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# Mergers & Acquisitions

## in 58 jurisdictions worldwide

## 2009

**Contributing editor: Casey Cogut**

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# Ukraine

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## 1 Form

How may businesses combine?

In Ukraine business may be combined in a number of different ways. The basic forms of business combinations are as follows:

- mergers may be conducted in two forms:
  - merger by transferring assets of one legal entity to another pre-existing entity; or
  - merger by transferring assets of two or more existing entities to a new one followed by liquidation of the entities being merged (fusion);
- spin-off (followed by sale of a newly established entity);
- share purchase;
- asset purchase (rarely used in practice);
- formation of a new legal entity;
- joint ventures (simple partnership); and
- lease or concession of a going concern.

## 2 Statutes and regulations

What are the main laws and regulations governing business combinations?

Business combinations are governed by a range of laws and regulations depending on the type of transaction. The following are the main laws that govern business combinations in Ukraine:

- Civil Code No. 435–IV dated 16 January 2003;
- Commercial Code No. 436–IV dated 16 January 2003;
- Business Associations Act No. 1576–XII dated 19 September 1991;
- Joint-stock companies Act No 514-VI dated 17 September 2008;
- Legal Entities and Individual Entrepreneurs State Registration Act No. 755-IV dated 15 May 2003;
- Economic Competition Protection Act, No. 2210–III dated 11 January 2001;
- Regulation on Economic Concentration, approved by the Anti-Monopoly Committee of Ukraine, Resolution No. 33-p dated February 19, 2002;
- Holding Companies Act No. 3528-IV dated 15 March 2006;
- Securities and Stock Market Act No. 3480–IV dated 23 February 2006;
- National Depositary System and Electronic Securities Circulation Act No. 710/97 dated 10 December 1997;
- State Property Privatisation Act No. 2163-XII dated 4 March 1992;
- State and Municipal Property Lease Act No. 2269-XII dated 10 April 1992;
- Concession Act No. 997-XIV dated 16 July 1999;
- Foreign Investments Regime Act No. 93/96-BP dated 19 March 1996;
- International Private Law Act No. 2709-IV dated 23 June 2005; and
- Insolvency (Bankruptcy) Act No. 2343-XII dated 14 May 1992.

Many issues associated with business combinations in Ukraine are governed by regulations issued by the State Commission on Securities and Stock Market of Ukraine, among other authorities. However, most of these regulations will be changed to ensure proper implementation of the new Joint-stock Companies Act.

Special rules govern the privatisation, lease and concession of state and municipal enterprises (public property), as well as combinations of banks, insurance companies, credit unions and other financial institutions.

Taking into account how immature the Ukrainian legislation is and how unfavourable tax regulations are pertaining to business combination transactions, most major M&A deals are executed through foreign holding companies (previously established or ad hoc).

## 3 Governing law

What law typically governs the transaction agreements?

If both parties to an agreement are Ukrainian individuals or legal entities, the agreement will be governed by the laws of Ukraine. If a foreign company or individual is a party to an agreement, foreign laws can be applied under the International Private Law Act of Ukraine. Traditionally, parties to M&A agreements subordinate them to British laws because most legal instruments commonly used in such transactions cannot be applied and enforced under the legislation of Ukraine. Nevertheless, it ought to be considered that numerous issues are subject to Ukrainian mandatory rules and cannot be regulated by foreign laws: share ownership rights registration (Regulations of the State Commission on Securities and Stock Market of Ukraine on Keeping the Registers of the Registered Securities Owners No. 1000 dated 17 October 2006), settlement procedures under an agreement (Regulation of the National Bank of Ukraine on Foreign Investment in Ukraine No. 280 dated 10 August 2005), registration of companies and making amendments to the records in the Company Register, real estate ownership rights registration, etc.

Also, Ukrainian courts broadly interpret the idea of public order. Under section 9 of the Supreme Court of Ukraine Ruling No. 13 dated 24 October 2008 'On Practice of Corporate Disputes Resolution', the following issues must exclusively be governed by the laws of Ukraine: activity of joint-stock companies incorporated in Ukraine, relations between a joint-stock company and its shareholders and relations between joint-stock company shareholders as to the

company's activity and corporate governance. If foreign shareholders of a company registered in Ukraine chose to apply foreign law to govern relations between shareholders or between shareholders and their company, according to section 10 of the Private International Law Act of Ukraine, such a choice would be deemed null and void. The Ruling prescribes that relations between founders (shareholders) of a business association in respect of formation of company bodies, establishment of their scope of authority, procedures of the general meeting summoning and decision making are regulated by the Civil Code of Ukraine and the Business Associations Act of Ukraine. These regulations are of mandatory nature and failure to comply with them violates public order. Shareholders of a company registered in Ukraine, as well as shareholders and the company have no right by their own arrangement to subject the terms under which an agreement on corporate governance becomes invalid (grounds, procedure, and consequences) to foreign law because these issues fall within the scope of the mandatory rules of Ukraine. Company shareholders are also not entitled to assign jurisdiction for corporate disputes connected with activity of a company registered in Ukraine, including corporate governance disputes, to international commercial arbitration courts. This position is supported by the High Commercial Court of Ukraine.

## 4 Filings and fees

Which government or stock exchange filings are necessary in connection with a business combination? Are there stamp taxes or other government fees in connection with completing a business combination?

### Filings to the state registrar

Any changes in the shareholding structure of a legal entity (excluding joint-stock companies) must be recorded in the entity's constituent documents and must also be registered with the relevant governmental registration authority – the state registrar – who is responsible for entering records to the Unitary State Register of Legal Entities and Individual Entrepreneurs.

If any type of reorganisation occurs, corresponding changes in the constituent documents must also be registered with the state registrar.

### Filings with anti-monopoly authorities

According to the Economic Competition Protection Act, prior consent of the Anti-Monopoly Committee of Ukraine (AMCU) is required inter alia in the following cases:

- mergers and fusions of commercial legal entities;
- formation of a commercial legal entity by two or more commercial legal entities;
- acquisition of a going concern or any structural subdivision of such a concern, making an asset management agreement, lease or concession agreement or obtaining the right to use such assets in any other way;
- appointment to managing bodies of one commercial entity of persons who occupy managing positions in another commercial entity; and
- acquisition of ownership rights or the right to manage shares (participatory interest) that give at least 25 or 50 per cent of votes in the highest decision-making body of a company.

However, not all of the above transactions automatically fall within the controlling competence of the AMCU. Prior consent of the AMCU is required in particular in the following two cases:

- if the asset value or annual turnover of the entities participating in a transaction (acquiring entity, group of entities to which the acquiring entity belongs and a target entity) exceeds the stated thresholds, inter alia:
  - the total value of the assets of the entities participating in the transaction (acquiring entity, group of entities to which the acquiring entity belongs and a target entity) or their annual turnover in the preceding calendar year should exceed €12 million, and
  - the value of total assets or turnover of at least two entities in Ukraine and abroad should exceed €1 million; or
  - the value of total assets or turnover of at least one entity in Ukraine should exceed €1 million; or
- if the share of any entity participating in the transaction in the market of a certain good exceeds 35 per cent and the combination involves players in the same or adjacent market.

To obtain the prior consent from the AMCU a notification and appropriate supporting documents must be filed. It takes 15 days for the AMCU to assess whether the notification and its supporting documents are complete and in good order. If the notification is not rejected by the AMCU during this period it is deemed as automatically accepted for review and substantive analysis, which must be completed within 30 days. If the AMCU initiates an in-depth investigation, this may take up to three months to complete.

The AMCU is entitled to refuse to grant its prior consent if a transaction might result in restriction of competition in any given market sector. If no prior consent is obtained, the new entities created as a result of a merger or acquisition may be liquidated. Any transactions completed without the prior consent may be held invalid in case they lead to restriction of competition. If a merger or takeover occurred without anti-monopoly clearance, the resulting entity may be ordered by the AMCU to split up. In addition, the AMCU is entitled to impose fines for non-compliance with these rules.

Apart from those cases when prior anti-monopoly clearance is required, other controls are also in place. For example, in some cases notification to anti-monopoly authorities is necessary after the transaction is already completed.

### Filings to the share registrar or depositary

If a combination transaction involves assignment of ownership rights to shares, a new owner must be recorded in the register of shareholders. Such a register can be kept by a company itself or its registrar, or a depositary. Within five days after all the required documents are filed the appropriate amendments must be made in the register. This system of share rights registration will soon be modified because under the provisions of the new Joint-stock Companies Act the shares will exist only in electronic form (starting from 29 April 2011).

### Filing with the Bureau of Technical Inventory (BTI)

If a combination transaction is connected with transfer of ownership rights to a target company's real estate, such a transfer must also be registered. The authority empowered to register real estate rights in Ukraine is the Bureau of Technical Inventory. In practice this procedure is quite complicated and time-consuming. Therefore, investors usually prefer to enter share (participatory interest) purchase agreements rather than asset deeds.

### Stamp taxes and other governmental fees

Under the legislation of Ukraine no stamp taxes are to be paid in connection with business combination transactions. However, when various governmental filings are required, certain state duties and fees are payable, usually of an insignificant amount (eg, state duty for the registration of a new legal entity is approximately €17, state duty for filing the application to the AMCU to obtain the prior consent for a business combination is approximately €500).

### 5 Information to be disclosed

What information needs to be made public in a business combination? Does this depend on what type of structure is used?

According to the Securities and Stock Market Act any issuer of securities shall disclose to the State Commission on Securities and Stock Market information on the following: decision on placement of securities with value of over 25 per cent of its registered capital, change of an owner of more than 10 per cent of voting shares in a company, decision to close a company. Such information can be found in the accessible to the general public Commission database at www.stockmarket.gov.ua/ua.

Under the Legal Entities and Individual Entrepreneurs State Registration Act information about decisions on mergers and/or acquisitions of legal entities is subject to publication.

Numerous requirements on information disclosure are contained in the new Joint-stock Companies Act.

According to section 64 of the above Act a person (or persons who act jointly) who intends to acquire shares and whose combined stock or stock owned by an affiliated person (or persons) will constitute 10 per cent or more of all ordinary shares of a company (hereinafter significant stock), is obligated to notify the company in writing about his or her intent and to publish it no later than 30 days prior to the date of the acquisition of the significant stock. Publication of such a notification is to be made by submission of it to the State Commission on Securities and Stock Market and to all stock exchanges where the company is listed, and by publication of it in official printed media. The notification must include information on the quantity, type and class of the company's shares that are owned by the person (or each of the persons who act jointly), and every affiliated person, as well as on the quantity of the company's ordinary shares that the person (or persons who act jointly) intends to acquire.

The Act contains requirements on disclosure of information on a mandatory bid. The person (or persons acting jointly) who acquired 50 per cent or more of the company's ordinary shares (hereinafter controlling stock) is obligated to offer to all shareholders within 20 days from the date of the controlling stock acquisition to acquire their ordinary shares, except for cases when the controlling stock is acquired during the process of privatisation. The mentioned person (or persons) is to mail to the company's registered address a public offer that cannot be recalled to all the shareholders who own the company's ordinary shares, and is to notify the State Commission on Securities and Stock Market and all stock exchanges where the company is listed of this offer. The supervisory board (or the executive body of the company, if the supervisory board is not prescribed by the company statute) is obligated to submit the above offer to each of the shareholders in accordance with the company shareholders' register within 10 days from the date of receiving the appropriate documents from the person (or persons).

The offer to the shareholders must contain information about the following:

- the person or persons who acquired the controlling stock and affiliated persons: last name (company name), place of residence (registered office), quantity, and type and class of the company shares owned by each of the above persons;
- offered price for the shares and how it is estimated;
- time within which the shareholders must announce their decision to accept or reject the offer; and
- payment arrangement (for the acquired shares).

A public joint-stock company is under the obligation to notify the stock exchange where its securities are being circulated of the general meeting to be held. In addition, a joint-stock company that has more than 1,000 shareholders must publish information about its general meeting no later than 30 days prior to the date of the meeting in one of the official printed media.

One of the problems with the Ukrainian legislation is that different regulations prescribe publication in different printed media that creates inconveniences for interested parties, which thereby need to examine four to five media sources instead of one.

### 6 Disclosure of substantial shareholdings

What are the disclosure requirements for owners of large shareholdings in a company? Are the requirements affected if the company is a party to a business combination?

According to the Civil Code, if an acquiring entity has acquired over 20 per cent of shares or a participatory interest in a limited liability company or a joint-stock company, the acquirer shall disclose information about the acquisition in a manner prescribed by law. However, the procedure for such disclosure has not yet been established.

See also question 5.

### 7 Duties of directors and controlling shareholders

What duties do the directors or managers of a company owe to the company's shareholders, creditors and other stakeholders in connection with a business combination? Do controlling shareholders have similar duties?

Ukrainian legislation does not specify any special duties for directors related to business combinations. However, certain exceptions are set forth by the legislation on joint-stock companies. Under the new Joint-stock Companies Act supervisory boards of each joint-stock company that participates in a fusion, merger, split-up or spin-off must draft a merger agreement or a plan for the spin-off that must contain the following:

- full name and bank details of each company that participates in the fusion, merger, split-up or spin-off;
- conversion procedure for and indexes of shares and other securities, as well as amounts of possible payments to shareholders;
- information about the rights that the successor-company will grant to the owners of securities other than ordinary shares of the company that is being discontinued due to a fusion, merger, split-up or spin-off, or information about measures to be taken in respect of such securities; and
- information about the persons proposed to be appointed as officers of the successor-company after a fusion, merger, split-up or spin-off is finalised, and information about their remuneration or compensation.

Supervisory boards of each of the joint-stock companies that participate in a fusion, merger, split-up or spin-off are obligated to provide shareholders with explanations as to the terms and conditions of a merger agreement or with a spin-off plan.

Such explanations must contain economic grounds for the expediency of a fusion, merger, split-up or spin-off, the list of methods that have been implemented to estimate the market value of the joint-stock company, and the assessment of share and other securities conversion index.

A supervisory board of a joint-stock company that participates in a fusion, merger, split-up, spin-off or reorganisation with a number of ordinary shareholders that exceeds 100 persons must obtain an independent expert opinion (from an auditor or an appraiser) on the terms and conditions for the fusion, merger, split-up, spin-off or reorganisation. Such an opinion must contain an evaluation of the expediency and adequacy of the methods used for market value estimation of the property of each joint-stock company and assessment

of shares and other securities index conversion.

Materials to be sent to shareholders during the preparation for the general meeting that will decide on approval of the terms and conditions for the merger (fusion) agreement, split-up (spin-off) plan or transfer act must include:

- draft of the merger (fusion) agreement or the split-up (spin-off) plan;
- explanations of the terms and conditions in the merger (fusion) agreement or the split-up (spin-off) plan;
- expert opinion on the terms and conditions for the merger, fusion, split-up or spin-off in cases prescribed for by the legislation; and
- in the case of a merger (fusion) - annual financial report (statement) from other involved legal entities for the last three years.

Essential terms and conditions for the merger (fusion) agreement approved by the general meeting of each of the mentioned legal entities must be identical.

All other operations are subject to the general duty of the directors established by the Civil Code of Ukraine, that is, to act reasonably, in good faith, and in the best interests of the legal entity. The directors of a legal entity may be held liable for losses incurred by the company as a result of their abuse of power.

The controlling shareholders have no statutory duty to act reasonably, in good faith, or in the best interests of the company. It should be noted, however, that according to the Commercial Code in cases when a subsidiary has entered into a disadvantageous transaction owing to a fault of its parent company, the latter shall compensate the subsidiary for the losses it has incurred. If the subsidiary became insolvent or bankrupt owing to the fault of the parent company, the latter would bear secondary liability to the subsidiary's creditors.

## 8 Approval and appraisal rights

What approval rights do shareholders have over business combinations? Do shareholders have appraisal or similar rights in business combinations?

A business combination may be subject to shareholder approval if it is a significant transaction; linked with the discontinuance of a legal entity; or related to change of a registered capital or introduction of amendments to a company charter.

According to section 98 of the Civil Code of Ukraine a decision on introduction of amendments to the charter of a legal entity, disposition of property in the amount of 50 per cent or more of the property owned by a legal entity is adopted by a three-quarters majority vote, if otherwise is not prescribed by law.

According to the Act on Joint-stock Companies the following is the exclusive authority of the general meeting of a joint-stock company:

- introduction of amendments to the charter of a legal entity;
- making decisions on share issues;
- making decisions on registered capital change (increase or decrease);
- making decisions on the spin-off and discontinuance of a legal entity, except for the cases prescribed by section 84 of the Act;
- making decisions on company liquidation, appointment of a liquidation commission, approval of a procedure and terms for liquidation, on distribution of company property among shareholders after creditors' claims are satisfied and a liquidation balance sheet is approved; and
- election of a commission on discontinuance of a legal entity.

Upon submission by a supervisory board of each joint-stock company involved in a merger, fusion, split-up or spin-off the general meeting decides on discontinuance of a company (merger, fusion, split-up or spin-off), as well as on approval of terms and conditions for a merger (fusion) agreement, transfer act (in the case of a merger or a fusion), or distributive balance sheet (in the case of a split-up or a spin-off).

The Act on Joint-stock Companies contains detailed regulations on making significant transactions.

If the market value of property or services that are part of a significant transaction exceeds 25 per cent of the value of assets according to the most recent annual financial report (statement) of a legal entity, a decision to participate in such a transaction must be made by the general meeting upon the submission of the supervisory board.

A decision to enter into a significant transaction if the market value of the property or services exceeds 25 per cent but is less than 50 per cent must be adopted by a simple majority of voting shareholders who registered for participation in the general meeting.

A decision to enter into a significant transaction if the market value of property or services is 50 per cent or more must be adopted by a three-quarters vote of all company shareholders.

If as of the date of the general meeting it is impossible to determine what significant transactions a company will enter into during the course of its day-to-day business, the general meeting can grant preliminary approval for significant transactions of a certain nature and the maximum value that can be entered into within one year.

It is prohibited to split the object of a significant transaction to avoid the procedure of making a decision on entering into a significant transaction.

A shareholder who votes against a decision on a merger, fusion, split-up or spin-off of a company, change of the company type from public to private, entering of the company into a significant transaction, change of registered capital (increase or decrease) has the right to claim from the company redemption of his or her shares at market value. For this purpose the shareholder must, within 30 days after the appropriate decision was made by the general meeting, file his or her claim in writing. The claim must contain the shareholder's last name (company name), place of residence (registered office), quantity, and type and class of the shares to be bought out.

The buy-out price is estimated on the date preceding the date of publication of the notice about the general meeting that made the decision based on which the shareholder claims redemption of shares.

The company is under the obligation to pay for the redeemable shares within 30 days after the buy-out claim is received.

## 9 Hostile transactions

What are the special considerations for unsolicited (hostile) transactions?

Ukrainian legislation does not provide for a duty of directors to prepare recommendations for shareholders on the expediency of any M&A transactions. Therefore, 'hostile takeovers' do not exist in Ukraine as of yet. Respectively, there are no special terms and conditions for implementation of such takeovers. All transactions are governed by the general rules.

**10 Break-up fees – frustration of additional bidders**

Which types of break-up and reverse break-up fees are allowed? What are the limitations on a company's ability to protect deals from third-party bidders?

There are no specific provisions governing break-up fees or reverse break-up fees and their enforceability.

**11 Government influence**

Other than through relevant competition (antitrust) regulations, or in specific industries in which business combinations are regulated, may government agencies influence or restrict the completion of business combinations including for reasons of national security?

The legislation of Ukraine entitles governmental authorities with broad powers to regulate and supervise business combinations.

The following are the main authorities that have regulatory influence over business combinations:

- Cabinet of Ministers of Ukraine;
- State Commission on Securities and Stock Market;
- State Commission on Regulation of Financial Services Markets;
- National Bank of Ukraine;
- State Property Fund of Ukraine; and
- company registration authorities (State Committee on Regulatory Policy and Entrepreneurship and Company Registrars).

**12 Conditional offers**

What conditions to a tender offer, exchange offer or other form of business combination are allowed? In a cash acquisition, may the financing be conditional?

Ukrainian legislation does not contain any restrictions as to the terms and conditions for inclusion in a conditional offer or exchange offer, and therefore a bidder may provide such offers with any terms and conditions. The same goes for any other forms of business combinations.

The Civil Code of Ukraine precisely prescribes for the possibility to conclude tender offers. More often than not such terms and conditions are included in transactions of stock sales and agreements on reorganisation. As a rule, such terms and conditions are the following:

- obtaining consent and permits from appropriate authorities; and
- taking certain actions by a target company or its shareholders.

It is common practice to sell shares of public (state and municipal) companies in exchange for 'investment commitments'. Failure to comply with such commitments may serve as a ground for terminating a deal.

**13 Minority squeeze-out**

May minority stockholders be squeezed out? If so, what steps must be taken and what is the time frame for the process?

Ukrainian legislation does not contain any provisions on squeezing out minority shareholders.

**14 Cross-border transactions**

How are cross-border transactions structured? Do specific laws and regulations apply to cross-border transactions?

Cross-border merger transactions cannot presently be implemented in Ukraine. However, there are no restrictions on any other transactions. There are no special laws that govern such transactions with the exception of the Foreign Investments Regime Act. This act establishes types and forms of foreign investment and numerous guarantees for investors.

Many substantial issues related to foreign investments are governed by the Regulation of the National Bank of Ukraine on Foreign Investment in Ukraine (as mentioned in question 3).

A number of laws contain restrictions on foreign investments into certain economy sectors and markets (financial services market, media, etc).

**15 Waiting or notification periods**

Other than competition laws, what are the relevant waiting or notification periods for completing business combinations? Are companies in specific industries subject to additional regulations and statutes?

Under the Legal Entities and Individual Entrepreneurs State Registration Act a notice must be filed with the company registrar if a company is to be discontinued or in the case of a spin-off of the company. The above procedures cannot be implemented within two months after the filing date. This waiting period is designated for settlement with creditors.

Some special rules on notification of creditors are prescribed by the Joint-stock Companies Act.

In cases of split-up, reorganisation, spin-off, merger or fusion, a company must notify its creditors and publish a notice about the appropriate decision in official public media. The creditors must be notified within 30 days after the general meeting makes the decision on the company split-up, spin-off or reorganisation. In the event of a merger or fusion the notice must be given within 30 days after the appropriate decision is made by the general meeting of the last involved legal entity. A public company must also notify each stock exchange it is listed with about such a decision.

A creditor of a company that undergoes a merger, fusion, split-up, reorganisation, or spin-off and whose claims are not secured by a pledge or surety within 20 days after being notified about the company's discontinuance has the right to request the company in writing to take one of the following actions: to enter into a pledge or surety agreement, to prematurely terminate or comply with obligations before the creditor and to compensate for damages, if otherwise is not prescribed by the agreement between the creditor and the company.

The merger, fusion, split-up, spin-off or reorganisation cannot be finalised until the filed claims of the creditors are satisfied.

**16 Tax issues**

What are the basic tax issues involved in business combinations?

Generally, the laws of Ukraine do not provide for any special taxes or duties to be paid in the case of business combination. Taxation of combination transactions depends on the form a combination is executed in and the type of transaction involved in the process (purchase-and-sale of shares or assets, exchange deed, deed of gift, etc).

Foreign investors who have acquired stocks (participatory interest) in Ukrainian companies are subject to withholding tax on the amount of the dividends received. The basic rate of this tax is 15 per cent from the dividends amount. However, double tax treaties may prescribe other rates. For instance, in accordance with the double tax treaty concluded between Ukraine and the United Kingdom, the rate of withholding tax may constitute 5 per cent (for investors who own at least 20 per cent stock or participatory interest) or 10 per cent (in other cases) of the dividend amount.

**17 Labour and employee benefits**

What is the basic regulatory framework governing labour and employee benefits in a business combination?

The legislation of Ukraine does not contain specific regulations governing labour and employee benefits in a business combination. Basically, all labour relations and employee benefits are subject to the provisions of the Labour Code of Ukraine dated 10 December 1971.

In the case of share purchase the possibility of changes in labour relations of a target company depends on the amount of shares purchased by the acquirer. Traditionally, acquirers who acquired controlling stock initiate appointment (election) of new CEOs of the target company. Also, they may influence the labour policy of the target company through its managing bodies.

If a business combination is executed in the form of a merger or a spin-off, the transfer of the employees takes place only with their own consent. In such a case an employee has the right to unilaterally terminate his or her labour agreement with the acquired company.

A collective agreement in the case of change of the target company owner remains effective for the period it was made, but no longer than one year. The new owner as represented by the managing body of the target company must start negotiating a new collective agreement within that period.

**18 Restructuring, bankruptcy or receivership**

What are the special considerations for business combinations involving a target company that is in bankruptcy or receivership or engaged in a similar restructuring?

Bankruptcy procedure in Ukraine is governed by the Insolvency (Bankruptcy) Act No. 2343-XII dated 14 May 1992. Generally, the bankruptcy procedure is quite time-consuming and procedurally complicated. It is therefore rarely used for the purpose of business combination compared with the other forms.

The way a potential acquirer can acquire the assets of a target-company undergoing bankruptcy procedure is through sanation. It implies participation of the acquirer in the restoration of the target company's solvency. The whole sanation procedure is intended to prevent the debtor's bankruptcy and liquidation and to improve the debtor's financial status. The sanation procedure can be introduced by a commercial court upon the petition of the committee of creditors and must be completed within 12 months. The said term can be extended for another six months or reduced at the petiton of the creditors' committee. After the commercial courts decide to apply the sanation procedure to the target company, the creditors' committee ought to give its approval for a candidate to take the position of sanation administrator, choose investors and approve a plan of sanation.

Therefore, any acquisition transaction involving a company in bankruptcy must be approved by a commercial court, a committee of creditors or a sanation administrator.

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