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Rojs, Peljhan, Prelesnik & partnerji, o.p., d.o.o. is the largest Slovenian corporate/commercial law firm, with 38 lawyers in total. The M&A team is made up of more than 15 lawyers and is known for its innovative work and intelligent approach to tackling local law limitations. The firm is a market leader in a variety of commercial and corporate law matters, including M&A and related practice areas, banking and finance (including M&A transaction financing), antitrust (including filing for merger clearance related to M&A transactions) and regulatory (including various regulatory proceedings for obtaining the permits related to M&A transactions). In 2014 the firm co-founded Top-Tier Legal Adriatic (TLA), which is an alliance of leading law firms operating in the Adriatic region and includes member law firms from Serbia, Croatia, Slovenia, Bosnia and Herzegovina, Macedonia and Montenegro, enabling the firm to offer one-stop services for the entire region. In 2017, Rojs, Peljhan, Prelesnik & partners became the only Slovenian member of Meritas, the prominent invite-only global alliance of independent law firms.

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1. Trends

1.1 M&A Market

Following considerable economic growth (reaching around 5% annually), the M&A market remains lively compared to recent years. The Republic of Slovenia's general parliamentary elections were held in 2018 and the new Government seems determined to complete certain crucial privatisation projects that slowed down due to elections, namely the privatisation of state-owned banks Nova Ljubljanska Banka (NLB) and Abanka.

Slovenia's largest bank, NLB, was successfully privatised in 2018. A 65% share was sold, and the state kept a 35% share. The procedure for the sale of 100% of Abanka is still on-going. There are a number of M&A transactions in the banking, financial and insurance sectors; apart from the above-mentioned sales of NLB and Abanka, Generali, the world's third biggest insurer, signed a sales agreement to acquire Slovenian insurance company Adriatic Slovenica from the KD Group for EUR245 million, and the transaction completed in early 2019. Likewise, the Coface group signed a sales agreement to acquire SID PKZ, the wholly-owned subsidiary of SID Banka, a national credit insurer with a dominant position in the local market.

To mention a few other major takeovers, China's Hisense increased its holding in Slovenian household appliances-maker Gorenje to approximately 95%; the crypto-exchange Bitstamp was acquired by Belgium-based investment firm NXMH; an agreement was signed for the sale of poultry producer Perutnina Ptuj to Ukrainian group MHP; Slovenian Adventura Holding purchased Marina Portorož and home appliances-retailer Big Bang; local Rastoder group purchased Gorenje Surovina, one of Slovenia's major waste management services providers; and Wiltan Enterprises Limited sold its shares in Elan, a sporting goods manufacturer, to KJK.

1.2 Key Trends

A similar level of foreign M&A investment is expected to continue throughout 2019. This trend is driven by the rising acceptance of the fact that inefficiencies of local management of state-owned companies and political interference have contributed greatly to the last overall economic crisis in the country. Disillusionment over daily politics and public opinion continue as important factors. There is considerable foreign investment, both strategic and financial investors, as well as a presence of a variety of private equity funds in the Slovenian M&A market. Further, there is a notable shift in buyers focusing on private and family-owned businesses, which are important drivers of M&A activity in Slovenia.

1.3 Key Industries

In 2019 a good deal of M&A activity is anticipated in the banking, financial, insurance, retail, manufacturing, digital, media and property sectors.

2. Overview of Regulatory Field

2.1 Acquiring a Company

The primary techniques for acquisitions include the purchase of shares with voting rights (ie, share deals) and the purchase of assets (ie, asset deals). Corporate reorganisations (spin-offs, mergers) and contractual co-operation arrangements (joint ventures, enterprise agreements) are also feasible. In the past three years acquisitions through capital increases have become notable transaction structures.

2.2 Primary Regulators

There are several regulators for M&A transactions:

- the Securities Market Agency is the primary regulator supervising the markets in financial instruments. The Agency also enforces the Takeover Act, which sets out the legal framework regulating mandatory and voluntary takeover bids;
- the Competition Protection Agency is the national competition authority competent to review concentrations, abuses of dominance and restrictive agreements and practices. Its merger clearance competence is typically limited to reviewing local concentrations that do not have an EU dimension (whereas concentrations with an EU dimension typically fall within the competence of the EU Commission); and
- the Tax Administration regulates the taxation and reporting obligations of legal entities within the jurisdiction and the Labour Inspectorate oversees the implementation of labour laws and regulations, collective bargaining agreements and other general documents, regulating employment and employee rights.

Depending on the industry sector, other regulators may have a significant role, eg, the Bank of Slovenia in the banking sector, the Insurance Supervision Agency in the insurance sector, and the Ministry of Culture in the media sector, etc.

2.3 Restrictions on Foreign Investments

There are typically no restrictions on foreign investment in Slovenia and foreign investment represents the greater part of current on-going or expected transactions.

2.4 Antitrust Regulations

Concentrations are subject to EU merger control legislation (eg, Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings – the EC Merger Regulation) and the Prevention of Restriction of Competition Act (ZPOmK-1) as the relevant national law.

2.5 Labour Law Regulations
The primary focus of acquirers with respect to labour law regulations should be the requirements of the Employment Relationship Act (ZDR-1), which sets out the rights of employees and the obligations of the transferor and the transferee with respect to M&As. Local legislation complies with the 'Acquired Rights' Council Directive 77/187 (as amended by Directive 98/50/EC and consolidated by Directive 2001/23), particularly relevant with respect to asset deals.

As a rule, employee rights held towards the transferor are automatically transferred and enforceable against the transferee upon transfer. Attention should also be paid to the Worker Participation in Management Act (ZSDU), which gives employees significant rights of co-operation in the management of a company's affairs through workers' councils and union stewards, including, without limitation, the workers' council's right to be consulted prior to the sale of the company or a significant part of it.

2.6 National Security Review
There is typically no national security review of acquisitions. There are exceptions, eg, certain regulated markets like banking, insurance, etc, and the authorities blocked a foreign investor (a European Union (EU) insurance group) in its attempt to increase its share in a Slovenian insurance company.

3. Recent Legal Developments

3.1 Significant Court Decisions or Legal Developments
There has been no significant M&A-related case law other than acquisition finance-related case law, which mainly focuses on unlawful financial assistance questions. No decisive case law has been established as yet.

3.2 Significant Changes to Takeover Law
There have been no significant changes to takeover law in 2018 or in 2019 to date.

4. Stakebuilding

4.1 Principal Stakebuilding Strategies
In principle, stakebuilding prior to launching an offer has been a natural consequence of the types of transactions that have dominated the local market in recent years and are likely to continue in the near future. In some cases, sellers are lenders who have obtained controlling stakes in target entities through the enforcement of share pledges given by borrowers. Often vendors act in syndicate and buyer stakebuilding has typically been achieved through private acquisition under share purchase agreements with seller-syndicates.

Following such a private acquisition, the transaction normally becomes a public deal, as the acquirer is obliged to publish a mandatory takeover bid for the remainder of the target company's shares. This trend is expected to continue with the presence of state or state-owned companies as the vendors on the M&A market and the resulting continued presence of consolidated ownership on the selling side. Other types of stake-building strategies are not a characteristic feature of the local market, which is generally constricted and does not boast high trading volumes.

4.2 Material Shareholding Disclosure Threshold
Generally, the material shareholding disclosure thresholds are set out in the Financial Instruments Market Act (ZTFI-1) for joint stock companies, the shares of which are traded on an organised market, and for joint stock companies, the shares of which are not traded on an organised market but which have had (in the relevant period for determination) at least 250 shareholders or more than EUR4 million of total capital. They are 5%, 10%, 15%, 20%, 25%, 1/3, 50% and 75% of voting rights in a joint stock company. The obligation to disclose typically arises when the threshold is reached or exceeded and also when the share falls under a material threshold. The disclosure notice must be submitted to the company and to the Securities Market Agency. The company must also publish the information included in the disclosure notice.

4.3 Hurdles to Stakebuilding
In general, a company may not deviate from the statutory reporting thresholds.

An additional hurdle to stakebuilding could come in the form of potential limitations set out in the bylaws on the transferability of shares in joint stock companies – specifically in the form of a requirement to obtain the prior consent of the company to the transfer of its shares. However, while such restrictions on transferability are possible under the Slovenian Companies Act (ZGD-1), they can typically only be set with respect to registered shares (and not bearer shares). Also, the reasons for which a company can refuse consent to the transfer are typically considered limited and must fall under the general notion of a threat to the performance of the company's goals or its commercial independence (for shares that are not traded on an organised market) or exceeding a material threshold (for shares that are traded on an organised market).

4.4 Dealings in Derivatives
Dealings in derivatives are generally allowed and regulated with the Financial Instruments Market Act and Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on over-the-counter (OTC) derivatives, central counterparties (CCPs) and trade repositories (TRs).

4.5 Filing/Reporting Obligations
With respect to disclosure obligations under the Financial Instruments Market Act, the filing/reporting obligations for derivatives that facilitate directly or indirectly the attainment or exercising of voting rights are normally aligned with the filing/reporting obligations for shareholders. The position of stock option holders is typically equated to that of shareholders.

The scope of filing/reporting obligations for derivatives under local competition laws will most likely be determined on a case-by-case basis. The obligations could arise with respect to the obligation to notify a concentration to the Slovenian Competition Protection Agency.

4.6 Transparency
The requirement to disclose the purpose of the acquisition and the intention regarding the control of the company typically arises only in relation to joint stock companies to which the Takeover Act applies and once the stakeholder or stakeholders acting in concert have reached the mandatory takeover threshold (1/3 of voting rights) or intend to reach it.

5. Negotiation Phase

5.1 Requirement to Disclose a Deal
The time of incidence, the content of information to be disclosed and the addressees of the disclosure will typically vary, depending on the type of transaction. As far as inside information is concerned, Regulation (EU) No 596/2014 applies.

5.2 Market Practice on Timing
Acquirers generally comply with legal requirements on timing.

5.3 Scope of Due Diligence
There is little or no legal regulation of (pre- or post-) acquisition due diligence in Slovenia. The content, scope and timing of due diligence will therefore be left entirely to the disposition of the sellers, the target entity and the purchaser. The practice of conducting pre-acquisition due diligence has developed vastly in recent years as a result of the rising predominance of professional investors and foreign investors with qualified advisers. Pre-acquisition due diligence has become the standard mode of operation. The scope and the level of detail demanded by the purchaser, however, vary greatly. A high-level transaction will typically involve all facets of the target's undertaking, ie:

- a legal investigation detailing financial arrangements, material (core-business) agreements, property and other fixed assets, intellectual property, regulatory compliance, employment issues, litigation and competition law issues;
- a tax investigation; and
- a financial investigation.

A materiality threshold will usually be set by determining a financial impact-based relevance limit. Vendor due diligence reports are often provided.

With mid-sized or small transactions, the level of detail normally requested by the purchaser is not significantly less. In fact, due to the manageability of the amount of information that needs to be processed in these types of deals, it can be quite the opposite. It is the scope of the investigation that will reduce and focus on the most material issues as identified by the purchaser.

5.4 Standstills or Exclusivity
Standstills are becoming more common. Standstill periods vary from one process to another and are often the result of negotiations (and as such are highly connected to the identity of the buyer). A limited exclusivity period is also quite often demanded in tender sale processes.

5.5 Definitive Agreements
Normally, the definitive agreements between the seller(s) and the buyer as a private deal contain only a reference to the buyer's obligation to submit a mandatory tender after completion of the private acquisition.

6. Structuring

6.1 Length of Process for Acquisition/Sale
The timeframe of the process will depend entirely on the structure of the deal and the safeguards, which the purchaser and/or seller aim to undertake. Therefore, depending on the scope of the pre-acquisition due diligence, the type of sale (auction or direct), type of financing and other elements of the process, a typical transaction could last anywhere from three-nine months (not including any post-acquisition activities).

This timeframe will inevitably alter (extend) if a mandatory takeover offer procedure and/or an antitrust review procedure are required. On average, a takeover offer procedure can last anywhere from two-five months and the expected timeframe for a Slovenian merger clearance review is approximately three months. Note that concentrations with no horizontal or vertical effects may be cleared swiftly.

6.2 Mandatory Offer Threshold
The mandatory takeover offer threshold is set at 1/3 of all voting rights in the target company. It usually applies to Slovenian joint stock companies, the shares of which are listed on an organised stock market in Slovenia or in any other EU member state, as well as those where the shares are not listed on an organised market, but have at least 250 shareholders or a total capital of more than EUR4 million.

The mandatory offer requirement is typically triggered if a (legislative or natural) person, by him or herself or with persons acting in concert, reaches or exceeds the threshold. If the shareholder's initial takeover bid is successful and if the shareholder attains at least 10% of additional voting rights in the target entity, it must typically publish an additional takeover bid. The obligation to make additional takeover bids generally ceases once the shareholder has obtained at least 75% of the target company's shares with voting rights.

6.3 Consideration

Cash is more common as consideration in the local market. This is largely a consequence of the fact that many sellers on the current market come from the banking and/or state sector and are selling for liquidity rather than for strategic purposes.

6.4 Common Conditions for a Takeover Offer

The use of conditions in takeover offers is generally restricted. Typically, only the conditions provided in the Takeover Act can (and in some instances must) be included in the takeover offer. If the acquisition of shares that are the subject of the takeover offer is conditional on the consent of an authority and/or agency, the offer must typically be issued under a resolutive condition that the authority and/or agency does not issue the consent. Similarly, if the consideration offered consists of newly issued shares of the bidder (or its parent company), the offer must typically be issued under a resolutive condition that such new shares are successfully issued.

The most common permitted suspensive condition is that of the minimum acceptance threshold, defined as the percentage of all securities, which the bidder needs to obtain for the takeover offer to become binding. All purchases executed until the minimum acceptance threshold is reached are normally entered into under a suspensive condition that the minimum is reached (and conversely under the resolutive condition that the minimum acceptance threshold is not reached).

6.5 Minimum Acceptance Conditions

A bidder will usually consider three relevant control thresholds when determining the minimum acceptance condition threshold and will typically attain an ordinary majority and the resulting ability to manage the regular affairs of the company by acquiring 50% of the voting shares plus one vote (voting control). A shareholder with voting control is generally able to manage and control all day-to-day matters of the company (all matters that are not extraordinary matters), including the election of the supervisory or management board, distribution of profits, adoption of the annual report and other regular affairs of the company. Therefore, in effect, a voting control will likely ensure the shareholder the ability to position his or her management in the company after the acquisition.

A qualified majority of 75% of the voting shares plus one vote normally gives the shareholder control over all, even extraordinary, matters (eg, decreasing the share capital of the company; the right to recall a member of the supervisory board, etc). Finally, a 90% majority typically triggers the ability for a minority shareholder squeeze-out to take place.

A minimum acceptance condition applies in the case of mandatory takeover offers and is set at 50% of all shares with voting rights plus one share (with voting rights) unless the buyer already holds at least 50% of all shares with voting rights. Thus, a buyer who has reached the mandatory takeover offer threshold of 1/3 of voting rights in the target company (or who has reached the additional 10% mandatory takeover offer threshold after a successful initial takeover offer), will typically be exposed to a risk of an unsuccessful takeover offer, unless it the 50% threshold has already been reached.

If the minimum acceptance condition is not met, the offer will usually be deemed unsuccessful and no transfer of shares will be executed. This is an immediate consequence of the fact that pursuant to the Takeover Act, upon issuing an unsuccessful takeover offer, the offeror will be precluded from exercising voting rights with respect to all his or her shares until the offeror either issues a new mandatory offer (which the offeror is, however, precluded from issuing earlier than upon twelve months after the initial unsuccessful offer), or disposes all or a part of the shares so that the amount of voting rights that are held by the offeror falls beneath the mandatory takeover offer threshold (or beneath the additional mandatory takeover offer threshold if applicable).

6.6 Requirement to Obtain Financing

A public M&A transaction, carried out through a mandatory or voluntary takeover offer pursuant to the Takeover Act, cannot be conditional on the bidder obtaining financing. Note that the Securities Market Agency will not issue an authorisation to publish the mandatory takeover offer unless the buyer offers proof that sufficient funds or a bank guarantee have been deposited with the Central Securities Clearing Corporation. A business combination related to a private M&A transaction may be conditional on the bidder obtaining financing.

6.7 Types of Deal Security Measures

The sale processes are quite commonly organised by the seller with the assistance of a financial adviser as a tender process. The process letters normally contain several disclaimers, including, without limitation, that the seller shall not be liable to the bidder for any damages caused in the tender or negotiations process. Therefore, although a bidder would seek break-up fees, the sellers would normally not accept them. However, in certain rare cases such fees have been negotiated between the parties. Contractual penalties

seem to be more common in Slovenia where either party does not close the deal.

6.8 Additional Governance Rights

In the context of a mandatory or voluntary takeover bid, issued pursuant to the Takeover Act, a bidder is typically obligated to extend the offer to all other shareholders of the target company. All shares not held by the bidder must be the object of the offer. Otherwise, if a bidder, who has not exceeded the 1/3 mandatory offer threshold seeks to enforce his or her position within the shareholder structure, he or she is generally free to seek and enter into various arrangements with other shareholders.

Shareholder agreements can address different issues (block voting arrangements, agreements on management and/or supervisory board appointment, minority shareholders' arrangements, profit distribution arrangements, pre-emption rights, etc). In such cases, however, the bidder would likely be considered as acting in concert with other shareholders, which means that they may be requested to submit a mandatory takeover bid if the 1/3 threshold were reached and also obtain merger clearance (to the extent such shareholders would be considered to have acquired joint control over the target company). The Slovenian Companies Act generally prohibits agreements that stipulate a shareholder's commitment to exercise his or her voting rights in line with instructions from the company, the management, the supervisory board or a subsidiary of the company. Additional limitations apply. Bidders may also consider other types of contractual co-operation modes (eg, profit-pooling or transfer arrangements, joint ventures, management agreements).

6.9 Voting by Proxy

Voting by proxy is very common and is possible on the basis of written authorisation given by the shareholder to a natural or legislative person. Certain limitations apply.

6.10 Squeeze-out Mechanisms

Rules on minority shareholder squeeze-outs typically apply once the majority shareholder has at least 90% of the shares, or more accurately put, at least the number of shares that represent 90% of the share capital of the company. Squeeze-outs are generally performed on the basis of a decision, adopted at the shareholders' meeting. Minority shareholders are usually entitled to a suitable compensation for their shares. Court challenges of squeeze-out compensation are permitted.

6.11 Irrevocable Commitments

In most recent transactions, prospective offerors had acquired a majority shareholding and control over the target company from a syndicate of shareholders or from a core shareholder prior to issuing a mandatory takeover tender. It is in this sense common practice for bidders to negotiate and ensure control and security for their investment by executing the acquisition of a controlling share before tendering a public offer. Negotiations generally precede tender procedures.

Any commitments entered into by shareholders are in principle possible under local law. However, in a takeover tender proceeding pursuant to the Takeover Act a shareholder will typically have the right to opt-out from an accepted bid (and from a possible prior contractual commitment) and opt for a competing offer, if a better competing offer is published. The law is quite favourable towards shareholders and aims to protect and ensure the most favourable terms for the sale of their shares in a takeover tender.

7. Disclosure

7.1 Making a Bid Public

With regard to operational terms, a bid is typically also published in a national daily newspaper, on the bidder's website and on the stock exchange if the shares are publicly traded.

Before publishing a mandatory or a voluntary takeover offer, a bidder must make public its intent to publish a mandatory or a voluntary takeover offer. The notification of intent to publish an offer must also be transmitted to the Securities Market Agency, the target company's management and the Competition Protection Agency. The management of the target entity is then required to notify the company's employees of the intended offer.

A takeover offer prospectus needs to be published no later than on the 30th day after publication of the intent, however not sooner than ten days after its publication.

The offer prospectus must include any and all information necessary so that the target company's shareholders are able to form an informed decision regarding the offer, in particular information regarding:

- the bidder's identity;
- the bidder's existing share in the target;
- the shares for which the offer is issued;
- the offered price per share (and/or information on any other consideration offered, including all pertinent information on the issuer (bidder) in accordance with Annex 1 to the Commission Regulation (EC) No 809/2004);
- the deadlines and terms of the bidder's intended performance of offered purchase upon acceptance;
- the conditions under which the offeror may revoke the offer;
- the start and end date of the tender;
- any condition under which the offer is made (including a minimum acceptance threshold);
- the process of delivering consideration (cash) to the sellers;

- the bidder's intentions regarding the future business strategy of the target company; protection of jobs and the position of the management;
- possible effects on conditions of employment and a strategic business plan for the target and the bidder;
- a statement of the law applicable with respect to the bid; and
- a statement of the competent jurisdiction, and if the target's shares are not publicly traded, also an auditor's report on the suitability of the offered share price.

In turn, the management of the target is required to publish its perspective on the bid.

7.2 Type of Disclosure Required

The Financial Instruments Market Act generally prohibits the issue and offering of shares without prior publication of a prospectus in accordance with the procedure prescribed in the Act, ie, containing information on the issuer, the securities and a summary of the prospectus. The contents of the prospectus must comply with Commission Regulation (EC) No 809/2004).

There are several exceptions to this general rule. The obligation to publish a prospectus in accordance with the Act does not apply to securities issued with the intention of being delivered as consideration for a takeover offer, if certain prerequisites are fulfilled, or securities offered or are intended to be offered in a merger or demerger transaction, and:

- the companies involved in the transaction publish the information and documents as required in the Companies Act (for mergers and demergers in relation to which the it applies); or
- the companies involved in the transaction have published a document, the contents of which are in the opinion of the Securities Market Agency materially equal to the contents of a Financial Instruments Market Act prospectus (if the Companies Act does not apply in relation to the transaction).

7.3 Producing Financial Statements

If the entire consideration or part of the consideration is to be paid in the bidder's newly issued shares, the offer prospectus must (in addition to the information which needs to be provided in a cash consideration bid prospectus) contain financial statements and all other pertinent information on the issuer (bidder) in accordance with Annex 1 to Commission Regulation (EC) No 809/2004. Financial statements typically need to be prepared in accordance with the Slovenian Accounting Standards or the International Financial Reporting Standards (IFRS).

7.4 Transaction Documents

Generally, disclosure of transaction documents in full is not required. Partial disclosure can be required in the takeover offer authorisation procedure before the Securities Market Agency, since the bidder is required to establish to the Agency that it has not offered (or undertaken to offer) the shares or assets of the target company as security for financing the bid. Depending on the design of the transaction and the legal structure of the entities involved in the transaction, transaction documents might (partially or in full) be disclosed upon completion, when registering the effected reorganisations with the companies register. Disclosure of transaction documents can also be expected in business combinations that require the approval of the shareholders' meeting.

8. Duties of Directors

8.1 Principal Directors' Duties

The Slovenian corporate management system is based on a division of interests. The primary responsibility of the management is generally to act in the interest of the company, its financial, operational and developmental prosperity (and through the interests of the company, also the interests of stakeholders, who are not shareholders). Conversely, if the interests of (individual) shareholders do not align with the interests of the company, the duties of the management must remain focused on those of the company. The principal directors' duties in a business combination will therefore lie in ensuring stability and security for the continued operation of the business. Several facets will need to be considered by the management in a business combination. Issues related to employment and the strategic outline, which the bidder has in store for the target company, are usually pushed to the forefront.

The law provides for several safeguards intended to ensure the impartiality of the management and the continuation of the management's primary focus in a business combination. The wellbeing of the company (according to the Takeover Act) which provides that it is the duty of the management to disclose its shareholding in the company, is a clear example.

8.2 Special or Ad Hoc Committees

While the establishment of ad hoc committees is not a requirement in business combinations, it is typically possible under local law. Ad hoc committees can be established in both the pre-closing and post-closing phases of a transaction. By establishing a pre-closing committee, parties to a transaction may aim to neutralise a potential conflict of interest arising with respect to the management, and most frequently the role of a committee will be to oversee certain facets of the transaction. Post-closing bilateral committees have been established as a method of overseeing and securing a party's undertakings or warranties (eg, with respect to the buyer's undertaking to refrain from implementing redundancies).

8.3 Business Judgement Rule

The business judgment rule has been applied in local jurisprudence specifically in relation to the management or supervisory board members' civil and criminal liability. In any case, the duties of care of directors established by law provide for a standard of review that is in content similar to the business judgement rule standard.

Local law requires that members of the management and supervisory bodies act for the good of the company with the diligence of a prudent and equitable businessperson. The liability of the members of management and supervisory bodies for acts that fall short of this standard and result in damages to the company, is typically joint and several. However, if the act of the management (or supervisory body) in question is, eg, based on a lawful decision of the shareholders' assembly, the management (or supervisory body) will generally be exempt from any and all liability. During takeover proceedings the management's standard of conduct is supplemented with the principle of neutrality and certain limitations established to prevent defensive measures.

8.4 Independent Outside Advice

It has become common in Slovenia for directors to engage outside legal counsel to provide them with independent legal advice on all legal aspects of a M&A transaction.

8.5 Conflicts of Interest

Conflicts of interest between directors, managers, shareholders or advisers in the context of takeover proceedings have to date not been the subject of notable court decisions. Exceptionally, a 2009 decision of the Constitutional Court of Slovenia identified the potential conflict of interest between majority and minority stockholders in a joint stock company as legitimate constitutional grounds for limiting the minority stockholders' property through rules on minority shareholder squeeze-outs.

9. Defensive Measures

9.1 Hostile Tender Offers

Hostile takeovers are permitted in Slovenia. Solicited tenders dominate the current market and conversely hostile offers are rare. The infrequency of hostile tender offers is partially also a consequence of the quite strictly enacted principle of neutrality of management, which limits the ability of managements in Slovenia to proceed with effective defensive measures in public tenders.

Hostile takeovers are more frequent in the context of insolvency and/or financial restructuring, particularly as the amended insolvency legislation has provided for new venues through which creditors are able to convert their receivables into shares in compulsive settlement proceedings and take over the management of the debtor.

9.2 Directors' Use of Defensive Measures

The use of defensive measures in takeover proceedings is strictly limited. As of the moment of notification of the takeover intention and until the decision on the outcome of the takeover bid is published, the management and supervisory board of the target company are typically not allowed to execute any of the following without the prior approval of the shareholders' assembly:

- increase the share capital;
- conduct business outside of regular affairs;
- conduct business which could seriously endanger the continued operation of the company;
- purchase own shares or securities giving rights to own shares; or
- execute any other actions that might prevent the takeover.

Furthermore, the target's shareholders' assembly must approve any decisions of the management or supervisory board that were taken prior to the notification of the takeover intention and which have not yet been executed in their entirety, if they are outside regular affairs and if their execution might preclude the takeover.

Acts of the management and/or supervisory board that are contrary to the limitations described above are void and will have no legal effect.

9.3 Common Defensive Measures

Preventive measures (eg, consolidation of shareholding, limitation of voting rights or the transferability of shares, authorised share capital increases, the sale of crown jewels) and white knight/squire tactics are more common than post-tender mechanisms. Notably, though, strict restrictions exist in Slovenian legislation with respect to limiting the transferability of shares and the exercise of voting rights of individual shareholders or blocks of shareholders, the purchasing of own shares, poison pill mechanisms, transferring of significant asset bundles, etc.

9.4 Directors' Duties

The outlining duty of directors is generally to act in the corporate interest of the company. The standard of review enacted in local law requires that members of the management act for the good of the company with the diligence of a prudent and equitable businessperson. In the context of takeover proceedings this outlining duty is complemented with the principle of neutrality, which limits the management's scope of authority with respect to certain acts that could hinder a takeover effort (and would in fact represent defensive measures).

With respect to such acts, directors have an immediate responsibility towards the shareholders' assembly and cannot utilise them without prior explicit authorisation from

the shareholders' assembly. The principle of neutrality that applies during public tender takeover situations is a branch-out from the general maxim of corporate interest. It puts the interests of majority shareholders into the forefront and offers shareholders the ability to oversee directly the conduct of business during takeover proceedings. As a consequence, the duties of directors change accordingly during takeover proceedings.

9.5 Directors' Ability to 'Just Say No'

While the Nancy Reagan defence mechanism is theoretically possible in business combination transactions, which require co-operation and even consent of the management and/or the supervisory board, this tactic is hardly ever used in a formal capacity.

10. Litigation

10.1 Frequency of Litigation

Litigation and particularly arbitration seem to be more common in private M&A transactions. Normally disputes concern breaches of the representations and warranties or earn-out agreements. In contrast, litigation has not been a common facet of public M&A deals in Slovenia in recent years. This is because hostile transactions have been rare and the market is currently predominated with solicited M&A transactions.

10.2 Stage of Deal

Litigation is most frequent in relation to minority shareholder squeeze-outs. While the decision to execute a squeeze-out typically cannot be challenged by the minority shareholders, the Companies Act gives minority shareholders the right to judicial challenge of the amount of compensation offered to them for the transferred shares. Minority shareholders tend to utilise this right quite frequently.

The coming years could bring about an increase in the occurrence of post-closing litigation concerning the warranties and undertakings of buyers and sellers.

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11. Activism

11.1 Shareholder Activism

One of the main driving forces of the local M&A market recently was the privatisation of state-owned companies that had represented the crown jewels of the state for the larger part of the former socialist period. While it is fair to say that transactions involving the state have become less saturated with daily politics in recent years, particularly after Slovenia's accession to the Organisation for Economic Co-operation and Development (OECD) and even more so after the state committed to its fiscal obligations under the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (TSCG), to some extent, daily politics still play an important part in the privatisation process.

In this sense, shareholder activism (in the guise of daily politics, or vice versa) continues to be a significant force on the market. A clear example of this was the extensive and demanding privatisation process related to Mercator, the largest Slovenian retailer, which was finally completed in 2014 (in the midst of notable pressure on state-owned seller banks to retract from the deal), after approximately eight prior failed attempts. Two questions can be distinguished as the main focus of politics-fuelled activism:

- which state-owned assets should be the object of privatisation; and
- who the buyer should be.

The first issue focuses on the strategic interest of the state and the second on the future prosperity of the asset itself (with a view to securing employment for locals and the wellbeing of the asset's local suppliers).

11.2 Aims of Activists

Activism in Slovenia is more often directed at trying to interfere with intended privatisations, especially if foreign buyers are concerned or if layoffs are expected after the sale, rather than encouraging companies to enter into M&A transactions.

11.3 Interference with Completion

Recent transactions related to state-owned assets have revealed an awareness of the fact that the overall financial crisis (and the obligations which the state had committed to as a result of the crisis), and a history of unproductive management of state-owned assets, have made privatisation a necessity rather than a possibility. While interference with the completion of transactions in the form of public denunciations calls for 'cessation of sale and reconsideration' and other forms of public pressure, which are from time to time exhaled by daily politics, remain present with respect to privatisation transactions, they seem to be no more than attempts at retaining or gaining voters' esteem. In reality, the playground seems to have levelled and appears to be ready for foreign investment.