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1 Relevant Authorities and Legislation

1.1 What regulates M&A?

Mergers and acquisitions are regulated by the following main laws:

- Law 9901/2008 "On Entrepreneurs and Commercial Companies", stipulates general rules and regulations on the merger of the commercial companies, relevant procedures and authorities ("**Law 9901/2008**").
- Law 10236/2010 "On Takeover of Public Companies", determines rules relating to the conditions and procedures for the takeover of at least 30% of the shares in the companies with a public offer ("**Law 10236/2010**").
- Law 110/2012 "On Cross-Border Mergers", stipulates rules on mergers of commercial companies when one of the companies involved in the merger is a foreign company ("**Law 110/2012**").
- Law 9121/2003 "On Protection of Competition", provides provision on the protection of the competition, as well as rules on the concentration of the commercial companies and relevant authorities ("**Law 9121/2003**").

The relevant responsible authorities in the Republic of Albania for mergers, change of control and transfer of a percentage of shares are as follows:

- The Albanian Competition Authority ("**ACA**") supervises the market in relation to competition issues and approves the merger of the companies when required by the law.
- The Albanian Financial Supervisory Authority ("**FSA**") approves the transfer of shares and change of control of the companies operating in the security sector, and approves the takeover bids in relation to the takeover of public companies.

1.2 Are there different rules for different types of company?

Law 10236/2010 applies to the companies incorporated in Albania that are publicly traded in Albania.

In the case of companies registered in Albania and listed on the stock exchange abroad, Law 10236/2010 applies only in relation to the notification of the employees of the target company, the protective actions performed by the administration of the target company, the obligation to make an offer, the exceptions from making an offer, and any provision of Law 9901/2008.

In the case of a foreign company, having its legal seat in the European Union or in the European Economic Area, Law 10236/2010 applies only in relation to the content and the procedure of the offer, provided that the following conditions are met: (a) the voting shares are accepted only in Albanian trade; (b) the voting shares are accepted in Albanian trade and in another country, but not in the country of the legal seat of the company, and the first acceptance in the market occurred in Albania, or the acceptance in the market has occurred simultaneously and the target company chose the FSA as the competent authority.

1.3 Are there special rules for foreign buyers?

The foreign buyers are treated as equally as the Albanian investors.

In the case of a cross-border merger, where one of the companies is registered in one of the Member States of the EU, the merger is regulated by Law 110/2012, which is in compliance with the Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005.

1.4 Are there any special sector-related rules?

The main regulated sectors requiring notification or consent by the relevant authorities in cases of change of control or transfer of a particular share percentage are the banking, insurance, media and telecommunication sectors.

1.5 What are the principal sources of liability?

The legal representatives, members of the Management Board of the companies participating in the merger, and experts engaged for the evaluation of the merger are jointly liable for any damages suffered by the shareholders and creditors of the participating companies due to non-compliance with the applicable law in relation to the merger procedure and evaluation of the participating companies' assets. In relation to the transactions for which an approval from the ACA is required, in cases of failure to obtain the approval of the ACA prior to the transaction, a penalty amounting to 10% of the annual turnover of the previous financial year for any participating company may be imposed by the Competition Commission.

In relation to public takeovers, Law 10236/2010 provides for administrative fines from Albanian Lek ("**ALL**") 5,000,000 (approx. EUR 35,000) up to ALL 20,000,000 (approx. EUR 142,000) for failure to comply with the rules of the bidding process.

2 Mechanics of Acquisition

2.1 What alternative means of acquisition are there?

In addition to the direct purchase of the shares, the following are alternative means for acquisition of a company:

(i) acquisition of shares by means of a share purchase agreement;

(ii) merger by acquisition, where the assets of one or more companies (the companies to be acquired) are transferred to another company (the acquiring company) in exchange for the shares of that company;

(iii) merger by formation of a new company, where the assets of the merging companies are transferred, in exchange for shares of the new company;

(iv) public takeover offer for public joint stock companies;

(v) acquisition of shares by means of inheritance; and

(vi) acquisition of shares by means of donation.

2.2 What advisers do the parties need?

The parties need a financial adviser in order to evaluate the transaction, the draft merger agreement or the offer in cases of public takeover procedure (according to the case), as well as a legal adviser in order to advise parties on legal procedures and to draft all the legal documents.

2.3 How long does it take?

The completion of an acquisition depends on the negotiation term of the parties, while the merger and the registration with the National Registration Centre ("**NRC**") takes approximately one month as of the publication of the draft merger agreement.

If a merger results in a concentration, the approval of the ACA is required and, in this case, the completion of the merger takes an additional term of one month.

The following are considered as a concentration which must be approved by the ACA in case during the previous year before the transaction: (a) the combined worldwide turnover of all the participating companies is more than 7 billion ALL (approx. EUR 50 million) and the domestic Albanian turnover of at least one participating company is more than 200 million ALL (approx. EUR 1.4 million); or (b) the combined domestic turnover of all of the participating companies is more than 400 million ALL (approx. EUR 2.9 million) and the domestic turnover of at least one of the participating companies is more than 200 million ALL (approx. EUR 1.4 million).

The completion of a public takeover process from the notification of the FSA by the bidder on the decision for a public takeover, until the approval by the target company and publication of the result of the offer, may not take more than 13 weeks, whereas the maximum time allowed for the target company to accept the offer is 10 weeks.

2.4 What are the main hurdles?

In relation to the merger, the main hurdles are:

- The publication of the draft merger agreement and explanatory report drafted by the legal representative of the merging companies.
- The publication of the report of a duly licensed expert appointed by each of the merging companies separately or jointly.
- The approval of the merger agreement by the shareholders of each of the participating companies.
- The publication of the merger agreement and resolution of the shareholders with the NRC.

In relation to the public takeover, the main hurdles are:

- The occurrence of the circumstance that will trigger the launch of a bid.
- The notification of the decision to launch an offer.
- The filing of the offer with the FSA.
- The approval of the offer by the FSA, and its subsequent publication.
- The notification of the offer to the employees.
- The publication of a report evaluating whether the offer is fair and reasonable by the financial adviser appointed by the Management Board of the target company.
- The publication of separate reports on the offer and the relevant consequences by the Management Board and the council of the target company.
- Acceptance of the offer.
- Publication of the result of the offer.
- Registration of the transfer of shares to the NRC.
- Registration in the Registration Centre, in the case of a joint stock company.

2.5 How much flexibility is there over deal terms and price?

In an acquisition, the price and other terms are freely negotiated between the parties.

In relation to mergers, Law 9901/2008 does not set any limits; however, the share exchange ratio shall be assessed by the financial expert appointed by the participating companies, or by the court if requested by the participating companies.

In public takeovers, the terms and the price are determined in the offer, and the bidder reserves the right to amend the offer by increasing the price, reducing the amount of shares to be acquired, and changing the terms and conditions at least one day before the termination of the deadline for acceptance of the offer by the target company.

The price offered by the bidder should not be lower than the highest value of:

- The fair share price, calculated on the basis of assessment methods, accepted and recognised by all.
- The weighted average price of the stock market during the last three months.
- The highest price of the shares paid by the bidder or any person acting in concert with the latter during the last 12 months, or the highest prices between the last value of the emission and the last value paid by the bidder.

2.6 What differences are there between offering cash and other consideration?

In public takeover procedures, the offer may consist of cash or shares.

The offer should consist of cash in cases where the bidder, or any person acting in concert with the latter, has purchased in cash 5% of the shares or voting rights of the company subject to the offer, during the last six months prior to the publication of the offer. In the case of offering marketable shares, their value is calculated based on their value in the stock market for the past 12 months.

2.7 Do the same terms have to be offered to all shareholders?

In public takeovers, the offer for taking control of a public joint stock company should be addressed with the same terms to all the shareholders. By virtue of Law 10236/2008, control is defined as ownership of at least 30% of the shares with voting rights.

2.8 Are there obligations to purchase other classes of target securities?

By virtue of Law 10236/2010, the offer should only be for securities giving access to the share capital and the right to vote; there is no obligation to purchase other classes of target securities.

2.9 Are there any limits on agreeing terms with employees?

There is no limit on the terms to be agreed with employees. However, the employees should be notified of the transaction and the impact it may have on the employment relationship.

In the case of a public takeover, the council of the employees should provide an opinion on the impact of the takeover of the company, in relation to employment, to the Management Board of the target company. This opinion is then published together with the opinion of the Management Board of the target company.

2.10 What role do employees, pension trustees and other stakeholders play?

In the case of a simple acquisition of the shares of a company, the shareholders of both companies should approve the transaction and authorise the legal representative to sign the sale-purchase agreement. The employees do not have any role.

In the case of mergers, the legal representatives of each of the participating companies should draft: (i) the merger agreement which, *inter alia*, provides the consequences of the merger for employees and the proposed measures; and (ii) an explanatory report on the merger agreement, as well the impact on the employees of the participating companies.

The creditors do not have any impact on approving mergers unless otherwise agreed. In practice, it might happen that the loans agreement with the bank stipulates that any change in the control of a debtor should be initially approved by the bank.

In the case of a public takeover, the Management Board of the target company should draft and publish an opinion analysing the potential consequences in the case of acceptance of the offer, as analysing the strategic plan in relation to the target company and any potential consequences arising out of these strategic plans in relation to the interests of the target company employment policy. The Management Board of the target company should also deliver such an opinion to the council of the employees.

The council of the employees should provide an opinion on the impact of the takeover of the company, in relation to employment, to the Management Board of the target company. This opinion is then published together with the opinion of the Management Board of the target company.

2.11 What documentation is needed?

In the case of an acquisition, the following documents are needed:

- a sale purchase agreement between the seller and purchaser; and
- a resolution of the shareholders of seller and purchaser approving the transfer of the shares and the relevant terms and conditions.

In the case of a merger, the following documents are needed:

- the draft merger agreement, and merger agreement in writing;
- an explanatory report drafted by the legal representative of the merging companies explaining the merger agreement and setting out the legal and economic grounds;
- a report of a duly licensed expert appointed by each of the merging companies separately or jointly; and
- a resolution of the shareholders of the merging companies approving the merger.

In the case of a takeover, the following documents are needed:

- the notification in writing to the FSA;
- the offer document submitted to the FSA for approval;
- the report of a financial adviser evaluation on whether the offer is reasonable or not;
- the recommendation of the Management Board of the target company analysing the consequences of the offer in the interests of the company, including the effects on employment and the consequences that the strategic plans might have on the target company; and
- the opinion of the council of employees on the consequences of the takeover on employment relations.

2.12 Are there any special disclosure requirements?

In the case of an acquisition, the share purchase agreement should disclose the price and number of shares to be sold, as well as the payment terms.

In the case of a merger, the following documents should be disclosed and published with the NRC and on the website of the companies:

- The draft merger agreement and the report of the legal representatives of the participating companies.
- The report of the licensed expert appointed severally or jointly by the participating companies, or by the court if requested by the participants. Such a report should evaluate, *inter alia*, whether the share exchange ratio is fair and reasonable.
- The signed merger agreement.

In the case of a takeover, the offer of the bidder should be notified to the FSA and published by the NRC, the Share Registration Centre ("**ShRC**") and the formal means of the regulated securities market.

The offer should disclose the following information:

- Identity of the bidder and, where the bidder is a company, the type, name and registered office of that company.
- Type, name and registered office of the target company.
- Identity of persons acting in concert with the bidder or with the target company and, in the case of companies, their types, names, registered offices and relationships with the bidder and, where possible, with the target company.
- Details of any existing holdings of the bidder, and of persons acting in concert with him/her, within the target company.
- Securities or, where appropriate, the class or classes of securities for which the bid is made.

- Maximum and minimum percentages or quantities of securities which the bidder undertakes to acquire.
- Type and the amount of payment offered for each stock and where the payment offered includes shares, their average weighted value on the stock market for the past 12 months, and information on the voting rights that they carry.
- Amount of the loan requested by the bidder to finance the takeover bid, the measures taken to secure the financing of the bid, and the consequences that a positive conclusion of the bid would have on the financial status of the bidder.
- Terms and conditions to which the bid is subject.
- The bidder's intentions with regard to the future business of the target company and, insofar as it is affected by the bid, the target company with regard to the safeguarding of the jobs of their employees and management, including any material change in the conditions of employment and, in particular, the bidder's strategic plans for the two companies, the likely repercussions on employment and the locations of the companies' places of business.
- Time allowed for acceptance of the bid.
- Steps to be taken by holders of securities to agree to the offer and to receive the appropriate payment for them.
- Bidder's intentions with regard to the right to require the holders of the remaining securities to sell to him/her their securities, if a certain percentage of the capital carrying voting rights has been acquired.
- The law which will govern contracts concluded between the bidder and the holders of the target company's securities as a result of the bid and the competent courts for resolving disputes.

In addition to the offer, the opinion of the Management Board and the opinion of the council of employees of the target company should be disclosed and published by the NRC, the Share Registration Centre ("**ShRC**") and the formal means of the regulated securities market.

Finally, the bidder should publish the result of the offer and register the transfer of the shares, if the offer is accepted with the NRC and the ShRC.

2.13 What are the key costs?

The main costs consist of (i) financial and legal adviser fees which are variable and which depend on the adviser, (ii) the administrative fees to be paid to the Competition Authority; namely, the application fee starting from 7,500 ALL (approx. EUR 53) to 15,000 ALL (approx. EUR 107), and the approval fee starting from 250,000 ALL (approx. EUR 1800) to 500,000 ALL (approx. EUR 3,600); (iii) the National Registration Centre fee of 120 ALL (approx. EUR 1); and (iv) the Share Registration Centre fee starting from 25,000 ALL (approx. EUR 1800), depending on the number of shareholders in the company.

2.14 What consents are needed?

In relation to mergers, the consent of the shareholders of all the merging companies is needed.

The approval of the ACA is required in the case of a concentration, as detailed in our answer to question 2.3 above.

In the following regulated sectors, the following consents are needed:

- In the banking sector, the transfer of at least 10% of the share capital of a bank, or such a percentage that enables a shareholder to influence the making of the decision, should be previously approved by the Bank of Albania.
- In the insurance sector, the transfer of at least 10% of the share capital of an insurance company, as well as any further participation up to or exceeding 20%, 33% or 50% of the share capital, should be approved by the FSA.
- In the telecommunications sector, an entity or a person may not hold more than 40% of the share capital in a national audio or audiovisual broadcasting company, and an entity or person holding shares in a national audio or audiovisual broadcasting company, may not acquire directly or indirectly shares of another national audio or audiovisual broadcasting company.

Regarding public takeovers, the offer of the bidder should be approved by the FSA before it is published.

2.15 What levels of approval or acceptance are needed?

The merger needs to be approved by at least 75% of the present shareholders, provided that the shareholders representing more than half of the voting shares are present in the meeting. However, the by-laws of the relevant companies may provide for a greater majority.

Law 10236/2010 does not provide for any minimum level of approval by the shareholders of the bidder before the submission of the offer.

2.16 When does cash consideration need to be committed and available?

In the case of acquisition of shares of private companies, cash must be paid in accordance with the terms of the share purchase agreement.

In the case of public takeovers, the bidder should make an offer only if he guarantees to pay the offered price. There is no provision in relation to what type of guarantee the bidder should offer, and there is no practice as the Tirana Stock Exchange is not operational.

3 Friendly or Hostile

3.1 Is there a choice?

Albanian law provides for both friendly and hostile takeovers; however, there is no practice as the Tirana Stock exchange is not functional.

3.2 Are there rules about an approach to the target?

Albanian legislation does not provide any specific rules about the target approach.

3.3 How relevant is the target board?

In the case of acquisition by purchase and merger, the board of the target company is not relevant at all.

In the case of a public takeover, the Management Board of the target company is entitled to provide the shareholders with an opinion on the transaction, in addition to the impact on the interests of the target company. However, the shareholders of the target company are entitled to approve the offer, and the law does not provide for the obligation of the shareholders to take into consideration the opinion of the board.

3.4 Does the choice affect process?

See question 3.1 above.

4 Information

4.1 What information is available to a buyer?

All corporate documents, i.e. articles of association by-laws, resolutions of the shareholders, possible pledges over the shares, as well as annual financial statements are available and may be obtained by the buyer at the NRC. The structure of the joint stock companies, meaning the shareholders, relevant participation and value, are also available with the ShRC.

Annual financial reports, as well as quarterly financial reports in relation to the public joint stock companies, are available from the FSA.

In case of an acquisition and merger, the acquiring company, in addition to the above, may require from the acquired company any other documents in relation to the contract, employment or court case; in practice, a due diligence is performed before the merger or the acquisition.

4.2 Is negotiation confidential and is access restricted?

There is no obligation to disclose negotiations, and therefore they may be conducted on a confidential basis.

4.3 When is an announcement required and what will become public?

The share purchase agreement, in addition to the draft merger agreement and the approved merger agreement, should be filed with the NRC for publicity purposes.

In relation to the public takeover, the decision of the bidder to make an offer, the offer itself, as well as the result of the offer should be notified to the FSA and published with the NRC, ShRA, the website of the bidder, as well all other communication means in relation to the securities market. Furthermore, the opinion of the Management Board and the council of employees of the target company, regarding the consequences of the offer, should be published.

4.4 What if the information is wrong or changes?

All the corrections or changes should be notified and published, as explained in the answer to question 4.3.

In public takeovers, the bidder is entitled to amend the offer until one working day before the expiry of the deadline for acceptance of the offer, and such an amendment should be notified immediately to the FSA. It should also be published.

5 Stakebuilding

5.1 Can shares be bought outside the offer process?

In cases where no control occurs during the acquisition, the share may be bought out of the offer process. By virtue of Law 10236/2010, control is defined as the acquisition of at least 30% of the voting rights.

5.2 Can derivatives be bought outside the offer process?

The purchase of derivatives are considered to be an acquisition of interest in share capital and voting rights, and therefore the same rules apply as in the acquisition of shares.

5.3 What are the disclosure triggers for shares and derivatives stakebuilding before the offer and during the offer period?

Different disclosure triggers for shares are required by different laws and different purposes.

By virtue of Law 9901/2008, a party should notify the NRC in writing within 15 days if the proportion of voting shares owned by such a party in a joint stock company exceeds or falls below the following thresholds: 3%; 5%; 10%; 15%; 20%; 25%; 30%; 50%; or 75%.

By virtue of Law 9879/2008, the same rule applies in the security sector. In this case, the notification should made to the FSA for the following thresholds: 5%; 10%; 25%; 30%; 50%; or 75%.

There are no rules on the disclosure triggers for derivatives.

5.4 What are the limitations and consequences?

By virtue of Law 10236/2010, a person who, alone or in concert with others, has obtained control of more than 30% of the voting shares of a public company, is required to launch a mandatory bid for the acquisition of all of the target company's remaining shares, within 10 days after the publication of obtaining such control.

6 Deal Protection

6.1 Are break fees available?

The Albanian law does not prohibit break fees. In public takeovers, the break fees must be included in the offer.

6.2 Can the target agree not to shop the company or its assets?

The Management Board of the target company may decide not to request alternative offers. However, in cases of a competitive offer made by any third party during the time period allowed for the acceptance of the offer, such a competitive offer is published and approved by FSA. A competing bid must offer a bid price at least 5% higher than the initial bid.

6.3 Can the target agree to issue shares or sell assets?

The target company may issue shares or sell assets, unless otherwise decided by the shareholders.

6.4 What commitments are available to tie up a deal?

In public takeovers, the Management Board and the council of employees are entitled to provide and publish their opinion on the offer and the impact that the change of control may have in the interest of the target company. Subsequently, the shareholders decide to accept or decline such an offer.

7 Bidder Protection

7.1 What deal conditions are permitted and is their invocation restricted?

The voluntary offers aiming to take control of public joint stock companies may contain certain conditions, provided that the fulfilment of such conditions does not depend solely on the bidder and the persons acting in concert with the latter. In cases where one of the conditions is not fulfilled, the bidder is entitled to revoke and withdraw the offer, provided that the time period allowed to accept the offer has not expired.

In mandatory offers, conditions are not permitted.

7.2 What control does the bidder have over the target during the process?

The bidder does not have any control over the target company during the bidding process. To mitigate this risk, the bidder may determine conditions in the offer in relation to the target company, i.e. the target company should not approve actions which may affect its business.

7.3 When does control pass to the bidder?

The bidder takes control of the target company upon acceptance of the offer. The transaction should be notified to the FSA and the NRC.

7.4 How can the bidder get 100% control?

Within three months from the expiry of the deadline for the acceptance of the offer, the bidder is entitled to:

- request the remaining shareholders to sell him their shares with voting rights, in cases where the bidder has acquired at least 90% of the share capital and voting rights of the target company; provided, however, that such an intention is determined in the offer; and
- request the remaining shareholders to sell him their priority shares and shares without voting rights, in cases where the bidder has acquired 90% of the share capital and voting rights of the target company.

On the other hand, the minority shareholders, within three months from the expiry of the deadline for the acceptance of the offer, are entitled to request from the bidder:

- to purchase their shares with voting rights, in cases where the bidder has acquired at least 90% of the share capital; and
- to purchase their priority shares and shares without the voting rights, in cases where the bidder has acquired 90% of the shares.

The price for the purchase shall be the same as for the shares purchased by means of the offer or the value of the shares; whichever is higher.

8 Target Defences

8.1 Does the board of the target have to publicise discussions?

There is no specific requirement for the Management Board of the target company to publicise the discussions, but it is obliged to make public its opinion on the offer, and the impact it may have on the change of control to the interest of the target company.

8.2 What can the target do to resist change of control?

As a general principle, the Management Board of the target company may not take any action from the publication of the offer until the publication of the results of the process, which may hinder the offer.

However, the shareholders may decide not to apply the above rule. In this case, the Management Board of the target company may take defensive measures in case:

- such measures are authorised by the shareholders after publication of the decision to make an offer;
- such measures constitute normal activity of the target company;
- such measures do not constitute normal activity of the target company, but are approved before the publication of the decision to make the offer; or
- the board of the target company requires an alternative offer.

8.3 Is it a fair fight?

The Management Board of the target company, through its opinion, may recommend for the shareholders not to accept the offer; however, the latter may decide to either accept or decline the offer on the change of control of the target company.

9 Other Useful Facts

9.1 What are the major influences on the success of an acquisition?

Concerning mergers, the adequate assessment of the share exchange ratio represents an important influence on the success of the merger.

In public takeovers, the offered price, the advice and reasons of the financial adviser on whether the offer is unfair and unreasonable, along with the recommendation of the Management Board of the target company to accept the offer, constitute key influences on the success of the public offer.

9.2 What happens if it fails?

In cases of an unsuccessful bid, the bidder or the persons acting in concert with him may not submit any bid for the securities of the target company within one year as of the publication of the result of the offer. Albanian law does not provide for any indemnity to the shareholders of the bidder.

10 Updates

10.1 Please provide a summary of any relevant new law or practices in M&A in your jurisdiction.

Although Laws 9879/2008 and 10236/2010 are in force, there is currently no practice in public takeovers due to the lack of any stock exchange. The Tirana Stock Exchange, the only organised securities market in Albania, is not functional.

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Gjika & Associates is a dynamic business-oriented law firm established in 2013 as a fruitful collaboration of highly-skilled attorneys with extensive experience in the national and international arena.

Our attorneys possess the right combination of skills, experience and international understanding to help clients achieve their business goals. We identify and manage key commercial and legal risks, cutting through the law and solving business and legal issues sympathetically. The firm possesses a complete understanding of the subtle differences and local approaches, laws and customs, and may thus facilitate the transaction management obstacles faced by our clients by using an integrated approach.

We advise on all aspects of domestic and cross-border transactional and general corporate issues, including acquisitions and disposals, corporate governance, mergers and re-organisations, equity capital markets, joint ventures, public and private mergers and strategic alliances, litigation before arbitration panels, and courts of all instances, as well as before the European Courts in Luxembourg and the European Court of Human Rights in Strasbourg.

Gjika & Associates is a recognised firm in the 2014 edition of the *IFLR1000*, and is a recommended firm in the 2015 edition of the *IFLR1000*.