

MERGERS & ACQUISITIONS – LEGAL ASPECTS

SHAREHOLDER RIGHTS VIS-A-VIS INTEREST IN PAID-UP CHARTER CAPITAL

“LEVEL” OF INTEREST	SHAREHOLDER RIGHTS
1 SHARE	<ol style="list-style-type: none"> 1) VOTING RIGHTS AT GENERAL SHAREHOLDER MEETING 2) RIGHT TO RECEIVE DIVIDENDS IN CATEGORY OF SHARES HELD 3) RIGHT TO RECEIVE PART OF ASSETS (ADEQUATE VALUE) IN EVENT OF LIQUIDATION 4) RIGHT TO DEMAND BUY-OUT OF SHARES
1% OF SHARES	<ol style="list-style-type: none"> 1) RIGHT TO INFORMATION CONTAINED IN COMPANY REGISTER 2) RIGHT TO FILE CLAIMS IN COURT AGAINST A COMPANY BOARD MEMBER
2% OF SHARES	<ol style="list-style-type: none"> 1) RIGHT TO MAKE 2 SUGGESTIONS FOR THE AGENDA OF A GENERAL SHAREHOLDER MEETING 2) RIGHT TO NOMINATE CANDIDATES FOR THE BOARD & INSPECTION COMMISSION
10% OF SHARES	<ol style="list-style-type: none"> 1) RIGHT TO DEMAND THE CONVENING OF A EXTRAORDINARY SHAREHOLDERS MEETING 2) RIGHT TO BECOME ACQUAINTED WITH LIST OF PARTICIPANTS OF A GENERAL SHAREHOLDERS MEETING 3) RIGHT TO DEMAND AN INSPECTION OF THE FINANCIAL & ECONOMIC ACTIVITIES OF THE COMPANY
25%+1 OF SHARES	RIGHT TO BLOCK A DECISION OF A GENERAL SHAREHOLDERS MEETING RELATING TO MAKING AMENDMENTS TO THE CHARTER, ISSUE OF SHARES (CLOSED SUBSCRIPTION, ISSUE OF ORDINARY SHARES BY OPEN SUBSCRIPTION, IF MORE THAN 25% OF EARLIER ISSUED ORDINARY SHARES ARE BEING ISSUED), REORGANIZATION & LIQUIDATION OF COMPANY, CONCLUSION OF MAJOR TRANSACTIONS.
30%+1 OF SHARES	RIGHT TO CONVENE A GENERAL SHAREHOLDERS MEETING, IN LIEU OF A MEETING THAT DID NOT TAKE PLACE
50%+1 OF SHARES	<ol style="list-style-type: none"> 1) RIGHT TO CONVENE A GENERAL SHAREHOLDERS MEETING 2) RIGHT TO TAKE DECISIONS AT A GENERAL SHAREHOLDERS MEETING (EXCEPT FOR QUALIFIED VOTING)
75%+1 OF SHARES	COMPLETE AND FULL CONTROL OF A COMPANY (UNLESS THE LEVEL FOR TAKING DECISIONS IS NOT OTHERWISE INDICATED IN THE COMPANY CHARTER)

MERGERS & ACQUISITIONS – LEGAL ASPECTS

COMPLIANCE MATRIX – ECONOMIC FORMS OF RESTRUCTURING AND FORMS OF REORGANIZATION OF A LEGAL ENTITY UNDER THE RUSSIAN CIVIL CODE

ECONOMIC FORMS OF RESTRUCTURING	FORMS OF REORGANIZATION OF A LEGAL ENTITY					CREATION OF NEW LEGAL ENTITY	TERMINATION OF LEGAL ENTITY
	MERGER	ACCESSION	DIVISION	SEPERATION	TRANSFORMATION		
MERGER OF INDEPENDENT FIRMS	*					+	+
MERGER OF PARENT & DAUGHTER FIRMS	*					+	+
ACCESSION OF INDEPENDENT FIRMS		*				–	+
ACCESSION OF DAUGHTER FIRM		*				–	+
DIVISION INTO INDEPENDENT FIRMS			*			+	+
SEPERATION INTO AN INDEPENDENT FIRM				*		+	–
TRANSFORMATION					*	+	–
SEPERATION OF DAUGHTER & MOTHER FIRMS						–	–
COMBINED FORMS, (CREATION OF HOLDINGD)	*			*		+	–

KEY: **FULL COMPLIANCE - *** **TAKES PLACE - +** **DOES NOT TAKE PLACE - _**

MERGERS & ACQUISITIONS – LEGAL ASPECTS

COMPARATIVE ANALYSIS OF WESTERN & RUSSIAN TRANSACTIONS RELATING TO “HOSTILE TAKE-OVERS”

CHARACTERISTIC	WESTERN “HOSTILE TAKE-OVER”	RUSSIAN “HOSTILE TAKE-OVER”
METHODOLOGY	BUILDING A SHARE PACKAGE (UP TO 10%) IN THE TARGET COMPANY; OPEN TENDER AGAINST MANAGEMENT INTERESTS	“QUIET” BUY-OUT OF SHARES; OPEN PROPOSAL; ACQUISITION OF DEBT OBLIGATIONS
INITIATOR OF ATTACK	AGGRESSOR (ITS DAUGHTER FINANCIAL COMPANY OR AUTHORIZED INVESTMENT BANK)	OFFSHORE COMPANIES OF THE AGGRESSOR
CONTROL TECHNOLOGY	SHARES OF THE TARGET COMPANY	1) SHARES (MANAGEMENT ORGANS OF THE AGGRESSOR TAKE A FORMAL DECISION TO BUY UP TO 10%; ANTITRUST & TAX ISSUES) 2) DEBT (NO FORMAL DECISION REQUIRED; NO ANTITRUST ISSUES; VAT APPLICABLE; NO LIMIT FOR PERCENTAGE OF ACQUISITION)
PAYMENT MEANS	CASH; SHARES OF AGRESSOR; OTHER	CASH; PROMISSORY NOTES OF AGGRESSOR
TRANSACTION COSTS	MARKET VALUE OF SHARES + TIME	MARKET VALUE OR AGREEMENT WITH CREDITORS
INITIATORS	MANAGEMENT OF AGGRESSOR OR BANKS	ACTUAL OWNERS OF AGGRESSOR
MAIN BENEFICIARY	SHAREHOLDERS & MANAGEMENT OF AGGRESSOR; MANAGEMNET OF TARGET	ACTUAL OWNERS OF AGGRESSOR; SOME SHAREHOLDERS & CREDITORS OF TARGET COMPANY
TARGET COMPANY PERSPECTIVES	ACCESSION TO AGGRESSOR; ALIENATION OF NON-PERFORMING ASSETS; SUBSEQUENT SALE	RESTRUCTURING; DIVISION OF ASSETS; POSSIBLE TERMINATION OF BUSINESS
INFLUENCE OF THIRD PARTIES	ONLY FROM THE COURTS (IN CASES OF COURT ACTION); ANTITRUST ORGANS; KEY CREDITORS OF TARGET COMPANY; STRONG INFLUENCE FROM INVESTMENT BANKS. STATE INFLUENCE MINIMAL	VERY STRONG INFLUENCE OF THIRD PARTIES, INCLUDING STATE AND OTHER SOCIAL INSTITUTIONS

MERGERS & ACQUISITIONS – LEGAL ASPECTS

TECHNOLOGY OF “HOSTILE TAKE-OVERS” – PRE-OFFER DEFENSES

NAME OF DEFENSE	DESCRIPTION	EFFECT OF DEFENSE
SHARK REPELLANTS 1: STAGGERED BOARD	BOARD OF TARGET COMPANY IS DIVIDED INTO 3 EQUAL GROUPS. ONE GROUP IS ELECTED FOR 1 YEAR. IN RUSSIA – AMENDMENTS TO CHARTER MAKES IT DIFFICULT TO CHANGE BOARD.	ACQUIRING COMPANY IS NOT GIVEN THE OPPORTUNITY TO OBTAIN MANAGEMENT CONTROL OVER COMPANY AFTER ACQUISITION OF CONTROL PACKAGE.
SHARK REPELLANTS 2: SUPER MAJORITY	VOTING FOR COMPANY MERGER IS SET AT 80-90%.	INCREASES THE AMOUNT OF SHARES NEEDED BY ACQUIRING COMPANY TO OBTAIN CONTROL.
SHARK REPELLANT 3: FAIR PRICE	ACQUIRING COMPANY IS FORCED TO BUY OUT ALL SHARES AT ONE PRICE IRRESPECTIVE OF WHO OWNS THE SHARES. TARGET REMOVES SUPERMAJORITY PROVISIONS	FOILS TWO ENDED TENDER PROPOSALS. NO DISCRIMINATION IN PURCHASE OF SHRES. ACQUIRING COMPANY IS FORCED TO RESTRUCTURE ITS TENDER PROPOSAL
POISON PILLS	SHAREHOLDERS OF TARGET COMPANY OBTAIN SPECIAL RIGHTS (RIGHT TO ACQUIRE ADDITIONAL SHARES WITH SIGNIFICANT DISCOUNT OR SELL SHARES AT A PREMIUM. IN RUSSIA – FORWARD CONTRACTS TO BUY SHARES (JV “ORIMI-STROY”/ZAO “LEXTENGAS”).	ATTRACTION TO A HOSTILE TAKE-OVER BY ACQUIRING COMPANY BECOMES VERY SMALL DUE TO NECESSARY INCREASED FINANCIAL RESOURCES IN ORDER TO BUY CONTROL PACKAGE. THIS MAY ALSO BLOCK ATTEMPTS BY ACQUIRING COMPANY TO EXECUTE DIRECT NEGOTIATIONS WITH SHAREHOLDERS OF TARGET.
GOLDEN, SILVER & PLATINUM PARACHUTES	MANAGEMENT & STAFF AMEND LABOUR CONTRACTS TO PROVIDE FOR SIGNIFICANT COMPENSATION IN EVENT OF TERMINATION	ATTRACTION TO A HOSTILE TAKE-OVER BY ACQUIRING COMPANY BECOMES VERY SMALL DUE TO NECESSARY INCREASED INVESTMENT COSTS
STAFF PARTICIPATION IN CHARTER CAPITAL	COMPANY SHARES ARE BOUGHT BY LOANS AND ARE PLEDGED. IN RUSSIA – METHOD USED BY RED OCTOBER IN 1995 AGAINST MENATEP	VOTING ON THESE SHARES IS EXECUTED BY COMPANY MANAGERS.
DUAL CLASS RECAPITALIZATION	A NEW CLASS OF SHARES ARE PLACED AMONG SHAREHOLDERS OF TARGET COMPANY. THESE SHARES HAVE PRIORITY VOTING, NO DIVIDENDS ARE PAID OUT, THEY ARE NOT LISTED IN OPEN MARKET. THEY CAN BE EXCHANGED FOR AN ORDINARY SHARE	THIS ALLOWS THE MANAGEMENT OF THE TARGET COMPANY TO OBTAIN A MAJORITY OF VOTES WITHOUT OWNING THE CONTROL PACKAGE OF SHARES

MERGERS & ACQUISITIONS – LEGAL ASPECTS

TECHNOLOGY OF “HOSTILE TAKE-OVERS” – PRE-OFFER DEFENSES CONT’D

NAME OF DEFENSE	DESCRIPTION	EFFECT OF DEFENSE
SAFEGUARDING THE REGISTER FROM UNSANCTIONED ACCESS	REGISTER HOLDER SHOULD BE A REPUTABLE COMPANY. CONSTANT ANALYSIS OF CHANGES IN REGSITER.	SAFEGUARDS COMPANY FROM ACCESS TO REGISTER BY SHAREHOLDERS SEEKING TO EXECUTE A QUICK BUY-OUT OF SHARES.
AUTHORIZATION OF PREFERRED STOCK	SIMILAR TO “POISON PILLS” SCENARIO.	
REDUCTION IN CUMMULATIVE VOTING	LIMITS THE RIGHT OF A SHAREHOLDER TO VOTE FOR A PARTICULAR BOARD MEMBER. AMOUNT OF VOTES= ORDINARY SHARESxAMOUNT OF BOARD MEMBERS ELECTED IN A YEAR.	MAKES BOARD CONTROL FOR ACQUIRING COMPANY DIFFICULT. TARGET COMPANY CAN VOTE FOR THEIR OWN BORAD MEMBERS EVEN IF THEY HAVE A MINORITY PACKAGE.
REINCORPORATION	JURISDICTIONS ARE CHOSEN WHERE CHARTER CHANGES ARE EASIER MADE AND WHERE ANTI-TRUST PROVISIONS ARE MORE STRINGINT.	SIMPLIFIES THE ORGANIZATION OF ANTI HOSTILE TAKE-OVER CAMPAIGN.
LOCK-IN AMENDMENT	PROVISIONS ARE MADE THAT LIMIT THE POSSIBILITY OF CHANGING EARLIER AMENDMENTS.	AGGRESSOR HAS DIFFICULTY IN AMENDING CHARTER EVEN IF HE HOLDS MAJORITY.
BUY-OUT USING LOANS	USING LOANS. IN RUSSIA – VERY POPULAR USING A BANK GUARANTOR.	SHARES OF A COMPANY THAT IS BOUGHT IN THIS MANNER ARE NO LONGER FREELY LISTED
STRATEGIC STAKES	EXCHANGE OF SHARES AMONG COMPANIES. IN RUSSIA – ONLY SHORT TERM ALLIANCES, WITHOUT EXCHANGE OF SHARES.	CREATES AN ALLIANCE THAT FACILITATES MUTUAL SAFEGUARDS AGAINST HOSTILE TAKE-OVERS

MERGERS & ACQUISITIONS – LEGAL ASPECTS

TECHNOLOGY OF “HOSTILE TAKE-OVERS” – POST-OFFER DEFENSES

TYPE OF DEFENSE	SHORT DESCRIPTION OF DEFENSE
PACMAN DEFENSE	COUNTER ATTACK ON SHARES OF AGGRESSOR. TARGET COMPANY MAKES A TENDER COUNTER OFFER. IN RUSSIA – “SLAVNEFT” – “TNK” AND ATTEMPT BY “INTERROS” TO BUY 49% OF TNK AT INVESTMENT TENDER.
“REVERSE” INTEGRATION OPERATION	ACQUISITION AS A COUNTER MOVE TO A TAKE-OVER. IN RUSSIA – “UNEXIM BANK” & RAO “NORILSKY NICKEL” AGAINST “NORISLKGAZPROM”.
LITIGATION	CLAIMS ARE FILED AGAINST AGGRESSOR FOR VIOLATION OF ANTI-TRUST OR SHAREHOLDER LEGISLATION
PROXY FIGHT	FIGHT FOR SHAREHOLDERS PROXY VOTE. IN RUSSIA – “UNEXIM BANK” ATTEMPT TO GET INTO BOARD OF RAO “GAZPROM.
WHITE KNIGHT	UNITING WITH A FRIENDLY COMPANY. IN RUSSIA – EXAMPLE OF NOVOKUZNETSKY ALUMINIUM FACTORY.
WHITE SQUIRE	MODIFICATION OF “WHITE KNIGHT”. WHITE SQUIRE DOES NOT OBTAIN CONTROL OF COMPANY.
STANDSTILL AGREEMENT	MUTUAL AGREEMENT IN WHICH AGGRESSOR UNDERTAKES NOT TO INCREASE ITS SHAREHOLDING IN TARGET COMPANY FOR SEVERAL YEARS AND DOES NOT HAVE PROXY VOTING RIGHTS.
REPURCHASE OFFER/ PREMIUM BUY-BACK/ GREENMAIL	PROPOSAL TO AGGRESSOR ABOUT ALTERNATIVE BUY-OUT WITH A PREMIUM (HIGHER THAN MARKET VALUE AND HIGHER THAN PAID BY AGGRESSOR).
ASSET RESTRUCTURING	<ol style="list-style-type: none"> 1) PURCHASE OF ASSETS THAT ARE PROBLEMATIC FOR AGGRESSOR OR CREATE ANTI-TRUST ISSUES. 2) “CROWN JEWEL DEFENSE” – ALIENATION OF ATTRACTIVE ASSETS. 3) “SCORCHED EARTH DEFENSE” – MOVEMENT OF ASSETS TO DAUGHTER COMPANY.
RESTRUCTURING OF OBLIGATIONS	ISSUE OF SHARES FOR FRIENDLY THIRD PARTY OR INCREASING AMOUNT OF SHAREHOLDERS. BUY-OUT OF SHARES FROM EXISTING SHAREHOLDERS AT A PREMIUM. IN RUSSIA – VERY POPULAR IN FORM OF ISSUE OF ADDITIONAL SHARES THEREBY DILUTING STOCK.
PR DEFENSE	<ol style="list-style-type: none"> 1) CREATING AN IMAGE OF THE COMPANY AS BEING IMPORTANT TO COUNTRY OR REGION. 2) INFORMATION WAR AGAINST AGGRESSOR COMPANY.

MERGERS & ACQUISITIONS – LEGAL ASPECTS

ANTI-MONOPOLY CONTROL OVER THE CREATION AND REORGANIZATION OF A COMPANY & REDISTRIBUTION OF STATUTORY CAPITAL

