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The International Comparative Legal Guide to:

Mergers & Acquisitions 2016

10th Edition

A practical cross-border insight into mergers and acquisitions

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Senior Editor
Suzie Levy

Group Consulting Editor
Alan Falach

Group Publisher
Richard Firth

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EDITORIAL

Welcome to the tenth edition of *The International Comparative Legal Guide to: Mergers & Acquisitions*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of mergers and acquisitions.

It is divided into two main sections:

Five general chapters. These chapters are designed to provide readers with an overview of key issues affecting mergers and acquisitions, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in mergers and acquisitions in 54 jurisdictions.

All chapters are written by leading mergers and acquisitions lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editor Michael Hatchard of Skadden, Arps, Slate, Meagher & Flom (UK) LLP for his invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.co.uk.

Alan Falach LL.M.
Group Consulting Editor
Global Legal Group
Alan.Falach@glgroup.co.uk

Armenia

Narine Beglaryan

Concern Dialog Law Firm

Yuri Melik-Ohanjanyan

1 Relevant Authorities and Legislation

1.1 What regulates M&A?

Armenian companies, regardless of their status (public or private), shall implement M&A regulation requirements. M&A regulation requirements can be different depending on the type of company or the sector of the company's activity.

The provisions concerning M&A contain, in the vast majority, legal acts which either regulate appropriate aspects of procedures in general or determine sector-related peculiarities.

1.2 Are there different rules for different types of company?

Armenian legislation does not specify the circumstances related to publicly traded companies and consequences thereof for M&A. Armenian legislation does not regulate acquisition of foreign companies by Armenian resident companies in particular, but in general, no restriction is set forth.

1.3 Are there special rules for foreign buyers?

There are no rules that restrict or limit investment, except for restrictions related to television and radio companies, i.e. foreign buyers are not allowed to own 50 percent or more of voting shares of the aforementioned companies.

1.4 Are there any special sector-related rules?

Special regulations are determined for companies acting in specific fields, e.g. a company that received a licence on network or rendering services of electronic network ("electronic network operator"), banks, insurance companies, investment companies, investment funds, managers of investment funds, television and radio companies or equity purchase. The following are a few of the mentioned peculiarities: (a) the requirement of the regulator's prior consent, e.g. the consent of a public service regulatory commission of Armenia in the case of alienation of shares of an electronic network operator; (b) restriction on a merger, e.g. the bank may be only taken over by another bank, or the investor may take options, such as asset purchase and equity purchase; (c) approval of a deal by a regulatory, e.g. takeover of an insurance company; (d) in the case of purchasing publicly traded shares directly or indirectly or by affiliates, the Central Bank of Armenia (CB) shall be notified if the participation equals 5, 10, 20, 50 and 75 percent or more; and (e) in the case of an offer tender of shares, a prior consent of CB is required.

1.5 What are the principal sources of liability?

Armenian legislation distinguishes two types of market manipulation: unscrupulous use of information; and price abuse.

(A) Use of information is considered as unscrupulous in cases where the insider (1) directly or indirectly buys or sells, or attempts to buy or sell, the securities on the ground of insider information, (2) discloses insider information to the third parties, with the exception of information of current activity, and (3) advises the third party to buy or sell the securities on the ground of insider information. The issuer is obliged to disclose information directly related to the issuer and/or leaked information, otherwise the issuer shall be obliged to reimburse damages thereby.

(B) Price abuse stands for (1) conclusion of the contract, or an order for its conclusion, the result of which is or may be the creation of wrong or misleading perception or signals related to price, demand or offer, (2) conclusion of, or order to conclude, the contract, the result of which is illegal deviation or artificial determination of level of prices, (3) conclusion, or order to conclude, contracts which are implemented by applying false, unscrupulous and/or misleading mechanisms, (4) spreading the information which conveys false or misleading signals to the market players, in cases where the spreader knows or shall know that the content of information is untrue, and (5) not listed above but the activity with similar content. Each who abuses prices intentionally bears joint liability for damages caused to every person.

In the case of violation of the said rules, the regulatory of the market (CB) is entitled to (1) apply a note of warning including the order to eliminate the violation and exclude the aforesaid in future, (2) apply a penalty, (3) make the licence invalid, and/or (4) withdraw the professional certificate. Due to market manipulation, criminal liability may arise as well.

2 Mechanics of Acquisition

2.1 What alternative means of acquisition are there?

According to Armenian legislation, several procedures are available, but a few, as mentioned above, are not applicable in specific sectors (e.g. a merger in the financial sector is prohibited). The approachable

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means are merger, acquisition/takeover, asset purchase and equity purchase. As for merger and takeover, common practice for Armenia is a merger or takeover between Armenian resident companies. In cases of activity related to special approvals and/or licence, the preferable means is takeover, which allows for the reservation of one of companies and its licences while a merger is "killing" both companies; thus, a new approval and/or licences will be required. Regardless of the company type and/or prosecution before closing this deal, it shall be approved by the State Commission for Protection of Economic Competition of Armenia ("SCPEC"). The issues, either legal or technical, may arise in the case of merger of a local company and a non-local one, especially due to lack of legislation, which in its turn can be avoided by stipulating appropriate clauses in a merger agreement. The procedures related to asset purchase will require the decision of a stipulated management body, e.g. the major transaction may require approval of a General Meeting or the board of directors. Although there is no limitation or restriction, it is more common in Armenia to establish a closed JSC, which does not mean that there are no publicly traded companies (OJSC) or any appropriate practice. The shares of a closed JSC can be purchased in cases where shareholders waive the prerogative right of purchasing. The payment for publicly traded shares is made up entirely of Armenian currency. SCPEC shall approve deals with assets and shares in the case of a purchase of more than 20 percent of the company's assets or shares.

2.2 What advisers do the parties need?

There is no prerequisite of using legal and/or financial advisers to comply with legislation, but for the preparation of required documentation and supporting the process, it is recommended to cooperate with the specialised law firm and the financial consulting company. Legal support will be required for legal due diligence of procedure, including the drafting of M&A documentation. The role of the financial consulting company or auditor is the provision of financial due diligence of the target (if required). In cases of purchasing publicly traded shares, the cooperation with the investment company shall be required. The latter shall make deals on behalf of the investor in the market.

2.3 How long does it take?

The M&A may be closed over 45 days (the said term includes a period of receiving appropriate consent and approvals) or more (a long period of negotiation, suspension of supervisor authorities consent/approval procedure, etc.).

2.4 What are the main hurdles?

As for the publicly traded company, the main milestone is the risk of market manipulations (see question 1.4). In the case of private companies, the essential issue is the requirement of approval of the General Meeting for entering into a merger or takeover or asset purchase (if the transaction is major). The prerogative right of purchase in closed joint stock companies is another obstacle. For other cases (regardless of whether the company is private or public), the approval of the regulatory authority (authorities) is required.

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

The main issue is acting in accordance with the requirements of anti-trust, economic competition protection and security market regulation legislation. In cases providing requirements of the aforesaid, according to the general rule, the terms and conditions of the deal are under the parties' discretion.

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

The deal price may be determined in cash, but there are limitations related to payment in physical money; the preferable option is to make payments via bank transfer. No restrictions are stipulated in relation to the determination of other consideration.

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

The current Armenian legislation allows for offering different terms to different shareholders.

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

The purchasing of other classes of target securities is not required according to the legal acts in Armenia, but may be considered as a condition of the deal. In the case of a merger, the other securities of both companies convert to the securities of the new company.

2.9 Are there any limits on agreeing terms with employees?

Employees do not take participation in an acquisition; therefore, no limits are set forth.

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

Employees, pension trustees or other stakeholders cannot have any impact on an acquisition process. According to the legal acts in Armenia, employees, pension trustees and other stakeholders are not entitled to take participation in M&A in any way; neither is the target obliged to gain approval thereof. However, different rules may be determined in the internal acts of company, collective agreement with employees, etc.

2.11 What documentation is needed?

According to legal acts, the parties shall provide: (a) in the case of a merger – Decision of General Meeting of Shareholder/Participants of each participant and a new company, Contract of merger, Act of transfer, Procedure and consideration of merger, Procedure on conversation of shares and the other securities of parties into the shares and/or the other securities of a new company, a Charter; (b) in the case of a takeover – Decision of General Meeting of Shareholder/Participants of each party, Takeover agreement, Act of transfer, Procedure and consideration of takeover, Procedure on conversation of shares and the other securities of parties into the shares and/or the other securities of a bidder; (c) in the case of asset purchase – Decision of Management body, Sale contract; and (d) in the case of share purchase – Share purchase agreement.

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2.12 Are there any special disclosure requirements?

The reporting issuer (the shares of which are allowed to be publicly traded in Armenia) (a) is obliged to publish and submit to CB the annual report approved by auditor report and intermediate reports, (b) shall publish essential information about the company and issued shares thereof, except for stipulated cases by CB's prior approval, and (c) report CB about the conclusion of contracts' securities and derivatives over five days since the date thereof; CB then publishes the report on its website.

The securities issuer shall immediately disclose insider information directly related to the issuer, except for postponement thereof. The information shall be disclosed by the issuer in the case of a leak.

In the case of purchasing publicly traded shares directly or indirectly or by affiliates, the Central Bank of Armenia (CB) shall be notified if the participation amounts to 5, 10, 20, 50 and 75 percent or more, and according to the stipulated rules, information shall be disclosed.

2.13 What are the key costs?

There are two types of costs: (a) fees, which shall be paid for registration of transaction and approvals and/or consents; and (b) service prices, if due diligence or consulting services are rendered.

2.14 What consents are needed?

As it is revealed in the above points in detail, the following consent is required to execute a transaction: consent of the General Meeting of shareholders; SCPE; and the appropriate regulatory, depending on the sector of activity.

2.15 What levels of approval or acceptance are needed?

The consent on the M&A is beyond the authorities of the General Meeting both for JSC and LLC. According to "Law on JSC", a transaction is considered as approved if three-quarters of the shareholders of the voting shares vote therefor, unless the Charter of the company determines a greater number of votes. Unless otherwise stipulated in the Charter, the M&A agenda shall be suggested to GM by the company's board (i.e. required of the aforesaid prior consent/approval).

According to "Law on LLC", the merger and acquisition is approved by at least two-thirds of the company's total participants, unless the Charter stipulates a greater number of votes.

The decisions related to a major part of the issues can be made by a simple majority of shareholders/participants both in JSC and LLC. For approval of specified issues, e.g. Charter's amendment, the qualified majority is required. Another requirement related to quorum can be stipulated in the Charter of the company.

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

In the case of purchasing additionally placed shares (the capital of new established company shall be paid totally before its registration), the payment terms may be stipulated in an appropriate decision but cannot be more than one year since placement thereof. If the price of the aforementioned shares is stipulated in cash, at least 25 percent of the nominal price shall be paid at the moment of purchase.

If the price of securities is stipulated in other consideration, it shall be paid fully at the moment of purchasing, unless it is stipulated otherwise in the decision.

Payment for publicly traded securities shall be made wholly in cash.

3 Friendly or Hostile

3.1 Is there a choice?

Armenian legislation does not distinguish between friendly or hostile M&As; therefore, the regulations do not vary.

3.2 Are there rules about an approach to the target?

There are no special rules except for those discussed above.

3.3 How relevant is the target board?

The role of the target (JSC) board is in giving the prior consent of merger, takeover (except for selling the shares by shareholder) and presenting the aforementioned consent to GM, unless the rules are otherwise stipulated in the company's Charter.

3.4 Does the choice affect process?

See question 3.1.

4 Information

4.1 What information is available to a buyer?

In general, the following information about JSC shall be public: (a) annual reports, balance sheets, profit and loss settlement; (b) prospectus in the case of publicly traded shares; (c) announcement on Annual GM convocation; and (d) in the cases mentioned in question 2.12. The list of information can be longer depending on sector-related rules. The legislation on LLC does not establish a requirement on publication of the said documents, except for the companies that are acting in special sectors.

The following information may be approached by inquiry: (a) name of shareholders, the quantity of shares to own and the nominal price thereof; (b) the amount of authorised capital and a copy of company's Charter; (c) whether the company is bankrupt or in the procedure of bankruptcy or liquidation; and (d) whether a restriction or limitation on the transaction is applied.

4.2 Is negotiation confidential and is access restricted?

The conduct of negotiation may be confidential; no requirements on disclosure of information are stipulated until the parties enter into the contract.

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

There is no special regulation concerning the content of the information which shall be disclosed after the M&A is entered into force; neither is there an obligation for announcement of the terms thereof.

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4.4 What if the information is wrong or changes?

See question 1.4.

5 Stakebuilding

5.1 Can shares be bought outside the offer process?

The agreement on buying the shares is considered to be concluded only if the offer to buy them is accepted according to the stipulated rules of the market.

5.2 Can derivatives be bought outside the offer process?

This is not applicable in Armenia.

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

This is not applicable in Armenia.

5.4 What are the limitations and consequences?

This is not applicable in Armenia.

6 Deal Protection

6.1 Are break fees available?

Break fees or inducement fees can be stipulated in written agreement.

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

It is possible for the target to agree not to seek alternative offer proposals in competition with a proposal that the bidder has recommended.

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

There is not any limitation thereon.

6.4 What commitments are available to tie up a deal?

The bans related to deal protection measures are not stipulated in Armenian legislation; thus, the participants are permitted to choose the option by their own discretion.

7 Bidder Protection

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

This is not applicable in Armenia.

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

This is not applicable in Armenia.

7.3 When does control pass to the bidder?

This is not applicable in Armenia.

7.4 How can the bidder get 100% control?

This is not applicable in Armenia.

8 Target Defences

8.1 Does the board of the target have to publicise discussions?

Because of the lack of appropriate legislation on the issue, the questions in Section 8 are not applicable.

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

See question 8.1.

8.3 Is it a fair fight?

See question 8.1.

9 Other Useful Facts

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

As the corporate market is not widely developed in Armenia, the practice of M&A (in the traditional, corporate understanding) is not widespread in the country. In general, mergers and acquisitions are held in accordance with shareholder-to-shareholder agreements.

9.2 What happens if it fails?

This is not applicable in Armenia; see question 9.1.

10 Updates

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

This question is not applicable in Armenia.

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Narine Beglaryan
Concern Dialog Law Firm
Office 207, 2nd floor
Charents str. 1
Yerevan
Armenia

Tel: +374 10 575 121
Email: narine.beglaryan@dialog.am
URL: www.dialog.am

Narine Beglaryan is a Partner with "Concern Dialog" Law Firm. She joined the firm in September 2013. She specialises in Banking law, Contract law, Labour law, Corporate law, Family law, in reimbursement-related issues, as well as in court representation of administrative and civil cases. At present, she specialises in the spheres of Combat against Money Laundering and Financing of Terrorism.

Prior to joining "Concern Dialog" Law Firm, she worked with Armentel CJSC as the legal representative of the department of legal support to the business and with BTA Bank CJSC as the chief lawyer of the legal office of the bank.

Narine Beglaryan graduated from the Moscow New Juridical Institute with the degree of Certified Specialist in Civil Law. She participated twice in the Philip C. Jessup International Law Moot Court Competition and was nominated for the Best Oralist prize in the national round. Narine received first prize in a competition of academic research of students of the Moscow New Juridical Institute.

Yuri Melik-Ohanjanyan
Concern Dialog Law Firm
Office 207, 2nd floor
Charents str. 1
Yerevan
Armenia

Tel: +374 10 575 121
Email: yuri.melik-ohanjanyan@dialog.am
URL: www.dialog.am

Yuri Melik-Ohanjanyan is an Associate, and joined the team of "Concern Dialog" Law Firm in June 2015. He holds the position of lawyer, practising in the areas of Corporate law, Labour law, Contract law, as well as Non-Profit Organisations and both incoming and outgoing Migration legal issues.

Yuri Melik-Ohanjanyan graduated from the French University in Armenia with the Bachelor's degree in European Law in 2015, and is currently studying for his Master's degree in European and International Business Law. During his academic years, Yuri undertook an internship at the French-Armenian Chamber of Trade and Industry, situated in Marseilles, France, as well as in the court of common jurisdiction of the administrative departments of Kentron and Nork-Marash and in the penal chamber of the Supreme Court of RA.

In November 2014, Yuri with his team represented the French University in the IHL (International Humanitarian Law) National Moot Court Competition, where the team was named as a winner.

"CONCERN DIALOG" Law Firm was established in 1998 as a company for the provision of litigation and representation services, mostly for individual clients. Starting from 2002–2003, the Company developed services for corporate clients.

At present, the Company provides services of both litigation/representation and legal advice. We also cooperate with the best specialists and other law firms on the market (using a project-based approach) in cases where our clients require special knowledge in areas in which we do not specialise, in order that the clients do not have to contact several consultants/companies.

Besides general business law, we specialise in the regulation (including telecommunications law) and legal issues of energetics (including tariff regulations).

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59 Tanner Street, London SE1 3PL, United Kingdom
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255
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