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New M&A caveats

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The past year has not only seen a very lively acquisitions market. It has also brought some interesting pieces of legislation regarding M&A activity in Lithuania

Indirect acquisitions triggering mandatory offers

Lithuanian securities regulations stipulate that persons who individually or jointly (with others acting in concert) acquire 40% of votes in a general meeting of shareholders of a public company which is “issuer” (i.e. the shares of which are listed on the regulated stock exchange or otherwise publicly traded) must offer to purchase all of the shares of the remaining shareholders of the target company or transfer the shares below the indicated 40% threshold. The choice must be made within seven days after the acquisition of votes exceeding the threshold. Where this new control holder chooses not to transfer the shares below the 40% threshold, he must submit a mandatory offer within 20 days from the moment he announces his decision.

In order to induce the person to make the mandatory offer or sell below the 40% threshold, the law provides for severe encumbrances, establishing that all voting rights relating to the shares are suspended from the moment of exceeding the threshold until the person registers the mandatory offer with the Lithuanian Securities Commission.

Furthermore, according to recent case law, even a single minority shareholder may request that the court oblige the person who exceeded the threshold to make a mandatory offer, where this majority shareholder failed to do so. Such an order by the court may be made even where the respondent sells his shares and holds less than the 40% threshold at the moment when the ruling of the court is

passed (this refers to a situation where the shareholder did not indicate, within seven days of exceeding the threshold, his intention to sell the shares rather than make a mandatory offer).

The black-letter rule of the law elaborates on the direct change of control – that is, only related to the change of a shareholder holding more than 40% of votes in the issuer company. However, the Lithuanian Securities Commission issued its comments regarding the law and quite unexpectedly adopted a very broad interpretation of its wording. The Securities Commission indicated that the change of control in the shareholder of the issuer company in the same manner triggers a duty to make a mandatory offer. This obligation arises irrespective of whether or not the mandatory offer was previously implemented by the shareholder.

The mandatory offer must then be made by the direct shareholder of the issuer company or a person controlling the shareholder. The duty to make a mandatory offer does not relate to the legal form of the shareholder, which means that the majority shareholder of the Lithuanian issuer company may be a private company, and change of control of such private company would create an obligation to make a mandatory offer for the minority shareholders in the Lithuanian issuer company.

Accordingly, what we now see is that the change of control in the majority shareholder (whether it is a listed public company, non-listed public company, private company, Lithuanian or foreign company) in the Lithuanian issuer company triggers an obligation to make a mandatory offer and failure to do so or a simple unawareness of this duty leads to severe consequences. Notably, the Lithuanian Securities Commission has the right to officially interpret legal acts regulating public trading in securities and related matters, though such opinion is not binding upon the court. So far, no potential bidders have

sought to overrule this interpretation in the court and therefore it remains binding.

Lithuania has around 40 listed companies and 10 non-listed companies that are considered as issuers. Accordingly, the regulation affects shareholders of around 50 companies. Because of the high capital concentration in Lithuania, most of these are held by one or several majority shareholders and change of control among these majority shareholders would create the abovementioned obligation.

This is good news for minority shareholders and not so good for bidders, as they have to be ready to acquire 100% stakes in group companies where earlier they could stay comfortable with acquisition of control in the holding company, which in its turn held the majority stake in the Lithuanian issuer. This also makes acquisitions more expensive. Finally, bidders must be more cautious when acquiring groups of companies, so that the mandatory offer obligation does not come up unexpectedly.

No green light for financial assistance

EU member states used to prohibit companies from the financing or securing of financing of acquisition of the shares of such companies. The notion originated from the Second Company Law Directive on Capital Maintenance. In Lithuania, the restriction of financial assistance is applicable to both public and private companies. The directive was amended several years ago, enabling member states to make financial assistance regimes more flexible.

However, the Lithuanian Parliament, considering the transposition of the amendments to the directive into national law, went the other way, stipulating that the companies may not, directly or indirectly, advance funds or secure financing for the acquisition of their shares. The previous restriction of the financial assistance was supplemented by adding “directly or indirectly”. There is no further guidance on what is actually allowed or prohibited and whether the amendment changes

anything in practice. The greatest regret is that parliament opted not to transpose the clear-cut rules of the directive under which the company may finance the acquisition of its shares.

This does not mean that leveraged buyouts are prohibited in Lithuania. It is just that the financing structures must be considered carefully and where, for instance, a special-purpose vehicle (established by the bidder to acquire the shares of the target company and carrying the debt for acquisition) is later merged with the target company, there should be good reason to do so, other than simply to push the debt onto the target company. For instance, this may be part of the tax planning of the transaction (to depreciate goodwill, among other things).

It may be summarised that M&A regulatory environment is becoming more complex in Lithuania, requiring higher degrees of sophistication from bidders than before.

Banking and finance

Recommended firms

Tier 1

Bernotas & Dominas Glimstedt
Lideika Petrauskas Valiunas ir partneriai Lawin

Tier 2

Raidla Lejins & Norcous
Sorainen
Sutkiene Pilkauskas & Partners

Tier 3

Eversheds Saladzius
Foigt & Partners/Regija Borenus
Jurevicius Balciunas & Bartkus

The times of cheap and easy financing have ended in Lithuania, with lending becoming a more expensive exercise. Bank lending is not so much declining as stabilising, resulting in “a hot market coming back to a healthy market”, in the words of one local partner.

Real estate in particular is feeling the brunt of the more conservative and diligent stance of the Scandinavian-dominated banking sector. Residential projects have been the main victims of the slump.

The stock market is equally glum. The few IPOs that were planned have been shelved due to the volatile international market conditions. If the fizz does return to equity capital markets soon, then companies wishing to list may take advantage of the launch of First North in Lithuania in November 2007. This alternative market, which is part of the OMX Nordic exchange, is not recognised by the EU

as a regulated market and therefore is subject to lighter regulation - making it attractive to small growth companies.

The debt markets have also been quiet. For corporates, taxation issues make the issuance of bonds costly, while government bonds are limited to a few issues a year. At least it's reliable: one lawyer compares sovereign debt issuance in Lithuania to a Swiss watch.

Banks are seen as the main player in bond issuance, but as they already contain significant in-house legal teams, this does not translate into mandates for law firms. But this could change as the market starts to discover those capital market instruments that provide alternatives to more traditional financing methods.

Lithuania does not have a significant project finance market, but there is work available in the energy sector. A new nuclear plant is to be constructed to replace the Ignalia units, which were closed by the EU. The €6 billion project is being built by the Lithuanian Energy Organisation, a company established in May 2008 which is 61.7% state-owned, the rest being owned by NDX Energija.

The legal structure is in place for the use of PPPs as a financing model. Nevertheless, even at a municipal level political factors make these projects difficult to complete. Add the issue of compatibility between EU financing and PPP structures, and it might be a while before the enthusiasm of law firms translates into mandates.

Bernotas & Dominas Glimstedt

Referring to Bernotas & Dominas Glimstedt's banking and finance work, one rival comments: “They are still remarkable and are known in the market.” Competitors have noted that, like most Lithuanian firms, Bernotas & Dominas does not have a specialised finance team - however, the firm does have a large core of leading partners. Gediminas Dominas is particularly respected by peers as a leading lawyer for finance work.

The firm's capital market expertise in the jurisdiction is well illustrated by its role as certified advisor on the Baltic First North alternative market. The only other Lithuanian firm to hold this position is fellow tier-one occupant Lideika Petrauskas ir partneriai Lawin. Certified advisers will advise companies on their readiness for trading and assist in the application process for the new exchange. Subsequently they must be well informed on the listing process.

The firm advises a number of local investors, including banking and investment firms Finvesta and Avesti, as well as Gild Bankers, a Baltic investment bank. The firm

has also worked with the European Bank for Reconstruction and Development.

Leading lawyers

Elijus Burgis
Gediminas Dominas

Lideika Petrauskas Valiunas ir partneriai Lawin

Lideika Petrauskas Valiunas ir partneriai, the Lithuanian member of the Lawin network, is strong across all fields of banking and finance. Clients and rivals are effusive with their praise, with one partner noting: “They are remarkable and known to the market.” One client comments: “There was no question of bringing them up to speed.”

The firm's large team allows it to offer an impressive level of specialisation for a Baltic practice. One competitor notes that the firm has “the biggest nucleus” in the Lithuanian market.

Finance partners Giedrius Stasevicius and Gediminas Reciunas receive market praise as capital markets lawyers. “They provided what we needed and answered any question we threw at them,” says one client. Recognition for the firm's ability in this area of practice can be seen in its role as one of the first certified advisers to the Baltic First North exchange. Lideika is also one of the few firms to be involved in debt work, advising Credit Suisse and Citibank on the Republic of Lithuania's Euronote issuance.

Lideika also advised General Financing, a Lithuanian consumer financing company, on what would have been the first securitisation of a consumer finance portfolio in the Lithuanian market; however, the project was suspended.

The firm has recently worked with several notable banking clients, including SEB, Raiffeisen Zentralbank Österreich and Fortis. The firm is acting for Indorama Holdings Europe, a petrochemicals producer, and Indorama Polymers Europe as borrowers for the acquisition of two PET component plants, one in the Netherlands for €57 million and another in the UK for €108 million.

The firm is also strongly involved in project finance work, advising the European Investment Bank on the Rail Baltica project. It is also advising the Ignalia nuclear power plant on the financing of its decommissioning.

Leading lawyers

Gediminas Reciunas
Giedrius Stasevicius

Raidla Lejins & Norcous

The firm formally known as Norcous & Partners has secured some key roles on lending deals in the past 12 months, the values of which are big-ticket by Baltic standards.

Together with its associated firms in Riga and Tallinn, the firm advised SEB Merchant bank on its provision of a €200 million financing facility to real-estate company Homburg Invest to buy a real-estate portfolio, including 25 Lithuanian properties, from SEB.

Later in February 2008, partner Ruslanas Bronikovas worked on another large-scale financing. His team advised HSBC Trinkaus & Burkhardt on a €130 million facility for working capital and acquisition financing to Germany's KMR Group. The raw-materials group needed the financing to acquire assets in the Netherlands and Lithuania.

February was a busy month for Bronikovas. He also advised concrete product manufacturer Consolis on the use of Lithuanian assets as security on its €150 million acquisition financing and capital expenditure facility.

The firm may often only be acting as local counsel on large projects, but clients are pleased with the answers they get when Raidla Lejins & Norcous are consulted. One client comments: "They were very helpful with any questions I had. They were very detailed in their responses."

On the regulatory side, in another pan-Baltic mandate involving its alliance partners, the firm advised on the merger of Baltic life assurance companies and investment management firms into a *societas europeae* - the new form of European public company.

Says one client: "The communication was good and they were swift to follow up any queries."

Leading lawyers

Ruslanas Bronikovas
Irmantas Norkus

Sorainen

Sorainen further added to its banking and finance team in the past year, adding senior associate Gediminas Almantas in April 2008 - but it also suffered a departure, with senior associate Rita Svedaite moving on. The banking and finance team is headed by Tomas Kontautas, described by a client as having "respected institutional experience", particularly in the insurance sector.

The banking finance team has two rising stars: senior associate Algirdas Peksys, whose experience working as corporate counsel for the Vilnius Stock Exchange helps mark him out as a securities expert, and Agne Jonaityte,

who peers see as a young talent. The team has been working on a wide range of financing projects.

The firm has been active on capital markets projects which, as is the case with other firms, are often regulatory in nature. Working with the other Sorainen offices, the team advised an Estonian real-estate investment fund managed by Gild Real Estate, in preparation for its private placement of the fund's units in Lithuania. The firm advised the client, Eastern European Real Estate Investment Trust, on regulatory issues including passporting and the preparation of a prospectus.

Sorainen has been advising the Vilnius Stock Exchange on a whole range of matters, including on the implementation of Mifid and the formation of the first alternative market.

Following its role advising the Allied Irish Bank on its acquisition of the mortgage finance business of AmCredit in the Baltic States, Tomas Kontautas, Agne Jonaityte and Algirdas Peksys have been providing regulatory advice to the client on the operation of a foreign credit institution in Lithuania.

The firm's finance work can also be transactional: as well as working on some project finance matters it was busy acting as local counsel for private-equity firm AAC Capital on financing for its acquisition of Finnish company Empower. The total €170 million facility contained a €15 million mezzanine element.

Leading lawyers

Kestutis Adamonis
Tomas Kontautas
Algirdas Peksys

Sutkiene Pilkauskas & Partners

Sutkiene Pilkauskas & Partners is a rare example of a Lithuanian firm that is highly active in capital markets work. Clients praise the firm for the quality of its work: "We were very happy with their service and approach," says one.

The firm advised Hansabank as the lead manager, underwriter and book runner on the €18 million IPO of facility management company City Service on the Vilnius Stock Exchange in July 2007. The deal featured partner Vilius Bernatonis, who one client referred to as "an expert on financial law". Another client says: "He's been extremely good, extremely helpful, and very knowledgeable."

Despite the desperate difficulties in international credit, the firm has been active on the lenders' side of a number of large-scale international financings, acting as local counsel on deals run by UK firms.

In January the firm acted as local counsel on the £600 million financing to British Vita Group, a manufacturer of foam, plastics and non-woven products, for its restructuring. In the transaction the firm advised the lender, JP Morgan, and its lead counsel, Clifford Chance. Vita has operations in Lithuania.

The firm is capable of taking a leading role in Baltic deals as well. In November 2007, the firm advised the borrower Polish Enterprise fund and its manager, Enterprise Investor, on the provision to the private-equity fund of a €10 million acquisition financing facility for its purchase of Baltic tour operator Novaturas.

The firm has also been busy undertaking regulatory work. In November 2007, the firm advised Estonian bank Big on its establishment of a branch in Lithuania. Most impressively, as part of its full transactional support, the firm has been advising Danske Bank and Sampo Bank on regulatory matters regarding the first cross-border merger of banks in Lithuania.

Leading lawyers

Vilius Bernatonis
Jonas Pilkauskas
Eugenija Sutkiene

Other notable firms

Jurevicius Balciunas & Bartkus has been noted as more visible in banking and finance in the past year by some competitors. The firm continues to establish itself in the project finance sector, and has been advising Klaipeda City Municipality on its PPP-financed sports arena.

Mergers and acquisitions

Recommended firms	
Tier 1	Lideika Petrauskas Valiunas ir partneriai Lawin
Tier 2	Bernotas & Dominas Glimstedt Raidla Lejins & Norcous Sorainen Sutkiene Pilkauskas & Partners
Tier 3	Foigt & Partners/Regija Borenius Jurevicius Balciunas & Bartkus
Tier 4	Foresta Saladzius

Despite the economic slowdown in the Baltic region, the M&A market remains lively in Lithuania. Tighter financing conditions have created difficulties for highly leveraged companies. This distress, coupled with shareholders' more realistic views of company value, has created a market more favourable to buyers than sellers.

Foreign direct investment continues to flow in from Scandinavia and other European states. Even though it is bigger than its Baltic neighbours, the Lithuanian market is still small enough that transactions generally require lower levels of leverage; meaning fewer deals are scuppered by the lack of credit.

Private equity is a growing influence on the M&A market. Although the big international private-equity players may have eyes on the market, Mid Europa's purchase of mobile company Bité in February 2007 has not been matched. But with strategic buyers taking the upper hand due to an over-reliance on leveraged financing by private-equity houses, the latter will instead focus on distressed targets until the market regains its liquidity.

Lideika Petrauskas Valiunas ir partneriai Lawin

Lideika Petrauskas Valiunas ir partneriai has the largest M&A team in Lithuania and is rated firmly in the top tier: "I have to admit, they are a leader," says one. The corporate department is led by Zilvinas Zinkevicius, who clients and competitors roundly rate as a leading lawyer. Zinkevicius's team was strengthened at the start of 2008 with the promotion of Dovile Burgiene and Ramunas Petravicius to the partnership.

Lideika is at the forefront of movements in the energy sector, advising state electricity company Lietuvos Energija on its establishment of a joint venture for the construction of a nuclear power plant and a power bridge between Lithuania and Poland. The total value of the venture is in the region of €2.3 billion and is the largest Lithuanian merger to date. New partners Burgiene and Petravicius are both active on the deal.

In other highlights, the firm advised shareholders of the Baltic tour operator Novaturas in the €40 million sale of its equity stake in its Lithuanian, Latvian and Estonian subsidiaries in November 2007.

Lideika also utilised its Lawin network when it advised Nordic business consulting and IT company Ementor on its acquisition of a controlling stake of Sonex group, the largest IT company in the Baltic States. The deal involved all three Baltic jurisdictions and was closed in December 2007.

Leading lawyers

Dovile Burgiene
Zilvinas Zinkevicius

Bernotas & Dominas Glimstedt

Bernotas & Dominas Glimstedt is the Lithuanian office of the Glimstedt association, which has offices in Estonia and Lithuania, as well as in Sweden. Like the many other pan-Baltic firms and alliances, Bernotas & Dominas Glimstedt is able to take advantage of these links and act on some of the more complex cross-border M&A deals.

Bernotas & Dominas Glimstedt strengthened its team when it promoted Elijus Burgis to become the firm's seventh partner. Burgis was praised by one client, along with name partner Egidijus Bernotas: "I have known them for a long time. They are excellent."

Rivals have noted the firm's visibility in M&A work, and the firm is also a client favourite. "I continue to work with them on assignments. The experience is only positive," says one client.

The firm's notable deals include advising one investor in its attempt to purchase Novaturas, the Baltic tour operator. In December 2007 the firm advised Swedish private fund Askembla on its acquisition of a majority stake in Kausta Guder, a company which sells and rents out construction machinery.

Leading lawyers

Egidijus Bernotas
Elijus Burgis
Gediminas Dominas
Remigijus Jakutis

Raidla Lejins & Norcouis

The firm formally known as Norcouis & Partners has had another strong year in the M&A market, taking advantage of its increased integration with its Estonian and Latvian partners with which it has been sharing the joint name of Raidla Lejins & Norcouis since May 1 2008.

Working alongside these other offices, the firm acted as lead counsel to Baltic private-equity firm BaltCap on its acquisition of the Yellow Pages directories publisher Interinfo Group from Texas Pacific Group, a deal which closed in February 2008. The transaction required the firm to coordinate legal support across Lithuania, Latvia, Estonia and the Netherlands.

Client have great respect for Ruslanas Bronikovas. "He would worry more than us, which is always comforting," says one. "He pointed out sensitive issues so that we could make informed decisions."

In another standout deal, a team led by Irmantas Norkus advised Lithuanian retailer IKI Group on its €300 million sale to Coopernic, a European alliance of independent retailers. Again working on a pan-Baltic deal, the firm advised IT company Sonex Group on its sale to Ementor, a Scandinavian IT business. The transaction involved assets in Estonia, Latvia and Lithuania, as well as Russia.

The firm is looking to expand and has launched a Belarus helpdesk aimed at servicing its clients that have shown an interest in investment opportunities in the region.

Leading lawyers

Ruslanas Bronikovas
Irmantas Norkus

Sorainen

Sorainen's Lithuanian office has continued to grow, and from May 2007 to May 2008 the firm's headcount rose by 20%. Additions to the M&A team included senior associate Lauras Butkevicius, who arrived from rivals Norcouis & Partners. The firm's capacity and international reach stretches across all three Baltic states, meaning it has been able to secure roles on all three of the jurisdictions biggest M&A deals in 2007.

Multinational clients find that Sorainen's model fits their needs and have been very satisfied with the quality that the firm offers. "We need one advisor, who is also international," says a client. "The professionalism is on a very high level. We have not been so satisfied with other firms."

In one of Lithuania's standout transactions, the firm advised European independent retailer alliance Coopernic on its acquisition of an 80% share in UAB Palink, the operator of retail chains IKI in Lithuanian and Cento in Latvia. The cross-border transaction was led by Sorainen and required English law advice for the five buyers and two sellers.

The firm was also active on the largest Lithuanian merger to date, when it advised the Lithuanian Government - and HSBC as the government's advisor - on the creation of the Lithuanian Electricity Organisation, an energy holding company. The €2.3 billion transaction saw Lietuvos Energija merge with the electricity distribution networks VST and RST. The holding company came into existence in May 2008 and was created to invest in the construction of the Ignalia nuclear plant and the power connections to Sweden and Poland.

In addition, a team involving Laimonas Skibarka, head of the M&A team, advised the Vienna Insurance Group on its acquisition of Seesam Life Insurance, the largest life insur-

ance company in the Baltics. This was the first direct acquisition of the shares in a *societas europaea*.

Leading lawyers

Kestutis Adamonis
Raminta Karlonaitė
Laimonas Skibarka

Sutkiene Pilkauskas & Partners

Although Sutkiene Pilkauskas & Partners has a smaller core of leading lawyers than some of the other top firms, peers believe the firm is visible in a number of transactions.

Clients have also expressed a belief that the firm is growing, and are impressed with the consistency of quality. "Throughout all levels, from partners to associates and below, the firm is strong," says one client.

The firm is particularly recognised for its strength in private-equity work, acting on several noteworthy investments in the past year. In one of the biggest Lithuanian acquisitions of 2007, the firm advised Enterprise Investors, a private-equity fund focusing on Polish and central and eastern European assets, on its €40 million purchase of UAB Novaturas, the Baltic tour operator. Marius Matonis advised on the deal; rivals respect Matonis as a leading lawyer.

The firm has also been acting for a private investor on its interest in the consolidation of the Lithuanian electricity network and creation of a national electricity company, which will construct grids and a new nuclear power plant. If the investment goes ahead, the deal will be valued at €2.5 billion.

In another big-ticket deal, the firm acted as local counsel for Danske Bank in its May 2007 €4.05 billion acquisition of the Sampo Bank Group. A team involving Vilius Bernatonis was advising on Lithuanian elements of the transaction.

Sutkiene Pilkauskas & Partners also helps investors as they cast their eyes further afield. The firm advised a consortium, comprising of Lithuanian brewer Alita and Swedish brewer United Nordic Beverages, on its €21 million purchase of a controlling stake in Serbian brewery BIP following its privatisation. The firm's approach to deals is appreciated by foreign clients. "They were of a western European standard. You could see they were educated in London," one client says.

Leading lawyers

Marius Matonis
Jonas Pilkauskas
Eugenija Sutkiene

Foigt & Partners/Regija Borenus

Partner Tomas Rymeikis has been leading Foigt & Partners' Lithuanian office on a number of M&A transactions. In October 2007, working with the other Borenus offices, the firm represented alcohol distributor Lion & Co in the sale of its Baltic companies.

In one notable transaction featuring Tomas Rymeikis, the firm represented the Lithuanian subsidiary of Maxit, a Baltic producer of construction materials, in the acquisition of its competitor Viscum. The cross-border deal again involved the other Borenus Group members, which can be found in Estonia, Latvia and Finland.

Leading lawyers

Tomas Rymeikis

Other notable firms

Jurevicius Balciunas & Bartkus has been active on the M&A front, advising private-equity firm Summit Partners on the Lithuanian aspects of its acquisition of a molecular-biology company.

The firm is a member of the Baltic Legal Solutions network together with its alliance partners in Estonia and Latvia. It is also a member of the Pinsent Masons Luther Group.