

Ukraine

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MARKET AND REGULATION

1. Please give a brief overview of the public M&A market in your jurisdiction. (Has it been active? What were the big deals over the past year? Please distinguish between trade buyers and private equity backed deals.)

At the beginning of 2009, it was expected that the value of all M&A transactions in Ukraine would be about US\$8 billion (about EUR5.9 billion). However, the value of transactions in the first half of 2009 reached only about US\$1.8 billion (about EUR1.3 billion), far less than the expected volume. The second half of 2009 saw a slight improvement, with 17 transactions valued at US\$2.61 billion (about EUR1.9 billion).

The majority of transactions in 2009 involved the sale and purchase of small and medium-sized businesses. The following sectors were active:

- **Financial.** The main transactions were bank recapitalisations and private transactions involving Russian and Ukrainian companies. The major deals were the acquisition of:
 - over 75% of the shares in Prominvestbank by Vnesheconombank (VTB) (Russia) for US\$160 (about EUR117) in January 2009;
 - 30% of the shares in Megabank OJSC by European Bank for Reconstruction and Development (EBRD) (United Kingdom) with KfW Entwicklungsbank (Germany) for EUR28.9 million (about US\$21.2 million).
- M&A activity in the Ukrainian insurance market has gradually declined. The main transaction involved the acquisition of 45% shares in National Stock Insurance Company Oranta by the individual Mykola Lagun, the owner of Deltabank, for UAH348.8 million (about US\$43.7 million) in April 2009.
- Finally, more than 50% of the shares in the leading Ukrainian stock exchange PFTS were acquired by Moscow Interbank Currency Stock Exchange for US\$10 million (about EUR7.3 million).
- **Oil and gas.** This sector represented a substantial part of the M&A transactions in Ukraine. It involved primarily foreign investors. The significant transactions included the acquisition of:
 - 18% of Ukrtatnafta (the biggest downstream company in Ukraine) by Corsan company affiliated with Privat-Bank (Ukraine) for UAH2.1 billion (about US\$0.26 billion);

- 20% of Galnaftogas by EBRD (United Kingdom) (see above, *Financial*) for UAH160 million (about US\$20 million);
- 70% in Cub-Gas by Kulczyk Holding SA (Poland) for US\$45 million (about EUR33 million);
- Bohorodtchanynaftogas SCI by Svenska Capital Oil AB, jointly with Sadkora Energy AB (Sweden); and
- Shelton Canada (Canada) (the major private company active in the sphere of Ukrainian sea shelf mine development in 2007 to 2008) by Sibir Energy (Sweden) in Summer 2009.
- **Food and beverage.** This sector's activity has increased since 2008. The major deals were the acquisition of:
 - 99% of Ukrroszerno by Sugar Union Ukrros OJC for UAH42 million (about EUR5.3 million);
 - 30% of RoAgro by Investment Company Kinnevik (Sweden) for US\$4 million (about EUR2.9 million);
 - 25% of Ukraine Sugar Company LLC by ED&F Man (United Kingdom);
 - 91.9% of Zhytomyrs'ki Lasoshchi LLC (Zhytomyr Sweets LLC) by Investment Company Delta Capital CA (Switzerland);
 - 99% of Odes'kyi Zavod Shampans'kyh Vyn LLC (Odessa Champagne Plant LLC) by Gruppo Campari (Italy) for US\$18 million (about EUR13.2 million);
 - 90.5% of Poltavpyvo by Sarmat-Ug (Russia).
- **Telecommunications.** This sector has shown high activity. The main transactions were the:
 - acquisition of 49% of Studio 1+1 Group by Mr Igor Kolomoisky for EUR206 million (about US\$280 million), and contribution of 100% of TET channel with the subsequent buyout of Studio 1+1 Group;
 - buyout of the remaining 40% of NTN Channel by U.A. Inter Media Group (Ukraine) for EUR98 million (about US\$133 million);
 - acquisition of up to 100% in Sitronics IT BV by Melrose Holding Company for EUR38 million (about US\$52 million);
 - acquisition of 50% of MTV Ukraine by U.A. Inter Media Group (Ukraine);
 - acquisition of Music Radio (May 2009) and Radio 4U for US\$1.5 million (about EUR1.1 million) (September 2009) by Business Radio Group (Ukraine).

2. What are the main means of obtaining control of a public company? (For example, public offer, legal merger, scheme of arrangement and so on.)

Generally, control over a public company is obtained through individual share purchase agreements with the target's shareholders. A broker with a securities trading licence must represent one of the parties to the share purchase agreement.

The other means of obtaining control over the public company are:

- Additional share issues and the acquisition of all issued shares by a new shareholder(s).
- Acquiring the integral assets of a company's business under a sale and purchase agreement.
- Merging or joining two or more companies (legal merger).
- Establishing a companies' association by delegating certain key corporate powers to one entity within the established association.

There is no specific procedure for public takeover bids that are made to obtain corporate control.

3. Are hostile bids allowed? If so, are they common? If they are not common, why not?

The law does not consider hostile bids to be a separate method for taking over public companies because the company's management cannot influence the circulation of the company's shares in the secondary market. Therefore, no specific restrictions on hostile bids are provided.

Hostile bids are not common and are usually used by existing shareholders of a public company to obtain complete control.

4. How are public takeovers and mergers regulated, and by whom?

There is no specific act regulating public takeovers and mergers in Ukraine.

The following laws constitute the basic legal framework for corporate takeovers and mergers:

- The Civil Code (16 January 2003, No. 435-IV as amended).
- The Commercial Code (16 January 2003, No. 436-IV as amended).
- The Law on Business Associations (19 September 1991, No. 1576-XII as amended).
- The Law on Joint Stock Companies (17 September 2008, No. 514-VI) (Law on Joint Stock Companies).
- The Law on State Registration of Legal Entities and Individuals - Entrepreneurs (15 May 2003, No. 755-IV as amended).

The following acts supplement the framework:

- Securities laws and regulations, including the:
 - Law on Securities and Stock Exchange (23 February 2006, No. 3480-IV);
 - Law on National Depository System and Peculiarities of Securities Electronic Circulation in Ukraine (10 December 1997, No. 710/97 as amended);
 - Securities and Stock Market State Commission regulations.
- Merger control laws and regulations, including the:
 - Law on Protection of Economic Competition (11 January 2001, No. 2210-III as amended);
 - regulation on the procedure for filing an application to the Anti-monopoly Committee of Ukraine to obtain a prior approval for concentration of business entities, as approved by the Anti-monopoly Committee of Ukraine (19 February 2002, No. 33-p as amended);
 - regulation on the procedure for filing an application to the Anti-monopoly Committee to obtain the prior approval for concerted practices of business entities, as approved by the Anti-monopoly Committee of Ukraine (12 February 2002, No. 26-p as amended).
- Foreign currency control and investments law and regulations, including the:
 - Law on Amending Certain Laws of Ukraine to Mitigate Adverse Effects of the Financial Crisis (24 November 2009) (Law to Mitigate the Financial Crisis);
 - Decree of the Cabinet of Ministers on the System of Currency Regulation and Currency Control (19 February 1993, No. 15-93 as amended);
 - Law on External Business Activity (16 April 1991, No. 959-XII as amended);
 - Law on Investment Activity (18 September 1991 as amended);
 - Law on Foreign Investment Regimes (14 March 1996, No. 93/96 as amended);
 - Resolution on the regulation of foreign investment matters in Ukraine, as approved by the National Bank of Ukraine (10 August 2005, No. 280).
- Privatisation law, including the:
 - Law on Privatisation of State Owned Property (4 March 1992, No. 2163-XII as amended);
 - Law on Privatisation of Small State-Owned Enterprises (6 March 1992, No. 2171-XXII as amended);
 - Decree of the President of Ukraine on Holding Companies Established in the process of Corporatisation and Privatisation (11 May 1996, No. 224/94 as amended);
 - Resolution of the Cabinet of Ministers of Ukraine approving the list of state-owned companies subject to privatisation in 2009 (3 December 2008, No. 1517-p).

The authorities competent to regulate and supervise public takeovers are the:

- Cabinet of Ministers of Ukraine.
- Securities and Stock Market State Commission (SEC) (*see box, The regulatory authorities*).
- Anti-monopoly Committee of Ukraine (AMCU) (*see box, The regulatory authorities*).
- National Bank of Ukraine (NBU) (*see box, The regulatory authorities*).
- State Property Fund of Ukraine (Ukrainian privatisation authority).
- Local registration authorities (state registrars).

PRE-BID

5. What due diligence enquiries does a bidder generally make before making a recommended bid and a hostile bid? What information is in the public domain?

The concept of public bids is underdeveloped in Ukrainian legislation and the law does not specifically regulate recommended and hostile bids.

Recommended bid

In agreed acquisitions (recommended bids) the scope of due diligence is established by the buyer and the seller and there are no mandatory minimum requirements. Generally, the scope of due diligence depends on the negotiation process, the target's business, the timeline of the acquisition and other factors.

Hostile bid

A hostile bidder typically makes no formal due diligence enquiries to the company or its shareholders before the hostile acquisition and relies on information available in the public domain.

Public domain

Information in the public domain is available at the following sources:

- The Unified State Register kept by the state registrars. This is given in the form of statements, extracts or excerpts, covering key (although limited) information on the company (the scope of which depends on the document form requested). This information is available in a free-access online database (www.irc.gov.ua).
- The register kept by the State Statistics Committee. This contains limited information on the company, which may sometimes be outdated.
- The official website of the State Institution Agency on Development of Stock Market Infrastructure (a free-access online database available at www.smida.gov.ua). This Agency is the authorised entity responsible for publishing official information on securities and the stock market, including basic information on:

- the company and its business;
- shareholders and management;
- securities issued and the company's financial statements.

In addition, certain information on publicly listed companies is contained in the printed media issued by the relevant stock exchange (for example, information that must be disclosed by law).

6. Are there any rules on maintaining secrecy until the bid is made?

There is no statutory requirement to keep an acquisition confidential until the bid is made. However, parties to the contemplated transaction can agree on confidentiality provisions between them (for example, in the merger agreement).

If the acquisition requires prior merger clearance from the AMCU (*see Question 8*) the application and its annexes must contain a substantial amount of information and documents. However, information filed with the AMCU is not automatically kept confidential unless marked by the applicant as "information with limited access". When confidentiality is requested certain specific rules must be complied with by the AMCU and such information must not be disclosed, except as specifically provided by the law. In practice, the information the AMCU publishes is typically limited to the fact that approval is granted and the names of the parties.

7. Is it common to obtain a memorandum of understanding or undertaking from key shareholders to sell their shares? If so, are there any disclosure requirements or other restrictions on the nature or terms of the agreement?

Obtaining a memorandum of understanding or a letter of intent is common practice in Ukraine.

The purchaser(s) and the shareholders that intend to sell their shares execute a memorandum (or a letter) to confirm their willingness to complete the transaction. Generally, this document includes:

- The substantial terms and conditions of the deal.
- The parties to the transaction.
- Basic data on the target.
- Preliminary price calculations.
- The payment procedure.
- Provisions on:
 - the confidentiality and non-disclosure commitments;
 - the governing law;
 - exclusivity clauses (if the parties agreed to negotiate on an exclusivity basis).

Generally, the memorandum of understanding (or the letter of intent) is not binding on the parties, unless they specifically state otherwise. Binding provisions are usually limited to clauses on confidentiality and governing law, and, occasionally, on exclusivity.

If parties wish to be bound in relation to the contemplated transaction, they can enter into a preliminary agreement, which is binding and enforceable under Ukrainian law for transactions between companies. However, the term of this agreement cannot be more than one calendar year.

8. If the bidder decides to build a stake in the target (either through a direct shareholding or by using derivatives), before announcing the bid, what disclosure requirements, restrictions or timetables apply? Are there circumstances in which shareholdings, or derivative holdings, of associates could be aggregated for these purposes?

There are no specific disclosure requirements for a bidder who decides to build a stake in the target company before announcing the bid.

The following general disclosure requirements apply:

- A company acquiring 20% or more shares in another entity must officially announce this fact (*Civil Code*). However, neither the procedure of notification, nor the form of notice has been established.
- If an individual or a company acquires over 10% of the ordinary shares of a joint stock company, disclosure requirements apply under the new Law on Joint Stock Companies (see *Questions 12 and 29*).
- If the transaction requires merger clearance, it must be notified to the AMCU if the bidder intends to:
 - acquire 25% (or more), or 50% (or more) in the target;
 - perform a merger or consolidation of a business entity; or
 - establish a joint venture with two or more participants if one of the following thresholds are met:
 - the aggregate worldwide value of assets or the volume of sales of the parties to the transaction over the last financial year exceeds EUR12 million (about US\$16 million), the aggregate worldwide value of assets or the volume of sales of at least two parties to the transaction exceeds EUR1 million (about US\$1.4 million), and the aggregate value of assets or the volume of sales of one party in Ukraine exceeds EUR1 million;
 - either party to the transaction has a market share over 35%; or
 - the combined market share of the parties to the transaction exceeds 35%, and the transaction takes place in the same market or in adjacent markets.
- If the target company is a bank, the bidder must notify the NBU and receive approval for the transaction if it will cause its shareholding to increase beyond 10%, 25%, 50% or 75% of shares in a Ukrainian bank.

- Certain information must be made publicly available to the market (known as ordinary and specific information) in the SEC's free-access database (*Law on Securities and Stock Exchange*). The specific information that must be disclosed includes:
 - any decision by the company to distribute more than 25% of shares;
 - redemption of its own shares (treasury shares);
 - changes of any owner of 10% or more of the company's shares.

9. If the board of the target company recommends a bid, is it common to have a formal agreement between the bidder and target? If so, what are the main issues that are likely to be covered in the agreement? To what extent can a target board agree not to solicit or recommend other offers?

It is not common for the bidder and target to enter into an agreement.

If the transaction is complex and the target must fulfil certain requirements before closing, it can also be a party to a framework or umbrella agreement (if any exists).

In a legal merger the merging companies often enter into a merger agreement. Generally, the merger agreement includes:

- The merger plan and merger timeline.
- Conditions precedent to the merger, relating to:
 - internal corporate actions (for example, obligatory redemption of shares from the minority shareholders not voting for the merger); and
 - official approval procedures with the competent state authorities (for example, Ukrainian merger clearance and clearance with the NBU).
- The new shareholding structure and arrangements relating to the distribution of shares in the surviving company between new shareholders.
- Principles and procedures for converting shares.
- Matters relating to assigning assets to, and accepting liabilities from, the surviving company.
- Issues relating to the tax succession of the surviving company in relation to the merging companies.
- Employment matters.
- Other matters of material importance to the parties.

The merger agreement must be approved by the shareholders' meeting of each merging company by a simple majority of votes. The preliminary approval of the merger agreement by the boards of the merging companies is not required, unless the procedure is established under the company's constituent documents.

There is no legal requirement to obtain an approval or recommendation from the company's board of directors in relation to any kind of offer, unless this is required by the company's constituent documents (which is uncommon).

The law contains no requirements on the extent to which a target board can agree not to solicit or recommend other offers.

10. Is it common on a recommended bid for the target, or the bidder, to agree to pay a break fee if the bid is not successful? If so, please explain the circumstances in which the fee is likely to be payable, and any restrictions on the size of the payment.

There is no mandatory requirement to agree a break fee in the event of an unsuccessful outcome.

Although the parties to the contemplated merger can agree on break fees, it is still relatively uncommon in Ukraine. There is no uniform market practice in this respect.

11. Is committed funding required before announcing an offer?

There are no requirements to commit funding before announcing an offer.

ANNOUNCING AND MAKING THE OFFER

12. Please explain how (and when) the bid is made public (highlighting any relevant regulatory requirements), and set out brief details of the offer timetable. (Consider both recommended and hostile bids.) Is the timetable altered if there is a competing bid?

If an individual or a company wishes to acquire over 10% of the ordinary shares of a joint stock company in a transaction, it must, 30 days beforehand (*Law on Joint Stock Companies*):

- Officially inform the target.
- Disclose the potential acquisition to SEC and all stock exchanges where the target is listed.
- Publish an announcement in the official press.

The announcement must contain information on the:

- Amount, type and/or class of the target's shares held by the buyer and each of its affiliated companies.
- Amount of ordinary shares to be purchased in the course of the transaction.

There are no other specific requirements for making offers. Neither public announcement nor formal notification is required for hostile and recommended bids amounting to less than 10% of the target's shares.

The content of the bid must comply with the general rules for making offers under the Civil Code. The offer must contain the following substantive terms and conditions:

- An express intent to acquire the target's shares.
- The purchase price or the procedure for its calculation.

- The type and quantity of shares to be acquired.
- The timeframe for which the offer is valid.

The SEC and the relevant stock exchange must be notified of a merger. This information must be published in the official press 30 calendar days before the shares are acquired. The notification must take place within two calendar days of the decision being adopted at a shareholder's meeting of the merging companies.

13. What conditions are usually attached to a takeover offer (in particular, is there a regulatory requirement that a certain percentage of the target's shares must be offered/bid)? Can an offer be made subject to the satisfaction of pre-conditions (and, if so, are there any restrictions on the content of these pre-conditions)?

There are no specific conditions that must be attached to a takeover offer and there is no established practice on this.

14. What documents do the target's shareholders receive on a recommended and hostile bid? (Please briefly describe their purpose and main terms, and which party has responsibility for each document.)

There are no requirements as to the documents the target's shareholders receive in either hostile or recommended bids.

Generally, the offer can be a formal offer to sell shares or a letter of intent executed by the buyer.

15. Are there any requirements for a target's board to inform or consult its employees about the offer?

There are no requirements for the target's board to inform or consult its employees about the offer.

16. Is there a requirement to make a mandatory offer? If so, when does it arise?

There is no general requirement to make a mandatory offer. However, a shareholder can require a mandatory buyout of all its shares, provided they voted against resolutions of general shareholders' meeting that passed the following (*Law on Joint Stock Companies*):

- For holders of ordinary shares:
 - mergers, accessions, divisions, conversions, spin-offs, or a company's transformation from a public into a private joint stock company;
 - a company's entry into a major transaction (related to assets or services which have a value exceeding 10% of the company's assets and other transactions defined as major under the company's charter);
 - changing the amount of the company's registered capital.

- For holders of preferred shares:
 - amending the company's charter to provide for the placing of a new class of preferred shares under which holders will have priority for receiving dividends or payments in case of liquidation of a company;
 - extending the rights of holders of preferred shares having priority for receiving dividends or payments in the case of liquidation of a company.

In addition, in a legal merger, the merging company must redeem the shares from the shareholders that both:

- Did not vote for the merger or approve the merger agreement.
- Applied to the merging company for redemption.

Redemption must be completed within one month from the date when the decision on the merger was approved by the shareholders.

See also *Question 20*.

CONSIDERATION

17. What form of consideration is commonly offered on a public takeover?

There are no specific requirements on the form of consideration the selling shareholders must obtain, except for in a merger, where consideration is in the form of shares issued by the surviving company. Generally, consideration combining both cash and shares is possible, while cash is most common.

18. Are there any regulations that provide for a minimum level of consideration? If so, please give details.

The minimum level of consideration is generally not less than the nominal value of the shares, although there are no regulations establishing this, except for in (*Law on Joint Stock Companies*):

- An acquisition of a controlling stake.
- A buyout by the joint stock company at the shareholder's demand (see *Question 16*).

In these cases the purchase price for minority shareholders' shares cannot be lower than the market value determined according to the rules set out by the *Law on Joint Stock Companies*.

19. Are there additional restrictions or requirements on the consideration that a foreign bidder can offer to shareholders? If so, please give details.

Generally, there are no requirements as to the consideration that can be offered by a foreign bidder. However, there are certain procedural requirements on the consideration payable by a foreign bidder for shares issued by a Ukrainian company, due to foreign currency control and investment regulations.

Consideration in the form of cash must be transferred by a foreign investor in a first class foreign currency according to the investment procedure established by the NBU. This currently involves the foreign investment being transferred to an investment account with an authorised bank in Ukraine, and then converted into the national currency of Ukraine (*Law to Mitigate the Financial Crisis*). The first class foreign currencies as established by the National Bank of Ukraine are the:

- Australian dollar (A\$).
- British pound sterling (GB£).
- Danish krone (DKK).
- US dollar (US\$).
- Icelandic krona (ISK).
- Canadian dollar (Can\$).
- Norwegian krone (NOK).
- Swedish krona (SEK).
- Swiss franc (CHF).
- Japanese yen (JPY).
- Euro (EUR).

Therefore, the foreign investment must be made in the national currency of Ukraine under the procedure prescribed by the NBU, through an investment account opened by the investor with an authorised bank in Ukraine.

The conversion rule is effective until 1 January 2011. Before the adoption of the *Law to Mitigate the Financial Crisis*, direct foreign investments could be made by direct money transfer to a current account with an authorised bank in Ukraine. They did not need to be transferred to an investment account or converted into the Ukrainian currency, which was a significantly simpler procedure.

Consideration in the form of shares issued by a foreign legal entity is possible only when the recipient of the shares obtains an NBU licence for investment abroad (if the shares are issued for cash).

POST-BID

20. Can a bidder compulsorily purchase the shares of remaining minority shareholders? If so, please give details.

A shareholder consolidating 50% or more of a joint stock company's ordinary shares must, within 20 days, offer to purchase the ordinary shares of the other shareholders (except when the consolidation occurred as a result of privatisation) (*Law on Joint Stock Companies*). The offer must be served to both the:

- Company (which then notifies the shareholders within ten days).
- SEC and relevant stock exchange (if the shares are listed).

The minority shareholder that accepts the offer must then sell its shares within 30 to 60 days from the date of notification. The price must be at the market level (see *Question 18*) and must be paid within 30 days of expiry of the acceptance period.

21. If a bidder fails to obtain control of the target, are there any restrictions on it launching a new offer or buying shares in the target?

There are no restrictions on a bidder launching a new offer in relation to an already targeted company.

22. What action is required to de-list a company?

De-listing means the procedure of excluding the securities from the registry of the stock exchange, where those securities no longer comply with the stock exchange's rules. This is then followed by terminating their circulation at the exchange, or transferring them to the category of de-listed securities which are admitted to circulation.

Under the Trade Code of the PFTS stock exchange (19 December 2002), the major stock exchange in Ukraine, the grounds for de-listing shares are:

- The liquidation of the issuer.
- A regulator's decision that the issue of securities has failed.
- A regulator's decision that an issue of securities is to be cancelled.
- The issuer's failure to comply with the requirements of the law and of the SEC's regulations (including provisions concerning shareholders' rights and corporate governance principles).
- The issuer's failure to submit information to be reported under the Trade Code and to comply with the terms of submitting information.
- The change of essential details of the securities listed in the PFTS List without proper notice.
- An application submitted to PFTS by its member (this can be any member of PFTS) or the issuer of listed securities explaining the need to de-list them.
- The issuer's failure to comply with the terms and conditions of the agreement with the PFTS on maintaining the listing of securities.
- The absence of PFTS sale and purchase quotations for securities for five business days.
- Expiry of the term for which the securities are issued.

The PFTS Trade Committee must make the decision to de-list the securities from the PFTS First Rate Quotation List. The relevant PFTS division will make the decision to de-list securities admitted to the PFTS Second and Third Rate Quotation Lists or admitted to circulation without entering into the PFTS Quotation Lists (the requirements for each list differ).

The decision on de-listing the securities from PFTS List is effective as of the date of its decision. This decision can be appealed within two business days.

The same procedure is used when a company wishes to de-list its shares.

TARGET'S RESPONSE

23. What actions can a target's board take to defend a hostile bid (pre- and post-bid)?

The law does not provide for any specific anti-takeover measures. Therefore, the company or its shareholders must act within the general legal framework (see *Questions 16 and 20*).

TAX

24. Are any transfer duties payable on the sale of shares in a company that is incorporated and/or listed in your jurisdiction? Can payment of transfer duties be avoided?

There are no transfer duties on the sale of shares issued by Ukrainian companies.

Capital gains on the sale of shares are generally taxable by Ukrainian corporate profit tax at 25%. Notaries' fees for the share purchase agreement are 1% of the purchase price.

OTHER REGULATORY RESTRICTIONS

25. Are any other regulatory approvals required, such as merger control and banking? If so, what is the effect of obtaining these approvals on the public offer timetable (for example, do the approvals delay the bid process, at what point in the timetable are they sought and so on)?

Merger clearance is required if the purchaser acquires 25% (or more) or 50% (or more) of the company's shares, where certain thresholds are met (see *Question 8*). The merger must be cleared before the transaction is closed (that is, the title to shares is transferred). No post-closing clearance is possible.

The merger clearance (phase 1) procedure takes up to 45 calendar days from the date of the application to the AMCU. The issued AMCU permit for concentration is valid for one year.

Filing with the AMCU requires the disclosure of information on both the bidder and the target. Therefore, in the event of a hostile bid, the target's refusal to provide information may hamper or substantially delay the clearance and, consequently, the takeover.

The acquisition or increase of a substantial shareholding in a Ukrainian bank is subject to preliminary approval by the NBU. No post-notification with the NBU is allowed. The NBU issues its approval within 30 calendar days. In practice, however, this term may be longer due to extensive documentary disclosure requirements.

In certain other industries, post-notification procedures are required (for example, the National Council of TV and Broadcasting must be notified of any changes in shareholders in the telecommunications sector).

THE REGULATORY AUTHORITIES**Anti-monopoly Committee of Ukraine (AMCU)****Head.** Oleksiy Kostusev**Address.** 45, Urytskoho Str
03035 Kiev
Ukraine**T** +380 44 251 6262**F** +380 44 520 0325**E** mail@amc.gov.ua**W** www.amc.gov.ua**Main area of responsibility.** The AMCU is a specialised government body responsible for regulating competition merger control and related practices.**Contact for queries.** See contact details above.**Obtaining information.** See website and contact details above.**Securities and Stock Market State Commission (SEC)****Head.** Dmytro Tevelev**Address.** 8, Moskovska Str
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Ukraine**T** +380 44 254 2430**F** +380 44 280 1605**E** web_master@stockmarket.gov.ua**W** www.ssmc.gov.ua**Main area of responsibility.** The SEC is a specialised government body regulating the securities market in Ukraine.**Contact for queries.** See contact details above.**Obtaining information.** See website and contact details above.**National Bank of Ukraine (NBU)****Head.** Volodymyr Stelmakh**Address.** 9, Instytutska Str
01601 Kiev
Ukraine**T** +380 44 253 0180**F** +380 44 230 2033**E** webmaster@bank.gov.ua**W** www.bank.gov.ua**Main area of responsibility.** The NBU is a specialised government body regulating the national monetary policy and currency transactions.**Contact for queries.** See contact details above.**Obtaining information.** See website and contact details above.**State Commission on Financial Services Markets Regulation****Head.** Vasyl Volga**Address.** 3, Borysa Grinchenka Str
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Ukraine**T** +380 044 234 1635**F** +380 044 234 0224**E** info@dfp.gov.ua**W** www.dfp.gov.ua**Main area of responsibility.** The State Commission of Financial Services Markets Regulation is specialised government body regulating the financial services markets in Ukraine.**Contact for queries.** See contact details above.**Obtaining information.** See website and contact details above.

26. Are there restrictions on foreign ownership of shares (generally and/or in specific sectors)? If so, what approvals are required for foreign ownership and from whom are they obtained?

Foreign investors are treated in the same way as domestic investors except that:

- The foreign investment cannot exceed 30% of companies active in publishing and distributing published materials.
- Although foreign investors can establish their 100% foreign-owned subsidiaries in Ukraine, problems can arise during establishment in Ukraine or when acquiring 100% of shares in legal entities registered in Ukraine for the purposes of holding land in Ukraine, as foreign entities cannot wholly own certain types of Ukrainian land.

27. Are there any restrictions on repatriation of profits or exchange control rules for foreign companies? If so, please give details.

Generally, there are no restrictions on repatriation of profits. However:

- Taxation procedures must be complied with (payment of dividends is subject to Ukrainian withholding tax, where applicable).
- Foreign currency control requirements must be observed. These require that the exchange into foreign currency and further transfer of dividends to the investor by a Ukrainian bank is subject to confirmation that the transfer of funds as consideration for the Ukrainian shares acquired from the selling shareholder or any historical (former) shareholder (where appropriate) has been made through a Ukrainian bank.

28. Following the announcement of the offer, are there any restrictions or disclosure requirements imposed on persons (whether or not parties to the bid or their associates) who deal in securities of the parties to the bid?

There are no restrictions following the announcement of the offer.

REFORM

29. Please summarise any proposals for the reform of takeover regulation in your jurisdiction.

The Joint Stock Companies Law came into effect (and the SEC adopted the required regulations) on 29 April 2009. This introduced:

- New reporting requirements (*see Question 12*).
- Mandatory offer/buyout provisions (*see Questions 16 and 20*).

Further clarifications of its takeover provisions are expected, as well as additional takeover regulations covering the following issues:

- Shareholders' pre-emptive rights in case of capital increases of a joint stock company.

- Corporate governance.
- Mergers of joint stock companies and related procedure.
- Shareholders' agreements.
- Relations between minority and majority shareholders, including compulsory buyouts and squeeze-outs.
- The scope of permitted anti-takeover matters.
- Debt-to-equity conversion.

No specific Ukrainian law on mergers and acquisitions is expected in the near future.

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