

Newsletter

COVID-19 impact on M&A in Russia: trends and transaction specifics

April 24th, 2020

Dear Ladies and Gentlemen,

Every day, the outbreak of coronavirus infection has an increasing impact on the economy, in general and various aspects of business, in particular. In this information letter, we have reflected the main trends and specifics of M&A transactions in Russia, under the conditions of restrictive measures caused by the spread of COVID-19.

General trends of the M&A market in Russia under COVID-19

- **Transactions' dynamic.** Substantial reduction of M&A transactions, particularly those involving foreign investors. At the same time, devaluation of assets creates new opportunities for the purchasers ready to take higher risks, in the current situation of uncertainty.
- **Industries.** Less interest in relation to businesses, which have been affected due to restrictive measures, caused by coronavirus infection. At the same time, the industries related to healthcare, deliveries, online trading, AI, IT and telecoms may find increased M&A activity.
- **Structure of transactions.** A new wave of restructuring of financing obligations is likely to come, which may also include certain corporate elements (e.g. debt-to-equity conversion, shareholders' agreements, call / put options). There may be an increased number of distressed M&A transactions, including within insolvency procedures and debt restructuring.

- **Financing of transactions.** The possibility to obtain financing, for the purposes of acquiring assets, may be limited. Alternative ways to be considered (e.g. deferred payment / earn-out).

Specifics of M&A transactions in Russia under COVID-19

- **Purchase price.** Increased use of the 'completion accounts' approach, due to uncertainty. A 'locked-box' concept to be used rarely, or in hybrid form, for example, with confirmation of certain financial indicators, at the completion date, as a condition precedent. Deferred payment (holdback, deferred consideration, earn-out) is likely to become widely used.
- **State support measures.** Key terms of transactions (e.g. purchase price, or a right to withdraw from the transaction) may depend on certain state support measures, which have already been provided for the target, or which may arise in the future (before and after completion).
- **Material adverse change ('MAC').** Particular attention to the wording of MAC provisions, especially in relation to epidemics / pandemics, as well as the right of the parties to withdraw from the transaction, in the case a material adverse change occurs.
- **Regulatory approvals.** It is necessary to take into account possible delays of state authorities, when reviewing applications for transaction approvals. A purchaser may also demand

limitation of its liability for failure to file an application, or to obtain regulatory approvals.

- **Long stop date.** Realistic approach to be taken when introducing a long stop date for satisfaction of conditions precedent. To consider a flexible mechanism to prolong a long stop date, for example, in case of delay in obtaining regulatory approvals.
- **The period between signing and completion.** Particular attention of the parties to the wording of 'ordinary course of business'. It is important for a seller to be entitled to immediate actions in extraordinary 'course of business', if it is necessary for the business continuity. The parties may additionally agree on an action plan to prevent / overcome the pandemic's impact on the target's business.
- **Specific issues in Due Diligence.** A purchaser should thoroughly examine the following issues: (1) commercial contracts with suppliers / clients of the target (performance of the agreement by both parties, a right to unilaterally terminate the agreement, 'force majeure' provisions, liability for breach of the agreement), (2) structure and collectability of receivables, (3) sufficiency of working capital (including reserves) for operational activity, (4) compliance with regulatory restrictions due to COVID-19, (5) obtaining of any financial aid, or other state support, compliance with the terms and conditions of such support, (6) COVID-19 risks coverage by insurance policies of the target, (7) IT and data protection issues, due to transfer of employees / business to remote working, (8) labor law issues connected with effective restrictive measures, (9) compliance with financial covenants.
- **Specific warranties / representations.** Extension of warranties / representations in relation to commercial contracts with suppliers / clients of the target, in particular, relating to the absence of any delays, notifications of failure to perform the contracts, or unilateral termination of the contracts, with the reference to force majeure or other circumstances.
- **Signing and completion.** Considering available options for "virtual signing" of transaction documents. Completion procedure, where the physical presence of the parties (their representatives) may be required, should be discussed with the notary in advance (in case of sale of participatory interest in an LLC) or registrar / depositary (in case of sale of shares in a JSC). The official websites of regional notary chambers contain the details of the notaries on duty. Some registrars / depositaries are developing the possibility of remote opening of the account and remote consummation of operations with shares.

For up-to-date legislative news and business-related guidance in connection with COVID-19, please visit our dedicated webpage:

COVID-19: What you need to know

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