

“The disclosure requirements provided in the legislation ensure market transparency for all market participants”

- year was more than Lats25 million; and
- at least one of the merger participants is in a dominant position in the relevant market before the merger.
- Merger of market participants in this case shall be understood as:

- merging of two or more independent market participants to become one market participant (consolidation);
- joining of one market participant to another market participant (acquisition); or

- such a situation where one or more natural persons who already have a decisive influence over another market participant or other market participants, or one or more market participants, acquire part or all of the fixed assets of another market participant or other market participants or the right to use such, or a direct or indirect decisive influence over another market participant or other market participants.

A merger of market participants without a prior notification is illegal.

Companies participating in the financial instruments market must notify the Financial and Capital Market Commission and the stock exchange.

Lithuania

By Egle Lauraityte and Gintautas Bartkus of Jurevicius Balciunas & Bartkus

General overview

What legislation governs M&A activity in your jurisdiction?

M&A activity in Lithuania is mainly regulated by the Civil Code, the Law on Companies, the Law on European Companies, the Law on Securities and the Law on Financial Instruments Markets. The Labour Code, the Law on Employees Participation in Adoption of the Decisions in European Companies and the Law on European Councils might also apply with regard to employees' participation in M&A.

What impact have recent legislative changes had on the nature and amount of M&A activity?

On January 18 2007 the new Law on Securities and the new Law on Financial Instruments Markets was adopted. The new laws expand the scope of the information to be published, introduce a new disclosure system, ensure access to information at the EU level, and abolish the requirement to conclude trade in securities of listed companies exclusively on the stock exchange, and provide other changes to enhance transparency of the securities market, better protect investors' interests, and promote competition in the securities markets.

What have been the most significant M&A transactions in your jurisdiction over the past year?

On December 15 2006 PKN Orlen acquired 84.36% shares of AB Mazeikiu nafta, the Lithuanian oil refinery, for about \$2.3 billion.

On January 2007 Mid Europe Partners, the leading private equity investment company in central and eastern Europe, acquired 100% of UAB Bite Lietuva and its subsidiary SIA Bite

Latvija for about Lit1.5 billion (\$578 million). UAB Bite Lietuva is one of the biggest mobile operators in Lithuania.

How, and to what extent, is foreign involvement in M&A transactions in your jurisdiction regulated or restricted?

Lithuania's laws do not establish any special restrictions or regulations with regard to foreign involvement in M&A transactions.

Due diligence

What are the principal disclosure requirements in a typical M&A transaction?

In case of reorganization of a company, the laws establish a mandatory public (and in certain cases personal) notification of the creditors and grant the creditors and the shareholders of the companies participating in the reorganization the right to get acquainted with the reorganization documents (for example, reorganization plan, draft new incorporation documents, and financial statement). The laws also establish certain requirements for disclosure of the already completed takeover of shares, for example, notification to the Securities Commission on the transfer of established block of shares.

To what extent do disclosure requirements achieve market transparency?

The new Laws on Securities and Financial Instruments Markets introduced changes on disclosure requirements. It is expected that the new laws will enhance the transparency of the securities market.

How significant an issue is prospectus liability in a typical M&A transaction?

The Law on Securities establishes the liability of persons indicated in the prospectus (for example, managing or supervising bodies of the issuer) for the correctness and completeness of the prospectus. According to the law, the investor has a right to claim damages sustained due to incorrectness and incompleteness of the prospectus.

What are the key unresolved issues in your jurisdiction?

Lithuanian laws regarding M&A are in material compliance with the EU law and there are no major unresolved issues with regard to M&A.

However, certain issues arise in practical execution of M&A transactions. For example, even though the Civil Code sets out the possibility of sale of a company or a material part of it, these types of transactions are not commonly employed in practice as the procedures of the transaction are rather complicated and not attractive from an economic and legal point of view.

Another oft-faced issue is the lack of uniform case law with regard to M&A transactions, which leads to the uncertainties in interpretation of the laws.

Takeovers

Are there any specific regulations and/or regulatory bodies governing takeovers in your jurisdiction?

Takeovers are mainly regulated by the same legal acts as M&A transactions. The Civil Code provides for a mandatory sale of shares of a closed stock company owned by the shareholder whose actions are contrary to the purpose of the company, and subject to a reasonable assumption that the actions of the shareholder will not change. Also, according to the Law on Securities, shareholders of listed companies that acquire at least 95% of the votes at the listed company's general shareholders meeting have a right, and obligation (upon a request of the rest of shareholders), to purchase the remaining shares of the company from other shareholders. To the extent and limits

established in laws, regulatory bodies governing the takeovers are the Competition Council, the Securities Commission and the Register of Legal Persons (regarding certain notification requirements).

What are the various methods by which a takeover can be achieved?

The methods by which a takeover can be achieved are: (i) voluntary takeover – by agreement of the parties; (ii) mandatory takeover – when the shareholder of the closed stock company acts contrary to the purpose of the company and it can reasonably be assumed that its actions will not change; also the right and obligation of the shareholder having acquired 95% of votes at the general shareholders meeting of the listed company to purchase the remaining shares of the listed company; (iii) mandatory offer – in case of acquisition of more than 40 % of the votes at the general shareholders' meeting of the listed company, the shareholder has an obligation to submit a mandatory offer to purchase the remaining shares.

How differently are hostile and voluntary takeover bids treated?

Hostile takeovers (understood as takeovers that are resisted by the target company's managing bodies) are not specifically regulated under Lithuanian laws.

What penalties are imposed for parties who violate takeover regulations (or equivalent)?

In case of violation of concentration requirements, a fine of up to 10% of the company's gross annual income for the preceding financial year might be imposed by the Competition Council. According to the Law on Securities, a fine up to Lit500,000 might be imposed upon the natural or legal person that has not executed, or not executed properly, a mandatory offer after it was approved by the Securities Commission.

What are the thresholds for disclosing bids and offers?

In the case of concentration, bids and offers must be disclosed to the Competition Council and permission for concentration must be received. A shareholder who acquires more than 40% of votes at the listed company's shareholders' meeting has an obligation to submit a mandatory offer to acquire the remaining shares of the company. In the case of an acquisition of at least 95 % of votes at the listed company's shareholders' meeting, the shareholder has a right and obligation (upon

Author biographies



Egle Lauraityte

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Egle Lauraityte holds a masters in law degree from the Law Faculty of Vilnius University (2002). She completed a one-year programme in management and business administration at Vilnius University (2004). In 2006 Egle Lauraityte obtained additional LLM degree in transnational business practice (USA, Fulbright Scholarship). Before joining Jurevicius Balciunas & Bartkus, she was employed at the law firm Lideika Petrauskas Valiunas & Partners (1999 to 2001) and UAB Ernst&Young Baltic (2002 – 2003).



Gintautas Bartkus

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Gintautas Bartkus graduated from the Faculty of Law at Vilnius University in 1989. Before joining Jurevicius Balciunas & Bartkus, he was Lithuania's Minister of Justice. Bartkus participated in the working group on drafting the Civil Code of the Republic of Lithuania (1992 to 2000). He has also been a member of the European Commission Advisory Group on Corporate Governance & Company Law since 2005.

Bartkus specializes in corporate law, contract law and insolvency. He has an extensive domestic and international experience in M&A projects, including legal due diligence engagements, assistance in negotiations, drafting legal documentation, and assistance in dealing with public authorities. Bartkus has been a member of Lithuanian Bar since 1995.

the request of the rest of the shareholders) to purchase the remaining shares of the listed company. The Law on Securities also requires disclosure of the completed takeovers of the listed company's shares if a person transfers 5%, 10%, 15%, 20%, 25%, 30%, 50%, 75% or 95% of votes at the listed company's shareholders meeting.

According to the Law on Companies, in the case of transfer of 100% of a company's shares, the Register of Legal Person must be notified on change of the shareholder.

Competition/Antitrust

What have been the major recent developments in competition policy and legislation as they relate to M&A in your jurisdiction?

Competition issues are regulated by the Law on Competition and other regulations. Due to accession to the EU as of May 1 2004, laws related to competition comply materially with EU law.

How are the competition/antitrust regulations enforced in your jurisdiction?

The provisions of the Law on Competition and

other regulations are enforced by the Competition Council as well as by the courts. Also, in the investigation of an EU competition law violation, the European Commission may exercise its respective powers.

How do legislation and regulation approach the issue of abuse of dominant position?

The Law on Competition prohibits the abuse of dominant position within the relevant market by carrying out actions that restrict or could restrict competition, limit the possibilities of other undertakings to operate in the market without a valid reason, or violate the interests of consumers.

To what extent are parties to an M&A transaction subject to prior notification requirements?

Parties to M&A transactions that are subject to the concentration requirements according to the Law on Competition must notify the Competition Council and apply for permission. The notification must be made and permission must be obtained if the combined aggregate income of the undertakings concerned is more than Lit30 million for the financial year preceding the concentration and the aggregate income of each of at least two undertakings concerned exceeds Lit5 million for the financial year preceding the concentration. The calculation of the aggregate income must be made in accordance with special rules of the Competition Council. In the case of foreign legal persons, only income received in Lithuania should be computed for concentration determination purposes.

“The new Laws on Securities and Financial Instruments Markets are expected to enhance the transparency of the securities market”