Latvia

Negotiated M&A Guide 2022

Corporate and M&A Law Committee

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1. INTRODUCTION

1.1 The legal landscape

The mergers and acquisitions of companies or any type of business entities or assets in the Republic of Latvia are not governed by any special acts, but rather by general laws of the country. The Civil Law (*Civillikums*) governs contractual relationships, while the Commercial Law (*Komerclikums*) governs the establishment and operation of commercial entities, and the general terms for share alienation. Part IV of the Competition Law (*Konkurences likums*) is dedicated to merger and acquisition control.

Article 15 of the Competition Law provides that, prior to merger, the parties who have decided to merge must submit a merger notification to the Competition Council of the Republic of Latvia if the aggregate turnover in Latvia of the parties to the merger in the last financial year has been not less than €30m, and the turnover in Latvia of at least two parties to the merger in the last financial year has been not less than €1.5m for each. In 2020, the Baltic countries (ie, Latvia, Estonia and Lithuania) collectively recorded 70 M&A deals worth a publicly announced total of approx. €1.2bn. The Annual Report of the Competition Council of the Republic of Latvia for Year 2020 reflected that 11 of those were recorded in Latvia. In the 11 mergers assessed, the Competition Council did not see any possible threat to competition and therefore authorised the transactions, with conducting a more in-depth economic analysis in two cases.

1.2 The impact of Covid-19

As the spread of Covid-19 virus has made its mark in the world, the M&A sphere in Latvia has been no exception. In the first half of 2020, the number and volume of M&A transactions in Latvia decreased, which can be explained by the priorities of market participants to maintain economic activity and stability. However, forecasts envisaged greater market concentration in various sectors, which would significantly increase the number of M&A transactions. The second half of 2020 reflected this with a satisfactory market recovery and various major transactions. While European M&A deal volumes dropped in the light of the pandemic, the Baltic market recorded slight growth. In practice, as per request of some market participants and subject to emergency situation regulation, the Competition Council extended some of the deadlines for responding to requests for information and merger cases that exceeded the decision-making deadlines provided for in the Competition Law.

1.3 Market trends and forecasts

In recent years, the M&A market in Latvia has generally been a seller-friendly environment. International investors have found the Baltic region to be appealing thanks to the legislative framework being favourable to businesses; EU membership, which provides for certain stability and security; and economic growth exceeding that of most Western European countries. Thanks to this growing appetite for investment, sellers have seemingly had the upper hand when negotiating M&A deals.

When it comes to indicating which of the industry sectors holds the most potential, technology, media and telecommunications (TMT) is dominating both across the continent and in Latvia in terms of volume. A highly technically qualified labour force, robust education systems and government backing for innovation assist the TMT sector in the Baltic region. Other noteworthy industries include industrials and chemicals, energy, transportation, healthcare, and finance.

2. TYPE OF TRANSACTION STRUCTURES ADOPTED IN PRIVATE M&A TRANSACTIONS

In Latvia, there are four preferred structures for M&A transactions – share purchase, purchase of assets, merger/acquisition by reorganisation and acquisition via joint venture. The Competition Law stipulates that an M&A transaction is not only a consolidation or acquisition of another company, but also, under certain circumstances, transactions that result in the acquisition of influence in another company or the acquisition of a company's assets or the right to use them. Reorganisation within one parent and subsidiary corporation is not considered a M&A transaction from the Competition Law perspective.

2.1 Share purchase transactions

A share purchase transaction is one of the most common and preferred forms of acquisition, as the procedure is relatively legally undemanding compared to others. A share purchase transaction is less time-consuming and more cost-effective compared to purchase of assets; there are also fewer statutory procedures compared to typical merger transactions. Ownership of the shares is transferred when both the buyer and the seller, as well as the chair of the management board of the company in question, sign the company shareholder register before a notary or by using a safe qualified electronic signature.

However, in a share purchase deal, the buyer assumes all of the target company's duties and liabilities, whereas in an asset purchase transaction, the buyer of assets may be able to reduce the acquired obligations and liabilities to some extent. That being said, the buyer may have to expend significant effort during due diligence process to understand such liabilities and then extract extensive representations, warranties and indemnity provisions from the seller for any undisclosed liabilities.

When performing due diligence, it is highly recommended that the buyer gets acquainted with the target company's contractual relationships with its clients or suppliers. This is important because the contracts may include change of control clauses, allowing the other party to terminate the contract if the ownership of the company changes. A rate of 3 per cent corporate income tax is applicable to a non-resident's income from the sale of shares, if, in the reporting year when the sale takes place or in the previous reporting year, the immovable property located in Latvia directly or indirectly (through holding in one or several other persons established in Latvia or abroad) accounts or has accounted for more than 50 per cent of the value of assets of such company.

2.2 Asset purchase transactions

Acquisition of assets is the preferred structure in cases when the buyer may want to acquire just a part of an entity. During an asset purchase transaction, the buyer has a notable level of control over the types of assets and the liabilities therein that are being purchased. On the contrary, during a share purchase transaction, the buyer may be lacking control over the obligations and liabilities that come with the shares. A purchase of assets is therefore a more transparent undertaking compared to others, unless the transaction is considered to constitute a transfer of the actual enterprise. However, an asset acquisition may be more complicated than a share purchase in terms of time and effort necessary to transfer each asset, as well as from a taxation perspective.

Where the transfer of assets is a transfer of undertaking, as defined by Latvian and EU legislation, there is an extra layer of complication, as the sale of assets alone may not constitute a transfer of an undertaking. There may be material implications and possible liability for the buyer, if the asset transaction is performed by a sufficiently organised and autonomous economic unit or corporation that is transferred as a functioning entity (as a going concern). According to relevant EU and Latvian regulations, the transferor's rights and obligations arising from an employment contract or from an employment relationship existing on the date of a transfer shall, by reason of such transfer, be transferred to the buyer. The Commercial Law also stipulates that the new acquirer of assets is accountable for all liabilities arising from the transaction. However, it is worth noting that the seller may be jointly accountable for the undertaking's obligations that have occurred within a period of five years prior to the transfer.

There are also some assets that cannot be acquired by others, such as specific insurance policies or bank accounts. The transfer of intellectual property, licences and permits may also have some type of restrictions. Under the Civil Law, contracts must be transferred by a novation agreement, rather than being assigned to the buyer; therefore, the transfer of more specific types of assets should be included in the provisions of the asset purchase agreement in order to avoid risks later on. If an asset consists of a real estate, a state fee of 2 per cent of the purchase price of the property shall be paid upon registration of the change of ownership. VAT may be applied to the sale of assets.

2.3 Mergers

Under the Commercial Law, there are two types of mergers – acquisition and consolidation. Acquisition is a process whereunder the acquired company transfers all of its property to the acquiring company. Consolidation is a process whereunder two or more companies (acquired companies) transfer all their property to a newly founded company (the acquiring company). Upon merger, the stockholders, shareholders or members of the acquired companies become shareholders of the acquiring company. The seller and the buyer of the business are jointly and severally liable for those liabilities which have arisen before the transfer of the enterprise, or its independent part to the ownership or use of another person, and the term or condition of which has occurred within a period of five years after the transfer of the enterprise.

Relatively less favoured amongst M&A transactions in Latvia, an acquisition via reorganisation can be both more time-consuming and complicated, as there are lengthy procedures established for the protection of the creditors of the company acquired. Under the Commercial Law, a statutory merger is a transaction whereunder one company is merged into another company with all its assets and liabilities, thus creating a single entity.

However, if the assets of a merging undertaking are, for example, largely or entirely immovable, there is no need to sign an agreement for such transfer as the assets, including intellectual property and licences, are transferred to the acquiring undertaking by way of universal legal succession. This is the main argument that distinguishes a merger from the acquisition of assets, where all the assets must be transferred to the acquiring party pursuant to the statutory provisions governing property transactions.

As for taxation, when high-value property is transferred as part of a merger process, no income tax and VAT apply to the exchange of holdings (shares, contribution or down payment) that occurs throughout the merger process, as there is no turnover if one undertaking transfers its assets to another undertaking via merger. Additionally, no state fee is applied.

3. PRELIMINARY AGREEMENT DOCUMENTATION

The main purpose of a non-disclosure agreement (NDA) and a letter of intent is to define, in plain language, the intention of the parties to enter into the main transaction and, as far as possible, to outline the main terms that should be included in the transaction documentation.

3.1 Non-disclosure agreement

When a M&A transaction takes place, most of the information contained in the transaction is sensitive, confidential and considered a trade secret. Therefore, in order to disclose and share sensitive information to other parties of the deal and not to disclose confidential information regarding the possible M&A transaction to third parties, a NDA must be concluded between all related parties. In Latvia, the NDA is a classic preliminary agreement document, as in almost all M&A transactions the parties want to guarantee that the information shall be kept confidential.

The NDA provisions must be precise, specifying the information that shall be confidential and shall not be disclosed to third parties, the persons who are entitled to access the information, and the provisions that specify when the information may be disclosed. The NDA shall be binding upon the parties.

3.2 Letter of intent

A letter of intent (LOI) is a document outlining the understanding between two or more parties that they intend to formalise later in a legally binding agreement. Like a term sheet, an LOI is usually not intended to be legally binding, except for the binding provisions included in the document. It confirms one party’s initial commitment to enter into an M&A deal. It can be also called a memorandum of understanding (MOU) or a term sheet; however, there are some differences between those two terms. The LOI may also be in the form of a letter setting out provisions before the final agreement, both parties’ intentions in the agreement, and the main terms of the potential M&A deal. Usually, the LOI addresses the timeframes and deadlines for the transaction, as well as setting the principles for purchase price determination.

Confidentiality could also be included as a provision in the LOI, as well as other provisions such as no-solicitation provisions; however, the LOI usually contains provisions regarding requirements and deadlines. In cross-border M&A deals, it may include provisions regarding the governing law. It is also possible to define certain limits that one of the parties wants to set, for example, that certain guarantees will not be provided by the seller or the like.

In Latvia, typically the LOI is not binding on the parties, but it should be noted that the parties to the LOI also tend to include provisions regarding confidentiality, costs, damages etc. If there is a dispute between the parties, the court may, in some cases, recognize that the LOI or its particular provisions shall be nevertheless binding on the parties. It must be noted that the parties have a duty to negotiate in good faith, without deception or coercion and in accordance with the Civil Law.

4. DILIGENCE STAGE

At the time the parties have agreed on the preliminary agreement stage, have entered into a NDA and/or a LOI has been drawn up, the parties shall start to exchange information and conduct proper due diligence on the M&A deal. Depending on the specific company and its conducted business, various types of due diligence can be conducted, including legal due diligence, financial due diligence and tax due diligence. In addition, technical due diligence, environmental due diligence or other types of due diligence specific to the business may be carried out.

The due diligence process provides an indication of whether the other party has provided adequate information about current legal, financial and other obligations. When compiling and evaluating such information, the parties are better prepared to make an appropriate decision. The seller's title to the shares, structure of the target is evaluated-on the basis of:

a) basic corporate information (including the shareholder structure, title to the shares, structure of the target, management, etc);
b) agreements between related parties;
c) licences and permits related to the business of the target;
d) assets (including movable and immovable property, and lease agreements);
e) commercial agreements (main clients/suppliers);
f) loans and liabilities (including guarantees issued to secure liabilities of third parties);
g) employment details of the target;
h) intellectual property;
i) information technology;
j) insurance structure;
k) environmental matters;
l) taxation and other obligatory payments; and
m) litigation.

These are some of the aspects that may be taken into account when conducting a due diligence procedure on a potential M&A deal in Latvia. However, each business has its own specifics; therefore, due diligence on business will have a unique approach and specific aspects shall be evaluated in each M&A deal. The challenging things at due diligence stage can be related back to the previous section: ie, it is advisable to draw up a letter of intent or a term sheet to set specific deadlines and goals, otherwise the entire process may drag on or, if there are no deadlines, result in a breakdown of the transaction.

Whether or not there is a preliminary agreement, problems may also arise if, for instance, the seller refuses to disclose information essential for the potential buyer. The seller may consider that the information shall not be disclosed, because it is strictly confidential and does not fall within the scope of the previously concluded NDA, which may cause disputes or even legal action, not to mention that the desired M&A deal in this case may fail.

Communication is currently likely to cause difficulties due to the epidemiological situation in Latvia and the world; saying that, it could also be seen as a benefit for cross-border deals, because communication in a virtual environment (such as Zoom, MS Teams, etc.) is more convenient, as it does not take time and resources to travel to another country. In recent times, documents for due diligence are typically posted in a virtual data room.

In addition, in Latvia it is typical that in vast majority of cases the due diligence is conducted by the buyer. Vendor's due diligence is still quite rare. The due diligence is usually performed before the conclusion of the share purchase agreement. However, in some transactions, a share purchase agreement can be signed, then due diligence carried out, and then the transaction is closed (closing).

It is necessary to understand all the costs and to find out the potential for any unplanned costs, as well as for both parties to communicate well, so that the deal can be beneficial for both parties.

As mentioned above, every M&A deal must be tailored to the specific case. Thus, by having an individual approach to each situation, both the buyer and the seller will be able to obtain the best possible outcome. It is important that the parties agree on the scope and content of the information to be disclosed before the due diligence stage, so that due diligence can proceed smoothly and without unnecessary controversies and problems.

5. MAIN TRANSACTION AGREEMENT

5.1 Formal requirements

5.1.1 Principal legislation for M&A transactions

In Latvia there is no single act specifically regulating M&A transactions. There are multiple regulatory enactments and norms that are applicable to various corporate company forms and different M&A transaction types and their aspects (corporate, general agreement regulation, taxation matters).

The Civil Law regulates the general agreement conclusion process, such as:

- the agreement definition, offer and acceptance;
- lawful agreement elements and transaction forms;
- the parties and subject of the agreement;
- expression of intent for concluding an agreement;
- faults in the expression of intent (mistake, fraud, duress) that can result in loss of validity of the agreement in case of any claims, or its invalidity from the moment of the concluding; and
- transaction term interpretation and liability for the alienator, contractual penalty and interest calculation.

The Commercial Law, being a special law (versus the Civil Law as a general law) regulates the procedure for share acquisition in more depth. Additional regulation is included in the Group of Companies Law, regulating the group of companies' internal relations (ie, company, with a decisive influence in other company or companies), while the Law on Governance of Capital Shares of a Public Person and Capital Companies of the Republic of Latvia, lays down terms for the reorganisation of public person (state) owned companies.

The Competition Law lays down the regulation for mergers in respect of potential competition restrictions arising as a result of company mergers. This includes the procedure for reporting a merger to the Competition Council, as well as the potential fines for breaching the competition regulation.

Taxation matters for M&A transactions are regulated by various tax laws, including the Law On Taxes and Fees, the Corporate Income Tax Law and the Cabinet Regulations, as well as the relevant foreign laws and regulations applicable in case of cross-border merger.

5.1.2 Transaction types

Share purchase agreement

Limited liability company (LLC) shares and joint-stock company stock purchases in general are the most commonly used forms of share acquisition, as the purchase of shares and stock is a relatively fast and simple procedure. The buyer acquires the shares in a legal entity, but its liability is limited only to its investment into the share capital of the respective company.

The Commercial Law regulates the requirements for share and stock purchases. With respect to LLCs, the Commercial Law provides for pre-emption rights: in case of sale of the shares, they must be offered to the other shareholders of the company. The time period for the utilisation of the right of first refusal shall be one month from the date when the notice regarding the sale of shares is sent to all shareholders, unless a shorter period of time has been specified in the articles of association. The shareholder can refuse to use the right of first refusal in writing before the end of the specified time period; however, if two or more shareholders use their rights of first refusal and the number of the shares to be sold is sufficient, the shares shall be divided between these shareholders in proportion to the shares owned by them.

The law does not provide for pre-emption rights in case of sale of stocks of joint stock companies, unless such a provision has been included in the articles of association of the respective joint stock company. The purchase agreement is usually concluded in writing, although the law does not necessarily mandate it to be in writing. The Commercial Law stipulates that a change of shareholders must be registered in the register of shareholders; with respect to LLCs, the folio where such changes are recorded must be signed by the chair of the management board of the company, as well as by those shareholders whose rights have changed. The signatures must be approved by a notary public or parties must affix a secure qualified electronic signature on the document. For joint stock companies, the notary approval of the signatures is not required.

Asset purchase

If the buyer wishes to acquire only certain assets of the target company, the parties may enter into an asset purchase agreement. Where appropriate, the agreement may also include the transfer of specific liabilities related to the respective assets.

If the asset concerned is considered to be an organisational economic unit of the seller and includes both tangible and intangible assets, it can be considered as a transfer of undertaking. According to the Commercial Law, the acquirer of the undertaking will be responsible for all the liabilities of such undertaking. However, the seller and the buyer will be jointly liable for liabilities of the undertaking that arose prior to the transfer and are to be fulfilled in the five-year period after the transfer.

Additionally, it should be noted that, for the items to be registered in public registers, the law may provide for a specific procedure for transfer of title and recording changes of ownership (eg, the title to the real estate is transferred at the moment the new owner is recorded in the Land Register).

5.2 Overview of typical agreement key clauses

5.2.1 General structure of agreements

According to the Civil Law, the essential components of the agreement are the parties, the subject of the agreement and the price. The purchase agreement typically includes additional provisions, and the usual structure of the agreement contains the following sections:

a) interpretation and preamble – description of the parties and the transaction;
b) subject of the contract – definition of the sales object of the transaction;

c) purchase price – description of the price components and the payment procedure;
d) closing conditions – actions necessary for effectuating the transfer of the title;
e) warranties, indemnities and other such undertakings;
f) terms and conditions of the seller's liability (including liability limitation clauses);
g) further obligations of the parties – non-competition, non-solicitation, confidentiality;
h) choice of governing law and dispute resolution, etc.

5.2.2 Parties to the agreement

Irrespective of the agreement type, the preamble of the agreement identifies the parties to the transaction, and specifies the names, registration numbers and registered addresses of the respective parties.

In case of the purchase of real estate, it must be assessed whether the buyer is entitled to acquire the land (including farmland) in the property. There may be some formalities (municipality's permission, municipality pre-emption rights, etc) that must be completed.

The preamble of the agreement usually describes the purpose and actual and legal circumstances under which the agreement is concluded. The circumstances mentioned in the preamble may play a decisive role in interpretation of the specific provisions of the agreement.

5.2.3 Subject of the agreement

The subject of the agreement describes what civil law relationship is established between the parties when entering into the agreement. The subject of the agreement must include a coherent declaration of intent by the parties to establish the specific obligation and the material components of the transaction. For example, the subject of the share purchase agreement will be the undertaking of the seller to sell the shares to the buyer, and the obligation of the buyer to buy the shares under the provisions specified in the agreement. The subject of the agreement will also include the description of the sales object – shares or specific assets.

5.2.4 Agreement price and payment procedure

The essential element of the purchase agreement is the purchase price. The price calculation mechanism, as well as the procedure of payment, must be precisely described. The amount of the purchase price or service charge or the procedure for determining it must be described.

An agreement on a fixed amount to be paid at the closing is one of the most widely used forms of the purchase price payment. At the same time, the final price is usually calculated after the transaction on the basis of the actual accountancy data as at the closing date. The agreement usually describes in detail the price calculation and adjustment mechanism, the obligations of the parties, as well as dispute resolution (eg, involvement of professional auditors, etc) in case the parties fail to reach an agreement. Less popular are earn-out agreements with purchase price being based on the future economic performance of the target company.

5.2.5 Completion terms and closing procedure

Usually, the purchase agreement includes a list of preconditions that each party must fulfil for the transaction to be closed.

If an escrow account is used for purchase price settlement, one of the buyer's obligations is to pay the purchase price (or a part thereof) into the escrow account.

The agreement must precisely list the actions to be taken at the closing. The agreement may also specify the persons that must be present at the closing, including those apart from the seller and the buyer.

For example, in the case of a share transfer, the shareholder register must be signed by the chair of the management board of the company, and the signatures must be approved by a notary public. It is therefore important to specify that the said persons are invited to participate, as well as to determine which of the parties shall witness it.

Given that remote closing is becoming increasingly popular, it is important to lay down the precise closing procedure, and the sequence of actions to be taken at closing.

5.2.6 Security

In share, stock and asset agreements, deposit payment or earnest money payment clauses are often used as security for the seller. In case of non-performance by the buyer, the deposit or earnest money is kept by the seller as compensation. Usually, the deposit amount ranges between 5 to 25 per cent of the purchase price.

The agreement may provide for deferred payments to safeguard the interests of the buyer in case of breach of any of the seller's representations and warranties. Such a holdback amount is usually set between 5 to 10 per cent of the purchase price, and the length varies from six to 36 months (usually depending on the period in which warranty claims can be made).

To protect the interests of both parties, it is typical to use an escrow account for the purchase price settlement, with a bank chosen as the institution to ensure that the purchase price shall be paid to the seller only when the title to the shares/assets is transferred to the buyer.

5.2.7 Representations and warranties

Typically, the section on representations and warranties will include the description of the target (company or assets) reflecting the ownership/title to the shares/assets; the legal and technical status of the assets; the legal and financial condition of the target company; and other important factors. The buyer usually seeks representations and warranties to support the due diligence findings, and obtain comfort, eg, regarding the absence of negative circumstances. The trend of including an extensive list of warranties continues to increase.

The seller typically attempts to keep its warranties as narrowly drawn as possible, and the recent trend is to use different qualifiers, such as qualifiers related to materiality, material adverse effect, knowledge, etc. Quite often, definitions limit knowledge to one or more specifically identified persons, such as management board members whose knowledge is taken into account for the knowledge definition.

The amount and scope of warranties provided by the buyer to the seller are significantly lower. In the light of the anti-money laundering regulations in Latvia, the standard is to require the buyer to warrant and provide proof of the legality of the origin of the funds used for purchase price payment.

5.2.8 Remedies and indemnification

In addition to representations and warranties, purchase agreements generally include indemnification provisions, according to which the seller agrees to defend, hold harmless, and indemnify the buyer in case any of the seller's warranties turns out to be false or incorrect. The sellers typically seek different liability limitations. The following limitation of liability provisions are often included in contracts:

a) *De minimis amount*: the minimum limit for any individual claim.
b) *Basket/threshold*: the minimum limit for claims in aggregate, or an amount which must be reached before any claims can be made by the buyer. The amount will often depend on the purchase price, but 1–2 per cent of the purchase price is quite standard. It is in the buyer's interests to agree that, once this threshold has been reached, the entire amount can be claimed, not just the surplus above the agreed figure.
c) *Maximum cap*: the total amount that the seller can be liable for in respect of breaches of warranty. As the M&A market in Latvia is currently driven by sellers, the standard cap is rather low at 10–25 per cent of the purchase price.

In vast majority of cases, recovery of loss of profit is not allowed. It is also a common practice to include the obligation of the buyer to notify the seller of any third-party claims received, and to ensure that the seller is given an opportunity to defend against such claims.

5.2.9 Agreement termination

Agreement termination clauses generally provide for termination in case of non-payment of the purchase price to the buyer, or failure to transfer the purchase object (the rights to shares, stock, by registering these in the relevant registries of the register of enterprise, etc) to the seller. However, the parties may agree upon the agreement termination in various other cases in accordance with their wishes: for example, if a breach of any material warranty is established by the closing, or the transaction is not closed within a specified period of time.

Additionally, agreements can be considered as non-valid from the moment of their conclusion if the transaction has occurred as a result of crime (eg, fraud, using document forgeries, breach of competition regulations), if a merger has not been reported to the Competition Council if required by law, and in other cases.

5.2.10 Choice of law, dispute resolution and proceeding language terms

For parties and companies the seat or assets whereof are located in Latvia, the choice of law is usually the laws in force in Latvia; however, the parties may choose the application of other laws in their agreement, as long as this does not alter the imperative norms in force in respect of the procedures for share/stock registration, company management, taxation, competition norms or other applicable regulations.

Similarly, the dispute regulation usually includes the courts of Latvia; however, in accordance with the Arbitration Law, it is also possible to include the arbitration court (which not a state institution, but a strictly procedurally regulated private dispute resolution method that results in a binding ruling).

The parties usually prepare the agreements in Latvian; however, it is common to have a dual language agreement if foreign parties, companies, shareholders, stockholders or assets are involved. Typically, English is used as the second language.

6. TYPICAL CONDITIONS TO CLOSING/RELEVANT REGULATORY REGIME

6.1 Typical conditions to closing

In most cases, there is a time gap between the signing of the agreement and the closing of the deal, as certain regulatory approvals are required. With such a time gap, there are certain conditions from both parties that must be met for a successful closing of the deal. If these conditions are not met, then the other party is not required to close the transaction. Some of the more popular closing conditions in a definitive purchase agreement are:

a) the buyer should ask for the representations and warranties to be accurate as of the signing, as well as of the closing date;
b) the buyer and the seller can negotiate how accurate the representations and warranties need to be, as all representations cannot be standardised; and
c) material adverse effect is something that is significant for determining whether the conditions to closing are satisfied.

The acquisition agreement must state the procedure by which title to the shares, stock or the assets will be transferred to the buyer. It must be signed by both parties, either by affixing safe electronic signatures with a time stamp or being signed in the presence of a notary public. If the documents are signed abroad and a valid e-signature option is not available, notary certified documents must be apostilled for Hague Agreement countries or legalised (if the relevant country is not part of the Hague Agreement), and the foreign language versions translated. The same signature requirements apply for the shareholder register and register of enterprises form KR18.

During the Covid-19 crisis, additional clauses concerning *force majeure* and public safety, insurance, etc, have been included, such as:

a) the current state of grants, loans and tax deferrals designed to address the adverse effects of the pandemic;
b) compliance of the representations and warranties forming part of the existing loan facilities;
c) compliance with commercial lease agreements;
d) compliance with new health and safety requirements;
e) impact of the lockdown on the supply chains of the target company;
f) non-performance of the contractual obligations by the target due to business interruptions;
g) changes in the terms and conditions of the insurance policies, etc.[1]

6.2 Relevant regulatory requirements

6.2.1 Competition law requirements

For the purposes of competition law, a merger (and thus a transaction that requires the permission of the Competition Council) is considered to be not only a merger or addition of one company to another, but, in certain circumstances, a transaction that results in the acquisition of influence in another entity and/or only the assets of the entity or the right to use them. The permission of the Competition Council for the performance of a merger is required if:

[1] 'Corporate M&A 2021, Latvia' (Chambers and Partners, 20 April 2021).

a) the total turnover of the merging parties in the previous financial year in the territory of Latvia has been not less than €30m, and
b) the turnover of at least two merging parties in the previous financial year in the territory of Latvia has been not less than €1.5m each.

In certain cases, the Competition Council has the right to require the merging parties to submit a report on a planned or actual merger before 12 months have elapsed from the date of implementation of the merger, if:

a) the merger is between direct competitors and, as a result of the merger, their combined market share in that market exceeds 40 per cent, and
b) the Competition Council has reasonable suspicions that the merger may result in the creation or strengthening of a dominant position or may significantly reduce competition in the relevant market.

Even if the merger falls below the notification criteria, the company has the option to:

a) request written confirmation that the Competition Council will not exercise the right to require the merging parties to submit a merger report;
b) submit a full or abridged merger report to the Competition Council on its own initiative.

Within one month from the date of receipt of the full or abridged report, the Competition Council takes a decision on the approval, prohibition or conditional approval of the merger, or a decision on the commencement of additional investigation. The Latvian merger regulation provides for a state fee for the evaluation of merger reports. If the Competition Council finds deficiencies in the merger report, and the market participant does not provide the necessary information to the institution within one month from the day when the notifier was notified, the merger report shall be deemed withdrawn and the market participant will not be reimbursed.

If a merger report has not been submitted, the Competition Council may decide to impose a fine on the new entrant or the buyer of decisive influence of up to 3 per cent of its net turnover in the preceding financial year.

6.2.2 Foreign investment protection

In regard to foreign investment, since 1 January 2002, the Investor Protection Law has been in force in Latvia. This determines the general principles of operation of the investor protection system, the procedure for providing the financial resources necessary for its operation and the payment of compensation. Investors are entitled to compensation in cases where the Financial and Capital Market Commission finds that an investment service provider who has received a special permit (licence) from the Financial and Capital Market Commission for the provision of investment services, or its branches abroad that have not joined the foreign investor protection system, is unable to fully and timely meet its obligations, or a court judgment declaring the insolvency or liquidation of the investment service provider has entered into force.[2]

Compensation is calculated and paid only to the investor who, in accordance with the provisions of the Investment Protection Law, is entitled to receive compensation in the amount of outstanding obligations, but not more than €20,000, regardless of the number of accounts

[2] '*Finanšu instrumentu tirgus klientu (ieguldītāju) aizsardzība*'. (FKTK. 2021) see www.fktk.lv/klientu-aizsardziba/valsts-aizsardzibas-sistemas/finansu-instrumentu-tirgus-klientu-ieguldítaju-aizsardziba.

opened for the investor. The compensation is paid for in the form of:

a) financial instruments in accordance with the market price of financial instruments owned by the investor on the day when the inability of the investment service provider to meet its obligations has been established; or
b) funds, if they are not entitled to the guaranteed compensation in accordance with the Deposit Guarantee Law.

7. POST-CLOSING

7.1 General post-closing actions

In this stage it is verified whether the buyer and the company have any pledges – for example, if the company owns an immovable property or any other valuable asset which serves as a basis for purchase by the other company, then it is examined whether the immovable property has any encumbrances, whether it is still owned by the company. If necessary, the parties will sign an assurance that all the commitments promised by the parties between the moment of signing of the agreement and the moment of the transfer are met, such as that the seller or any person authorised by it carries out only the activities necessary for the performance of the contract.

During this period, the seller may be obliged to obtain prior written consent from the buyer for various activities, such as:

a) making payments from the company's current accounts;
b) signing, amending, terminating or novating contracts;
c) issuing authorisations or procurations;
d) performing any activities with immovable property;
e) issuing or receiving loans;
f) granting options or other special rights for acquisition of capital shares of a new company;
g) deciding on the acquisition of shares, capital shares or undertakings of other companies;
h) encumbering the assets of the company with the rights *in rem* or liabilities;
i) commencing any legal proceedings upon the initiative of the company; or
j) issuing a guarantee or other type of consent to ensure the fulfilment of the obligations of any person.

At that point, it is necessary to sign a shareholder register. If the parties agree that the corporate changes will be carried out in conjunction with that change, documents such as regarding the change of the management board (consent/resignation of the members of the management board), amendments to the articles of association, and, if the buyer wishes, new employment contracts may be concluded, letters of departure may be submitted, etc. If the buyer finds it necessary, subject to the results of due diligence, statements can be issued to the authorities.

To save time, documents which are required to be submitted to the enterprise register, together with the shareholder register, may be certified by a notary public. If the new shareholder is a foreign company, then, upon providing information regarding the true beneficiary chain, all the statements of such foreign companies must be translated, and that translation must be signed by a notary public. It is therefore advisable to prepare a timely statement of foreign shareholders and translations, so that the registration process is not delayed.

As mentioned in section 6.1, enterprise register documents must be submitted in Latvian. Therefore, if a foreign company is involved in the process, it is recommended that the documents are prepared simultaneously in two languages. Documents that are used for internal purposes within a company need not be translated.

7.2 Regulatory filings (where required)

The enterprise register has published guidelines to facilitate the registration process (see www.ur.gov.lv) showing what documents are to be submitted and what fees should be paid if changes in the shareholder register are to be recorded. It is possible to submit documents to the enterprise register in several ways – electronically signed and in a paper format. The timing for receipt of the decision regarding changes in the shareholder register depends on the amount of the state fee paid and on the format the documents have been submitted. If the documents have been submitted in paper form, registration may take longer, since the period within which the application is to be considered shall be counted from the date when the documents became available to the enterprise register.

7.3 Regulatory requirements including ongoing statutory compliances (where required)

There may be a consequential obligation to report changes of the membership of the shareholders/management board of the company not only to the enterprise register.

In general, this relates to companies operating in sectors requiring licences and where the state has chosen to regulate/monitor the market leaders of the particular company, eg, banks and consumer credit companies. For example, in a credit institution, more specific requirements are laid down regarding changes in the management board than in a regular company, as an impeccable reputation must be a prerequisite. More stringent requirements have also been imposed on shareholders in these companies: eg, a shareholder may not be a person who has fulfilled the obligations of a management board or a supervisory board member in a credit institution or financial institution declared insolvent during their performance of the duties in question.

Even if a person meets the requirements of the law, to occupy the position of a management board member, the Financial and Capital Market Commission has the right to request and evaluate information regarding the suitability of the shareholders of the credit institution. In cases where companies are related to national security, the company must report to the Cabinet of Ministers on its members and shareholders having indirect holdings (voting rights) or having, either directly or indirectly, significant holdings in that commercial company. If a person acquires a substantial interest or decisive influence in a commercial company that is significant to national security, a permit issued by the Cabinet of Ministers will be required.