transaction 30 days prior to the convening of the shareholders' meeting at which the transaction agreement will be discussed. The notice of transaction (merger, demerger) is published in the *Official Gazette*.

Regulated industry
If the transaction is executed in a regulated industry, disclosure of the documents required for obtaining the approval of the regulator on acquisition of shares would most likely be required.

Publication requirements
Depending on the type of transaction, the acquirer is obliged to:
(i) Publish the decision on the acquisition of the shares that triggers a mandatory takeover bid in two forms of print media distributed in the territory of Montenegro within four business days of the acquisition of the shares.
(ii) Publish the takeover prospectus in two forms of print media distributed in the territory of Montenegro within three days of the CMC decision approving the takeover prospectus.
(iii) Upon completion of the transaction, the acquirer is obliged to publish the results in the same manner as it is obliged in the case of the prospectus, within three business days from the CMC decision on termination of the public takeover bid.
(iv) If the acquirer decides to withdraw from the takeover bid, such a decision must be published in accordance with the preceding rules.

The target is obliged to publish an opinion on the takeover bid within seven days of the announcement of the takeover bid.

Registration requirements
Each transaction must be registered before the CREE.

Transactions involving joint-stock companies must also be registered before the CCDC.

2.13 What are the key costs?

The key costs depend on the type of transaction:
(i) The merger clearance fees payable to the Competition Protection Agency start from 0.07% of the aggregate turnover of all the participants in the previous financial year, but may not exceed EUR 20,000.
(ii) The fee payable to the CREE is EUR 3 for LLCs and EUR 40 for joint-stock companies.
(iii) The fee for publication in the *Official Gazette* is EUR 12.
(iv) The fee payable to the CMC depends on the type of transaction and is determined as a percentage of the share issue (e.g. for mergers, it ranges within 0.3% of the share issue, etc.).

Other costs that may apply are the fees of the broker and other advisers, which are determined in a separate agreement, and the notary public fees, which do not comprise a significant amount.

2.14 What consents are needed?

The number of required consents varies from transaction to transaction. With regard to the types of consents, they can be divided into corporate consents and consents issued by the competent authorities.

Corporate consents may consist of: (i) decisions approving the transaction documents; (ii) a decision on the appointment of an independent expert to evaluate financial reports; (iii) a decision on the takeover; and (iv) a decision on the disposition of high-value assets (exceeding 20% of the book value of the company's assets).

The consents issued by the competent authorities may involve the obtaining of: (i) merger clearance; (ii) consent of the regulator of a regulated industry; and (iii) CMC approval of the takeover bid.

2.15 What levels of approval or acceptance are needed?

Generally, from the corporate perspective, the transaction is subject to the approval of the board of directors/management board/supervisory board. If the transaction is a disposition of high-value assets, it is subject to approval by the shareholders' meeting.

With regard to other approval from the competent authorities, please see question 2.12 above.

According to the Takeover Act, in a voluntary takeover bid, the acquirer must specify the acceptance threshold for the offer to be successful. Additionally, in the case of a competing bid, an acceptance threshold may be specified only if the original takeover bid envisaged such a threshold and the same is not achieved by the time of submission of the competing takeover bid. The acceptance threshold for the competing bid may not be higher than for the original bid.

2.16 When does cash consideration need to be committed and available?

The conditions regarding consideration depend on the type of transaction. When it comes to LLCs, the compensation terms and conditions may be agreed freely. On the other hand, joint-stock companies are subject to a stricter procedure. The compensation needs to be provided concomitantly with the acquisition of the shares. Additionally, according to the Takeover Act, a takeover bid may only be launched once the compensation for all the shares addressed in the takeover bid has been deposited.

3 Friendly or Hostile

3.1 Is there a choice?

As a general rule, hostile bids are permitted. In Montenegro, however, major transactions are usually friendly.

3.2 Are there rules about an approach to the target?

The approach to the target is free, i.e. there are no specific rules on approaching the target. However, it should be noted that insider trading is prohibited.

3.3 How relevant is the target board?

Bearing in mind that Montenegro is a relatively small market and that the managements of most joint-stock companies or LLCs are dependent on the shareholders who appointed them, the target board may not be deemed extremely relevant.

However, it is easier to implement a transaction with the cooperation of the target board, due to several reasons such as: (i) disclosure of documents required for due diligence and negotiation procedures; (ii) the necessity to assure the target's shareholders that the transaction is in the interests of both the company and the shareholders; and (iii) facilitation of the registration procedure.

On the other hand, the target board is also relevant because it provides an opinion on the takeover bid.

For defence mechanisms that can be applied by the target, see question 8.1 below. According to the Takeover Act, a search for a white knight is explicitly permitted and such activity of the board is not subject to shareholders' meeting approval.

3.4 Does the choice affect process?

The transaction will be implemented more promptly if there is cooperation between the parties involved.

4 Information

4.1 What information is available to a buyer?

The buyer has access to the following information through publicly available sources: (i) basic corporate data on the target – through the CREE, CCDC, MSE and the target's website (if any); (ii) data on the target's real property – through the Cadastre of Real Estate; (iii) data on the target's status of business accounts – through the CBoM; (iv) data on the status of shares – through the CCDC; (v) data on the encumbrances on shares – through the pledge register kept by the Commercial Court; and (vi) financial reports – through the MSE and tax administration.

Any other information that is not publicly available can be obtained only in cooperation with the target.

4.2 Is negotiation confidential and is access restricted?

The parties involved may arrange for the information received and the negotiation process to be kept confidential. However, as soon as the information is published in accordance with the mandatory provisions of law, this restriction ceases to produce effect.

4.3 When is an announcement required and what will become public?

The announcements made by the acquirer and the target in the case of joint-stock companies subject to a takeover bid are described under question 2.12 above.

Merger clearance decisions are published on the official website of the Competition Protection Agency.

The parties are obliged to submit the following documents to the CREE: (i) the merger agreement, signed and certified before a notary public; (ii) minutes of the shareholders' meeting at which the decision on the merger was adopted; and (iii) the request(s) for deregistration of one or more of the companies being merged. These documents must be submitted to the CREE no later than 15 days after receipt of the CMC decision on the registration of shares based on the merger.

4.4 What if the information is wrong or changes?

According to the Takeover Act, if the information contained in a takeover prospectus is incorrect, or any information that may influence the decision of the shareholders to accept the bid is not indicated therein, the officers in charge will be held jointly and severally liable for the damage caused to the owners of the shares subject to a public takeover bid if such persons were or should have been aware of the incorrect or missing information.

Furthermore, a legal entity that publishes a takeover prospectus with inaccurate information will be subject to a fine ranging from EUR 500 to 40,000. The officer in charge of such a legal entity or natural person acquirer will be subject to a fine ranging from EUR 30 to 4,000.

False disclosure of information in order to gain profit (i.e. fraud) constitutes a criminal offence.

According to the Capital Markets Act, if between the time when the prospectus is approved and the definitive closure of the offer or, if applicable, the time when trading on the market begins, new circumstances arise or if it is determined that a prospectus was published on the basis of inaccurate or incomplete data or information capable of affecting the assessment of the securities, the issuer, the offeror or the person asking for the admission to trading on a regulated market, shall supplement the prospectus with accurate and complete information.

The supplement must be made available to the public by the same means as the prospectus. In such a case, the person who has agreed to buy the shares may withdraw from the transaction. The right to withdraw is exercisable within a time limit, which may not be shorter than two working days after the publication of the supplement.

As regards LLCs, the buyer may claim damages from the seller in the case of breach of the representations and warranties indicated in the sale and purchase agreement with respect to disclosed information.

5 Stakebuilding

5.1 Can shares be bought outside the offer process?

According to the Takeover Act, shares of up to 30% of the share capital of a listed joint-stock company can be directly or indirectly acquired outside the offer process.

In the event that the acquirer exceeds the 30% threshold, it must launch a takeover bid (mandatory or voluntary) in accordance with the Takeover Act.

5.2 Can derivatives be bought outside the offer process?

In general, there are no restrictions with respect to purchase of derivatives.

5.3 What are the disclosure triggers for shares and derivatives stakebuilding before the offer and during the offer period?

The Capital Markets Act envisages the following thresholds that trigger a notification requirement for shares of joint-stock companies listed on the regulated market: 5%; 10%; 15%; 20%; 25%; 30%; 50%; and 75%.

5.4 What are the limitations and consequences?

The Takeover Act prescribes limitations on the ability to market the purchaser to accumulate shareholdings as indicated under question 5.1 above. Furthermore, the Takeover Act envisages a list of exemptions from the procedure of the takeover bid. For example, the takeover bid is not required, *inter alia*, if the acquirer:

(i) Acquires shares on the basis of the public offer for subscription and payment of the increase of share capital of the target.
(ii) Acquires shares on the basis of pre-emptive rights.
(iii) Gained more than 30% of voting shares of the issuer through the process of privatisation.
(iv) Acquires more than 30% of voting shares in the merger of the issuer or change of a legal form.
(v) Acquires more than 30% of voting shares as a bankruptcy creditor in a bankruptcy procedure initiated against the issuer, or in the process of court liquidation of the issuer.
(vi) Acquires shares of the issuer on the basis of inheritance.
(vii) Obtains the shares of the issuer via court settlement.

6 Deal Protection

6.1 Are break fees available?

The arrangement of a break fee is not prohibited; however, if the break fee is excessive, it can be decreased by the court to a reasonable amount. On the other hand, in accordance with the Contracts and Torts Act, breaking off negotiations without a justified reason may result in an obligation to compensate the frustrated costs to the other party.

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

No-shop agreements should be analysed on a case-by-case basis, particularly from the competition perspective. Envisaging this kind of agreement is generally allowed. However, its provisions must not be too restrictive on the target.

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

In principle, the target can agree to issue shares or sell assets. However, it is advisable that each such transaction be approved by the shareholders, especially if it is a major transaction.

6.4 What commitments are available to tie up a deal?

The type of commitments available to tie up the deal depend on the type of transaction.

Specifically, when a transaction involves LLCs or joint-stock companies not subject to the Takeover Act, the commitments available to tie up a deal are many and varied. For example, the parties may use a preliminary agreement, an exclusivity clause, a no-shop agreement as explained under question 6.2 above, or break fees as indicated under question 6.1 above. Furthermore, the parties may agree to deposit the consideration in an escrow account.

When it comes to listed companies, some of the envisaged mechanisms are difficult or impossible to implement. For example, exclusivity may not be guaranteed in a public takeover bid, etc.

7 Bidder Protection

7.1 What deal conditions are permitted and is their invocation restricted?

The conditions for completion of the M&A transaction generally depend on the type of transaction. Specifically, the more regulated the market/sector of the transaction, the less discretion is given to the parties in setting the conditions of the transaction. The parties have the most freedom to determine the conditions of transactions involving LLCs. Conversely, the parties will not have as much freedom in laying down the conditions for transactions carried out on a regulated market, since they are subject to stricter scrutiny.

The acquirer cannot withdraw a bid upon publishing, except in certain cases provided by the Takeover Act; for example: (i) existence of a competing bid; (ii) occurrence of *force majeure* events; or (iii) initiation of bankruptcy or liquidation proceedings against the target.

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

The actual control of the bidder is established in accordance with question 7.3 below.

The Takeover Act regulates and restricts the activities of the management of the target in terms of prohibiting the management from frustrating the bid.

During the process, the parties may agree on the target management's obligation to keep the ordinary course of business and not incur losses and damage for the target. However, when envisaging these provisions, the parties must be careful not to create a provision that may constitute control that has not been approved by the Competition Protection Agency.

7.3 When does control pass to the bidder?

Control passes to the bidder upon completion of the transaction, i.e. upon registration of the transaction with the CREE or the CCDC.

7.4 How can the bidder get 100% control?

Complete control of the target may be acquired by way of squeeze-out in the case of joint-stock companies.

In cases where not all of the minority shareholders are willing to sell, a squeeze-out mechanism could be a solution. However, squeeze-out can be triggered only in the case of joint-stock companies if the majority shareholder holds 95% of the shares in the target acquired after a takeover bid.

8 Target Defences

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

The target has limited options to act through its management.

Specifically, during the period from the launching of a bid until the announcement of the results of the bid, the management may not do the following without prior approval of the shareholders' meeting: (i) conclude transactions outside the ordinary course of the target's business; (ii) perform activities that could significantly jeopardise further operations of the target; (iii) acquire its own shares, or own securities that can be exchanged for shares, or annul its own shares or securities; and (iv) perform activities that aim to obstruct or impede acceptance of the public takeover offer.

However, the management may seek a more suitable competing bidder or issue a negative opinion on the bid.

8.2 Is it a fair fight?

The defence mechanisms of the target company can be seen as limited.

9 Other Useful Facts

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

There are two main aspects that can influence the success of an acquisition. One is the cooperation of the target and the

acquirer, and the other is cooperation with the competent authority (i.e. the regulator, the MSE, the CMC, or the Competition Protection Agency).

9.2 What happens if it fails?

If the acquirer withdraws from the takeover bid, the CMC will annul the prospectus.

For interruption of negotiations, please see the answer to question 6.1 above.

10 Updates

10.1 Please provide a summary of any relevant new law or practices in M&A in your jurisdiction.

Montenegro is currently bringing its legislation in line with the EU *Acquis Communautaire* as a candidate for EU membership. The vast majority of legislation dealing with M&A is therefore based on relevant EU directives. The most recent (important) legislative changes affecting M&A transactions were introduced in 2020, with the adoption of the Companies Act. Notwithstanding this, the Government is currently working on new draft legislation in this area, although it is unclear when will it be adopted. Additionally, amendments to the Capital Markets Act are planned in the near future; however, it is still not clear whether they might affect M&A transactions.

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