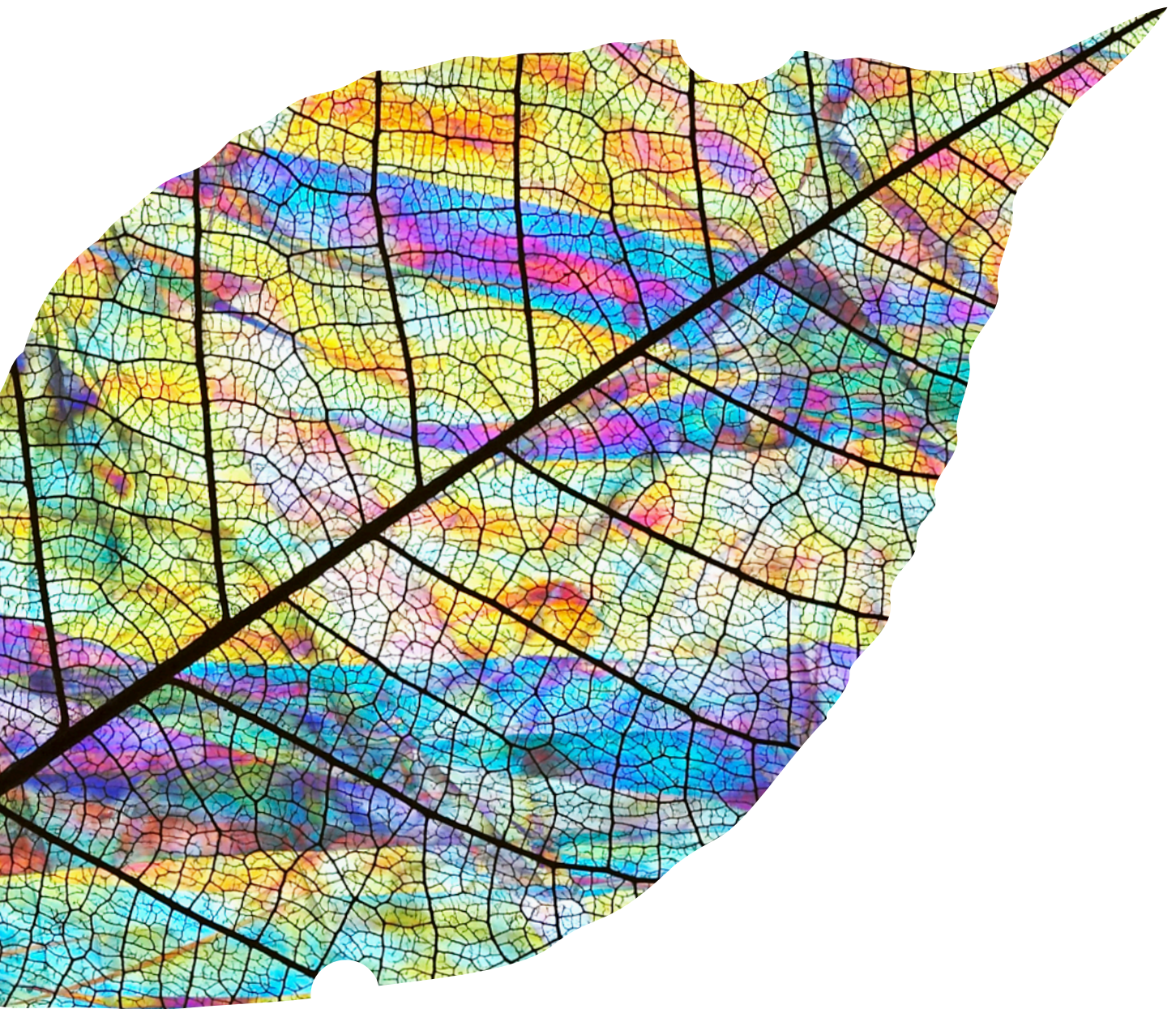


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GLOBAL LAW INTELLIGENCE UNIT



Leveraged Mergers & Acquisitions

September 2010

Leveraged Mergers and Acquisitions

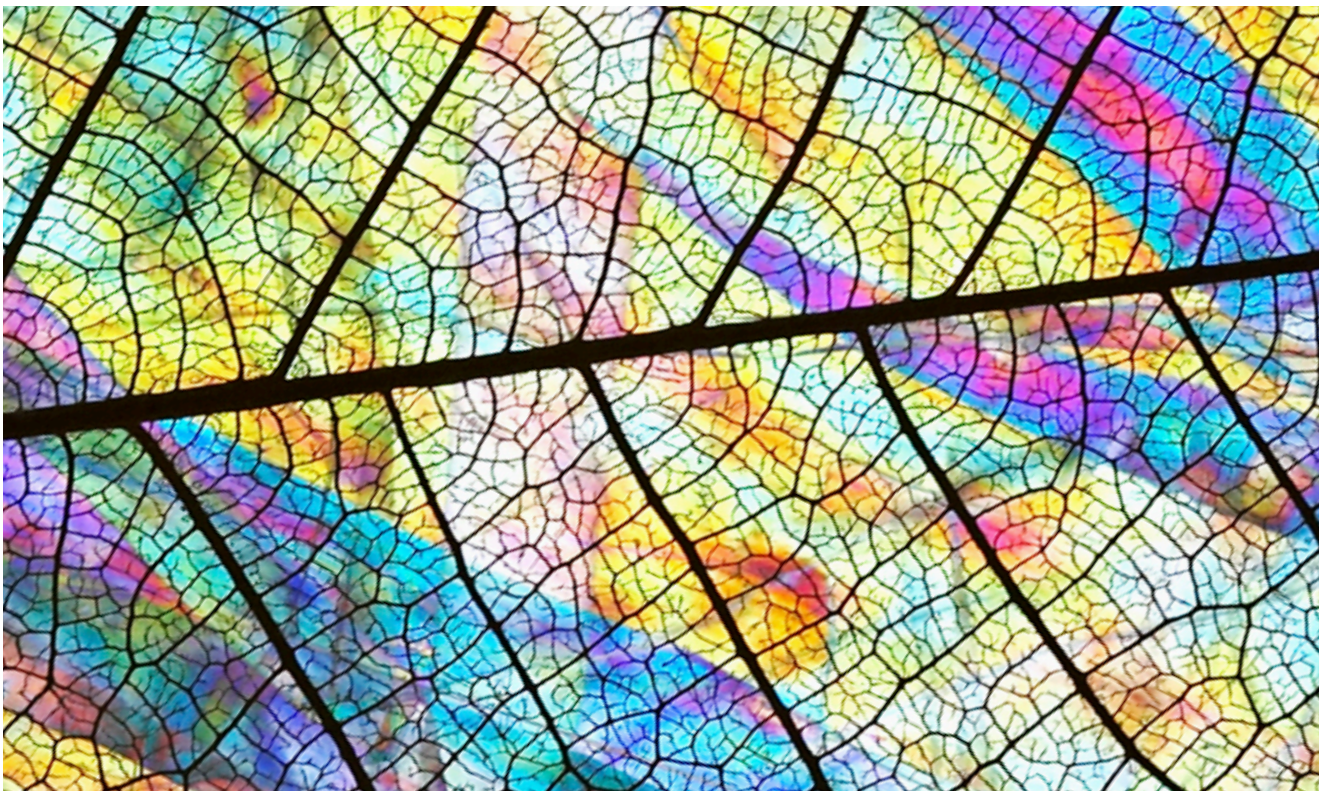
Key considerations relating to target companies

Legal ratings of over 140 jurisdictions with commentary

A special international survey carried out by the Allen & Overy
Global Law Intelligence Unit and global relationship firms

September 2010

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1_Introduction

Objectives

The objective of this survey is to present a colour-coded chart which rates key legal considerations relating to target companies in the case of an acquisition.

We have selected seven legal indicators which are highly relevant in planning the strategy of an acquisition where the target company is located in a foreign jurisdiction and has numerous subsidiaries scattered around global jurisdictions.

Each of the key indicators is given a colour, ranging from blue through to green and yellow, through to red, so that the broad position in the jurisdictions can be seen at a glance. Each of the charts is accompanied by brief notes giving background and additional legal data explaining the colour rating.

The overall purpose is to synthesise and distil complex legal data. This pioneering technique of rating legal issues in this way is intended to enable surveys of this kind to be conducted quickly and at a fraction of the cost generally involved in this type of investigation.

Levels of law

The survey measures black-letter law. The Intelligence Unit distinguishes between four levels of law, namely:

- Black-letter law or what the law actually says, sometimes known as law on the books.
- Application of the law where courts and tribunals have a discretion eg whether there is an emphasis on the literal and predictable interpretation of contract or whether the judicial authorities tend to support retail individuals as opposed to businesses or banks or support domestic residents as opposed to foreigners.
- The legal infrastructure, such as the independence and competence of the judiciary and the time taken to get a matter heard.
- Whether the jurisdiction upholds the basic rule of law.

In many jurisdictions, it is necessary to take all of these levels into account. In this survey, we assess only the black-letter law. It is often the case that the other levels are sufficiently apparent to well-informed observers. Any adverse assessment of the other levels should be taken into account in the approach to the specific key considerations and their rating.

The transactions

The chart deals with acquisitions or takeovers of foreign companies or assets privately as opposed to a public takeover. However, the chart applies equally to public takeovers of groups with subsidiaries in many jurisdictions.

Where the acquisition is not paid for by an issue of shares but rather by a cash price, the acquisition is typically financed by banks and others. The banks may require the members of the target group to guarantee the financing loans to the acquiror and seek security from the target companies in order to secure the group guarantees. These guarantees and security may be prevented by legal prohibitions in the jurisdictions concerned, as shown in the chart.

A syndicate of banks may also make direct loans to the target group in order to refinance their existing facility and to provide working capital. It is often necessary to refinance existing facilities because the target's bank loan agreements contain change of control clauses providing that, if there is a change of control, the banks are entitled to call for repayment of their loans. The target group would typically give guarantees and comprehensive security to secure the direct loans from the new banks.

The main objectives of direct loans to the target group are often:

- to avoid withholding taxes;
- to enhance deductibility of interest by the target group;
- to reduce the risk of guarantees being set aside; and
- to avoid problems on a company giving financial assistance (eg guarantees and security) in connection with the purchase of its own shares.

The deal structure may be quite simple as where a parent company enters into the acquisition agreement or makes a public offer. Alternatively, there may be a complex structure involving tiers of bidding companies and tiers of financing lenders. For example, on the acquiror's side, there may be at least three tiers of shell special purpose companies, Bidco, Midco and Topco. Bidco makes a bid for the target group or agrees to acquire the parent and pays the price out of the proceeds of loans from senior banks and subordinated mezzanine lenders. Midco owns Bidco and provides the rest of the finance out of shareholder loans. Topco owns Midco and is held by, say, a private equity firm and management of the target.

The objects of these tiers are usually:

- to separate the senior lenders, the junior lenders and the equity shareholders; and
- to enable the senior lenders at the Bidco level to sell the group more easily, either on an exit or, if the venture fails, without interference of the shareholder lenders or equity shareholders.

Main issues

The key main issues chosen for this survey are the following:

1_ **Withholding Tax** Whether there is a withholding tax on interest payable under a direct loan to a foreign subsidiary of the bidder by a UK bank.

2_ **Financial Assistance** Whether the target group can guarantee a bank loan to the acquiror to finance the purchase price paid by the acquiror and grant security for the guarantee or a loan.

3_ **Security Interests** This item measures the availability and strength of security interests to secure the guarantees and to secure any direct loans.

4_ **Clawback** This assesses the risk that the security and guarantees could be set aside as a preference on the insolvency of the target group.

5_ **Merger Control** This deals with merger filing obligations.

6_ **Foreign Investment Approval** This deals with whether there are any legal limitations applying to a foreign company purchasing, or acquiring an indirect interest in, a company in the jurisdiction concerned.

7_ **Employee Rights** This issue deals with employee problems eg whether employees can block a merger or whether employees of the target are automatically transferred to a company purchasing the business.

The colour-coding involves a weighting of possibly several complex factors and there may therefore be a degree of subjectivity.

It is worth mentioning that the contents of this survey are not legal advice for strict reliance purposes. It is always necessary to obtain specific advice in relation to particular transactions.

2_ The chart and guidelines

The colour-coded ratings chart covering more than 140 jurisdictions is set out in the following pages. At the end of the chart, there is a set of guidelines: these are broadly the questions answered by the contributing law firms.

The chart adopts a uniform system of colour scaling.

Blue indicates that the legal position is unrestricted, not bound by rules, relaxed and therefore favourable from the point of view of the acquiror.

Red indicates that there are prohibitions, strict legal restrictions or statutory bars, so that the position is unfavourable from the point of view of the acquiror.

The intermediate colours are green and yellow.

Hence the scale ranges from freedom to strict control, from liberalism to legal prevention and is represented by colours in the spectrum, blue, green, yellow and red.

This scale does not measure whether a particular approach is or is not justifiable or reasonable. The scale is neutral in terms of legal values and only seeks to measure the degree of freedom as against legal restriction.

The advantage of this method of scaling is that it is consistent and it is not necessary to engage in policy evaluations. In addition, one can see at a glance whether a jurisdiction is overall free or rule-bound.

Guidelines

(1) Withholding Tax

We assume that a bank established in the UK grants a loan to a company established in your jurisdiction.

- If there is withholding tax that cannot be avoided, the colour is red;
- if withholding tax can be avoided but only if strict conditions are met (eg in Togo for loans of longer than five years, with the approval of the Ministry of Finance), the colour is yellow;
- if the withholding can be reduced to zero quite easily (eg under a double tax treaty or a broad exemption), the colour is green; and
- if there is no withholding tax at all on payments of interest on a loan, the colour is blue.

(2) Financial Assistance (assuming that the target is a private limited company)

- If financial assistance is completely prohibited, the colour is red;
- if financial assistance can be given once a full – or highly regulated – whitewash procedure has been carried out, the colour is yellow;
- if financial assistance can be given once minor formalities are complied with (eg a special resolution is passed by the shareholders), the colour is green; and
- if financial assistance is never an issue, the colour is blue.

(3) Security Interests

Indicators which are taken into account are as follows: Is a universal charge possible? Is it easy to register the security in a centralised registry? Are there some preferential creditors who rank ahead of the secured creditors? Is it easy to enforce (eg private sale, costs, freeze on insolvency)?

- If security is defective on all the criteria or simply not possible, the colour is red;
- if security is defective on most of the criteria, the colour is yellow;
- if security is defective on some of the criteria, the colour is green; and
- if security is only slightly defective on a few criteria, the colour is blue.

(4) Clawback

Assuming fraud is not involved, please can you advise on the length of the suspect period:

- If the suspect period is 5 years or over, the colour is red;
- if the suspect period is shorter than 5 years but longer than 2 years, the colour is yellow;
- if the suspect period is shorter or equal to 2 years but longer than 6 months, the colour is green; and
- If the suspect period is equal to 6 months or shorter, the colour is blue.

(5) Merger Control

- If there is a merger regime with a mandatory filing obligation and a suspension obligation, the colour is red;
- if there is a merger regime with a mandatory filing obligation but no suspension obligation, the colour is yellow;
- if there is a merger regime but filing is only voluntary, the colour is green; and
- if there is no merger regime, the colour is blue.

(6) Foreign Investment

- If the restrictions are strong (eg foreign investor can only hold 50% of the share capital of the local company) or requirements are strict (eg approval), the colour is red;
- if the restrictions are quite strong (eg acquisitions in certain key sectors such as media, transport, energy, land etc. are prohibited or require approval), the colour is yellow;
- if there are only some limited restrictions in some minor sectors (eg defence), the colour is green; and
- if there are no restrictions, the colour is blue.

(7) Employee Rights

- if numerous employee rights apply (eg they can block a merger), the colour is red;
- if employees have quite strong rights (eg they can delay a merger), the colour is yellow;

– if only a few rights apply (eg concerning the employees of the target who are to be transferred to the purchasing company), the colour is green; and

– if no specific rights apply, the colour is blue.

Key from the point of view of the acquiror:

■ very relaxed ■ quite relaxed ■ quite strict ■ very strict

If cells are split, two different sets of rules apply (see the relevant detailed comments of Chapter 5 for further information)

	1_Withholding Tax	2_Financial Assistance	3_Security Interests	4_Clawback	5_Merger Control	6_Foreign Investment Approval	7_Employee Rights
Albania	10%			90 days			
Algeria	10%			N/A		import, export etc	
Angola	15%			5 years		approval required	
Argentina	12%			2 years	BUT there are some exemptions	eg media, aviation	
Armenia	10%					eg TV, radio...	
Australia	0%	whitewash		4 years	voluntary	approval required	
Austria	none			1 year		eg real estate...	
Azerbaijan	10%			90 days			
Bahrain	none						
Barbados	15%			1 year			
Belarus	0%			3 years			
Belgium	none			6 months			
Belize	15%			12 years			
Bermuda	none			2 years??			
Bolivia	12.5%			2 years			
Bosnia and Herzegovina	10%			6 months			
Brazil	15%			90 days			
British Virgin Islands	none			2 years			
Brunei	20%			N/A			
Bulgaria	0%			3 years		eg land	
Burundi	15%			6 – 9 months			
Cameroon	15%			18 months			

	1_Withholding Tax	2_Financial Assistance	3_Security Interests	4_Clawback	5_Merger Control	6_Foreign Investment Approval	7_Employee Rights
Canada	none			1 year		notification or approval required	
Cape Verde	15%			2 years			
Cayman Is.	none			6 months			
Central African Republic	15%			18 months			
Chad	20%			18 months			
Chile	4%			2 years	voluntary		
China	10%			1 year			
Colombia	none			18 months		Defence, disposal of toxic waste	
Congo-Kinshasa	0 – 20%			6 months max		telecoms	
Costa Rica	15%			6 months	voluntary		
Croatia	none			5 years			
Cyprus	none			2 years			
Czech Rep.	0%			3 years			
Denmark	none			2 years			
East Timor							
Ecuador	25%			N/A	notice post merger	energy, telecom...	
Egypt	avoidable			2 years			
El Salvador	10 – 20%			cessation of payment date			
England	none			2 years	voluntary		
Estonia	avoidable			2 years			
Ethiopia	10%						
Finland	none			2 years			
France	0%			18 months			
Georgia	0%			1 year			
Germany	0%			3 years			
Ghana	8%			12 months		registration etc	
Greece	0%			2 years			
Guatemala	10%			N/A			
Guernsey	none			2 years			
Guinea	15%			18 months			
Guinea Bissau	25%			18 months			
Honduras	10%						

	1_Withholding Tax	2_Financial Assistance	3_Security Interests	4_Clawback	5_Merger Control	6_Foreign Investment Approval	7_Employee Rights
Hong Kong	none			2 years			
Hungary	0%			5 years			
Iceland	0%			2 years			
India	10%			1 year	to change soon!	eg retail trading	
Indonesia	20%			1 year			
Iran	5%			N/A			
Iraq	3%						
Ireland	0%			2 years		media & aviation	
Isle of Man	none			6 years			
Israel	15%			2 years			
Italy	[10%]			1 year			
Ivory Coast	none			18 months			
Japan	0%			1 year		notification required	
Jersey	none			5 years			
Jordan	7%			20 days			
Kazakhstan	10%			3 years			
Kenya	15%			1 year			
Kosovo	10%			1 year			
Kuwait	none			2 years		<49%	
Kyrgyz Republic	0%			3 years			
Latvia	0%			5 years			
Liechtenstein	none			1 year			
Lithuania	0%			3 years			
Luxembourg	none						
Madagascar	none			6 months			
Malaysia	10%			6 months	to change soon!	eg communication	
Mali	13%			18 months			
Malta	none			6 months			
Mauritius	0%			2 years		consent required	
Mexico	5%			270 days			
Moldova	0%			1 year			
Monaco	none			3 years			
Mongolia	7%			2 years		eg land	
Morocco	10%			N/A			
Mozambique	15%						
Namibia	5% – 10%			2 years			

	1_Withholding Tax	2_Financial Assistance	3_Security Interests	4_Clawback	5_Merger Control	6_Foreign Investment Approval	7_Employee Rights
Netherlands	none			Unlimited			
New Zealand	2%			2 years	voluntary	some land & assets	
Nicaragua	10%		changed from red	30 days			
Niger	16%			18 months			
Nigeria	7.5%			3 months			
Northern Ireland							
Norway	none			2 years			
Oman	none			2 years		approval required + <65-70%	
Pakistan	10%			3 months		registration	
Panama	15%			4 years	voluntary		
Paraguay	6% – 30%			1 year			
Peru	4.99% – 30%			1 year			
Philippines	15%			1 month		eg land, utilities	
Poland	0%			5 years			
Portugal	10%			4 years			
Qatar	none – may change soon						
Romania	10%			3 years			
Russia	0%			3 years			
Rwanda	15%						
Sao Tome	25%			5 years			
Saudi Arabia	0%			N/A			
Scotland	none			2 years	voluntary		
Senegal	16%			18 months			
Serbia	10%			1 year			
Seychelles	0%			6 months			
Sierra Leone	0%			1 year			
Singapore	10%			5 years	voluntary		
Slovakia	0%			3 years			
Slovenia	5%			1 year		media, energy etc	
South Africa	none			2 years			
South Korea	10%			6 months		media, telecom...	
Spain	0%			2 years			

	1_Withholding Tax	2_Financial Assistance	3_Security Interests	4_Clawback	5_Merger Control	6_Foreign Investment Approval	7_Employee Rights
Sri Lanka	0%			2 years		pawn broking	
Sudan	[15%]					approval required	
Sweden	none			5years			
Switzerland				5years		telecom, transport...	
Taiwan	20%					approval required	
Tajikistan	10%			N/A			
Tanzania	[10%]			2 years		telecom, shipping...	
Thailand	10%			1 year	to change soon!	large restrictions	
Togo	15%			18 months			
Trinidad & Tobago	10%			3 months			
Tunisia	2.5%			N/A			
Turkey	0%			2 years		notice required	
Turkmenistan				N/A			
UAE	none			2 years		strict restrictions	
Uganda	15%						
Ukraine	0%						
Uruguay	12%					eg radio, aircraft	
US	0%			6 years			
Uzbekistan	5%			N/A			
Venezuela	5%			2 years	voluntary		
Vietnam	10%			3 months			
Zambia	10%						
Zimbabwe				N/A			

3_Maps of the key issues

This chapter summarises the data in the detailed colour-coded chart in chapter 2 in the form of world maps. The objective is to add a further dimension to a quick perception of international differences and an immediate appraisal. The maps also tend to show whether there are regional differences and where the problematic areas are.

Map 1_Withholding Tax

Withholding tax is the term used to describe a tax which is collected at source by the payer. The charts and map address the position in relation to withholding tax on payments of interest under a loan. The object of withholding is to facilitate the collection of tax and also to enable national tax authorities to collect tax in respect of interest paid to foreign lenders since it would normally not otherwise be possible to collect directly from such lenders. Once a payment has been made it is difficult for the tax authority to claim back the tax from the overseas recipient and so withholding by the borrower is often the only realistic way in which tax authorities can collect tax on interest paid to a lender in another jurisdiction.

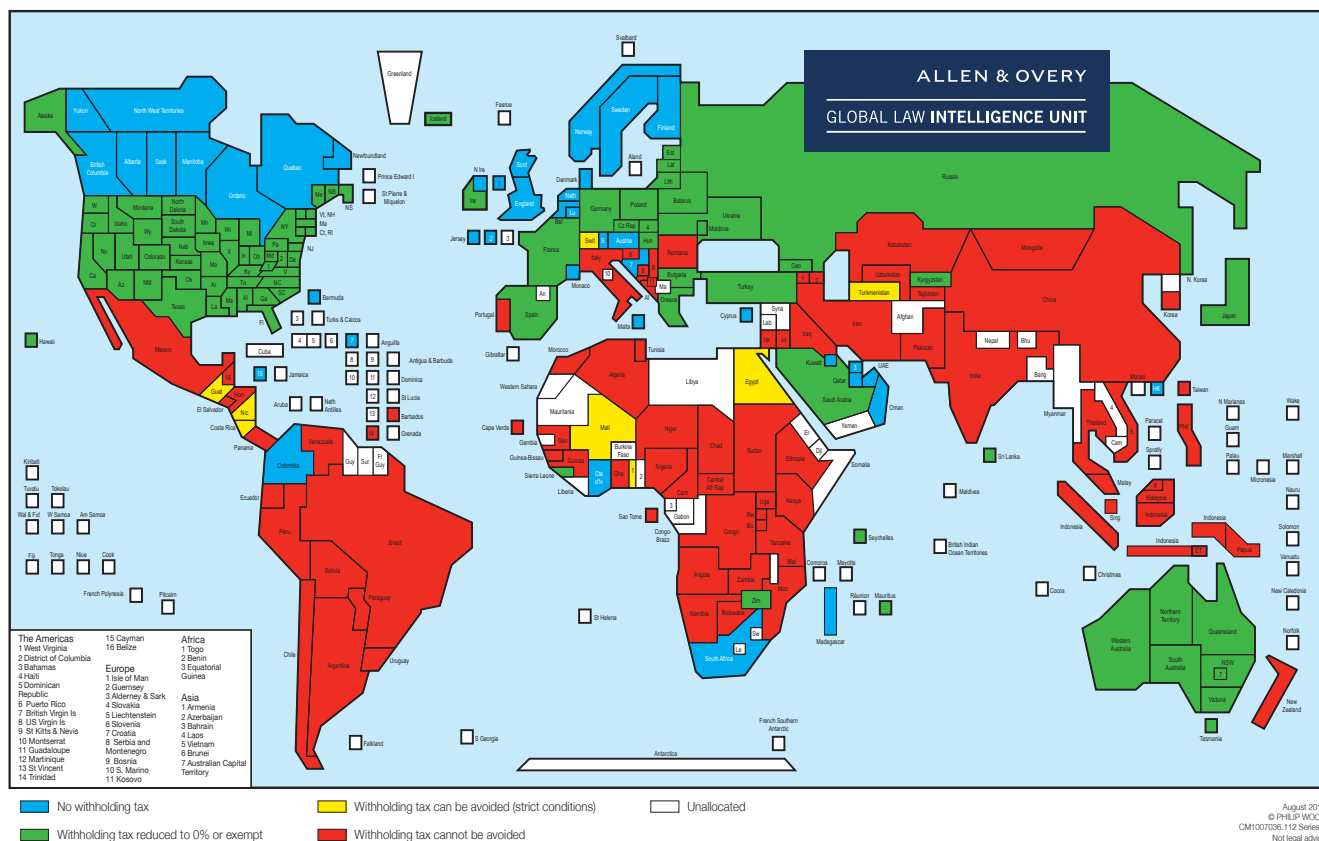
Generally, if there is a withholding tax, then it is unlikely the loan will go ahead. The reason for this is that the spread or margin above the cost of funds paid by the borrower on bank loans is often extremely small, e.g. anything between 0.25% and 3%, so that a withholding tax of even a moderate amount would wipe out the lender's gross return on the loan. It is true that loan agreements generally contain a gross up clause whereby the borrower must pay extra interest if any tax has to be deducted from interest, but this is unlikely to be commercially acceptable where it is clear from the outset that a withholding tax will be imposed.

If the interest on the loan is subject to a withholding tax, options to consider include:

- _ Whether a claim for relief can be made under an applicable double tax treaty and whether the parties meet the requirements for obtaining relief under the treaty.
- _ A conduit loan whereby the bank lends to a conduit bank in the borrower's country who on-lends to the borrower which can pay the conduit bank without deduction. This has many disadvantages and, from a tax perspective, there is a risk that certain tax authorities may ignore the presence of the conduit bank and treat the loan as having been made directly.
- _ The borrowing group borrows through a finance subsidiary under the guarantee of the parent where the subsidiary is located in a jurisdiction which does not impose a withholding tax.

The charts and map assume that interest is being paid to a UK bank by an unconnected non-UK corporate. If, however, the borrower was in the UK and the lender was an unconnected non-UK bank (with no UK operations) then income tax at 20% would prima facie have to be withheld by the borrower. However, the UK has a wide network of double tax treaties which may entitle the borrower to full or partial relief from the obligation to withhold (depending on the terms of the treaty).

Withholding Tax Map



Map 2_Financial Assistance

Many jurisdictions prohibit a company from giving financial assistance for the purpose of the acquisition of its own shares. The typical case would be the acquisition of a company, financed by a bank loan, where the acquired target company subsequently guarantees the loan and gives security for the guarantee or the loan itself.

The commercial effect is not dissimilar to a repayment of share capital of the target company. It is a basic rule of company law that shareholders are paid on bankruptcy after creditors and so any transaction which could put shareholders ahead of creditors is suspect. The whole idea is that the payment of share capital is subordinated to the payment of creditors.

An offending transaction is typically void and a criminal offence.

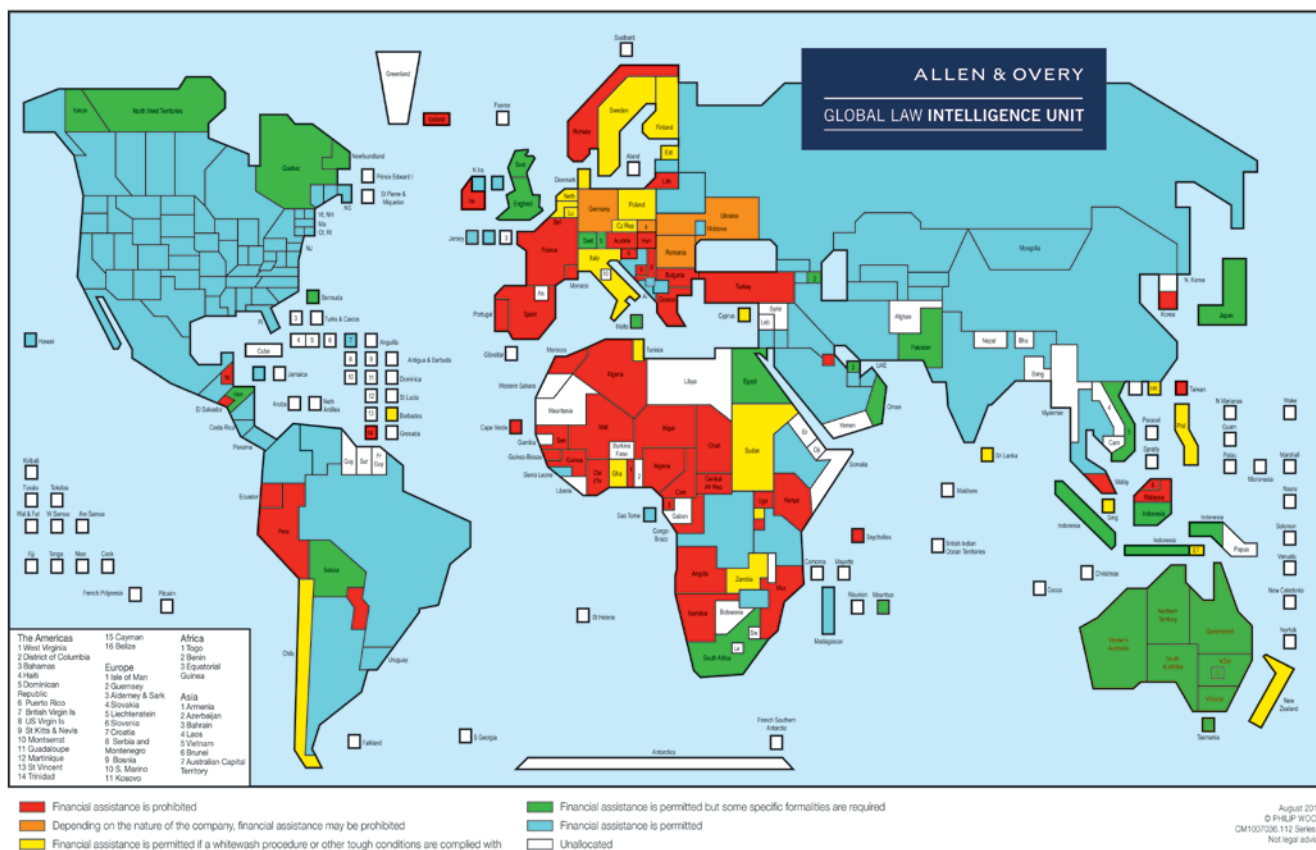
If there is a ban on financial assistance, then the lending banks are not able to take guarantees and security from the target group. The result is that the direct creditors of the target group are in effect paid before the banks. A strict prohibition on financial assistance operates like a poison pill frustrating an acquisition, one consequence of which is to protect the management of targets.

In some countries, the financial assistance prohibition applies only to public companies and not to private companies. This is the case with some EU countries pursuant to the relevant Directive.

Elsewhere, there may be a method of sanctioning the transaction by shareholder resolutions or proof of solvency at the time of the transaction – commonly called a whitewash.

An alternative worth considering is for the target to merge into the acquiring company after the acquisition so that the security is given by the new company for its own obligations.

Financial Assistance Map



Map 3_Security Interests

This map shows broadly the availability and strength of security interests around the world in the present context. The security may be given by the target companies either to secure guarantees of the financing loan to the acquiror, where permitted, or to secure direct refinancing and working capital loans by the banks directly to members of the target group.

The evaluation of security interests involves quite a number of complex issues of which the following are the main factors:

- _ The **scope** of security interests and, in particular, whether a universal charge is available.
- _ The **publicity** needed to validate security interests and whether this can be achieved simply and cheaply.
- _ The scope of the **secured debt**, eg whether future revolving debt can be covered and whether foreign currency debt can be secured.
- _ The priority of security interests over **preferential unsecured** creditors, mainly taxes, employees, judicial insolvency rescue, new money and expenses, and the like.
- _ Restrictions on **enforcement**, in particular the need for a judicial public auction and the imposition of freezes on judicial insolvency reorganisation, as well as the stoppage of interest post-commencement of proceedings and the loss of post-commencement collateral.
- _ **Transaction costs**, especially high notary fees, registration fees, stamp duties, and enforcement costs.

Other factors are the vulnerability of the security interests to be set aside as a preference and prohibitions on financial assistance to buy the company's own shares. These topics are the subject of other maps in this series.

The availability of a trustee to hold and manage the security for the benefit of the lenders is useful.

It will be seen from the map that there is wide divergence of the attitude of jurisdictions to security interests. This is because they trump unsecured creditors on insolvency and therefore enjoy a super-priority.

Map 4_Clawback

The issue covered by the map on clawback deals with the question of whether any security or guarantees given to banks can be set aside as a preference on the insolvency of the debtor.

All developed bankruptcy laws provide for the recapture of assets transferred by the debtor in the twilight suspect period prior to the commencement of formal insolvency proceedings. The object is to prevent debtors from transferring assets beyond the reach of their creditors, to ensure that, when debtors are in fact insolvent, they treat their creditors equally and to discourage creditors with special leverage from harassing a debtor in financial difficulties.

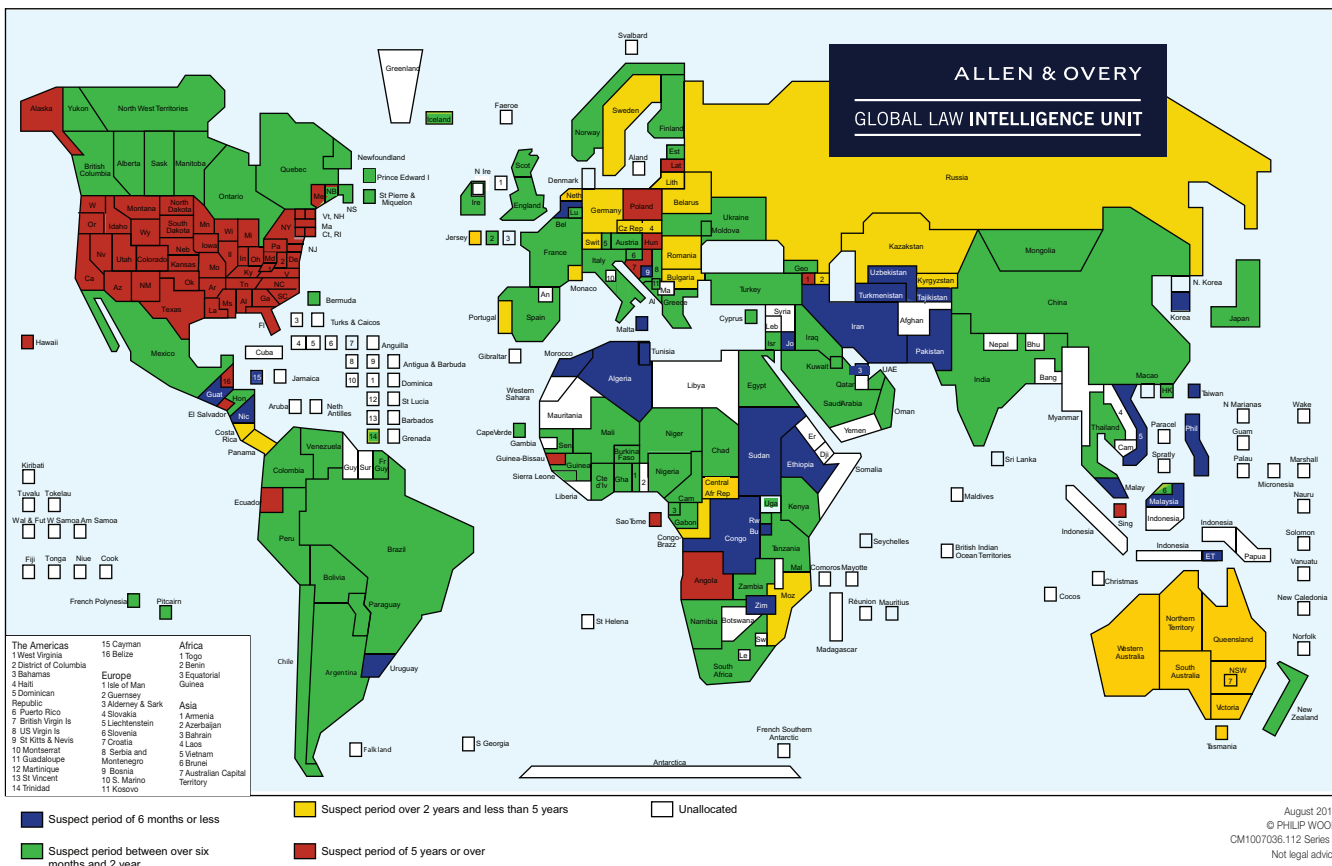
An opposing policy is the need for the predictability for transactions and their safety against retroactive avoidance.

Virtually all jurisdictions avoid intentionally fraudulent transfers. It is relatively unusual for security given at the time of the grant of a loan, rather than later, to be upset as a preference because there is a fair exchange. Nevertheless, a few jurisdictions do unwind security given for a loan made in close proximity to the formal commencement of the insolvency.

The main problem is the avoidance of guarantees. This is because almost all jurisdictions with developed bankruptcy laws avoid gifts or other transactions at an undervalue and a guarantee may have a gratuitous element, eg because the guaranteeing company does not receive anything in exchange for the guarantee. If the guarantee fails, then any security for the guarantee will also fail.

The result is that in most transactions the statutory suspect period (ie the length of the period prior to the commencement of formal insolvency proceedings) for the avoidance of preferences will be relevant. This period ranges from three months to many years, depending on the jurisdiction. There may be longer periods for transferees who are closely related to the debtor.

Clawback Map



Map 5_Merger Control

Under most merger control rules, regulatory authorities primarily consider any adverse effects on competition that may arise as a result of a transaction. The authorities seek to protect competition in the markets affected. Maintaining competition in markets is crucial as competition between business for customers helps ensure lower prices and better quality products, greater choice, innovation and more efficient production and distribution.

Merger control can have a huge impact on acquisitions and is usually tackled right at the outset of any transaction. If regulatory authorities must be notified of a proposed transaction, the completion of the deal could be delayed, in particular if competition concerns are raised, and greater expenses will be incurred. Major cross-border antitrust clearances can be particularly time-consuming and expensive.

Filings and other submissions will require significant client input, inevitably diverting management and employees away from the day-to-day running of the business.

In addition, merger control can increase the complexity of the structure of the deal. A slight change, for example in the shareholdings of the acquiring entities, might be enough to trigger a notification where one was otherwise not required. It may even be worthwhile changing the structure of a deal to avoid filing requirements.

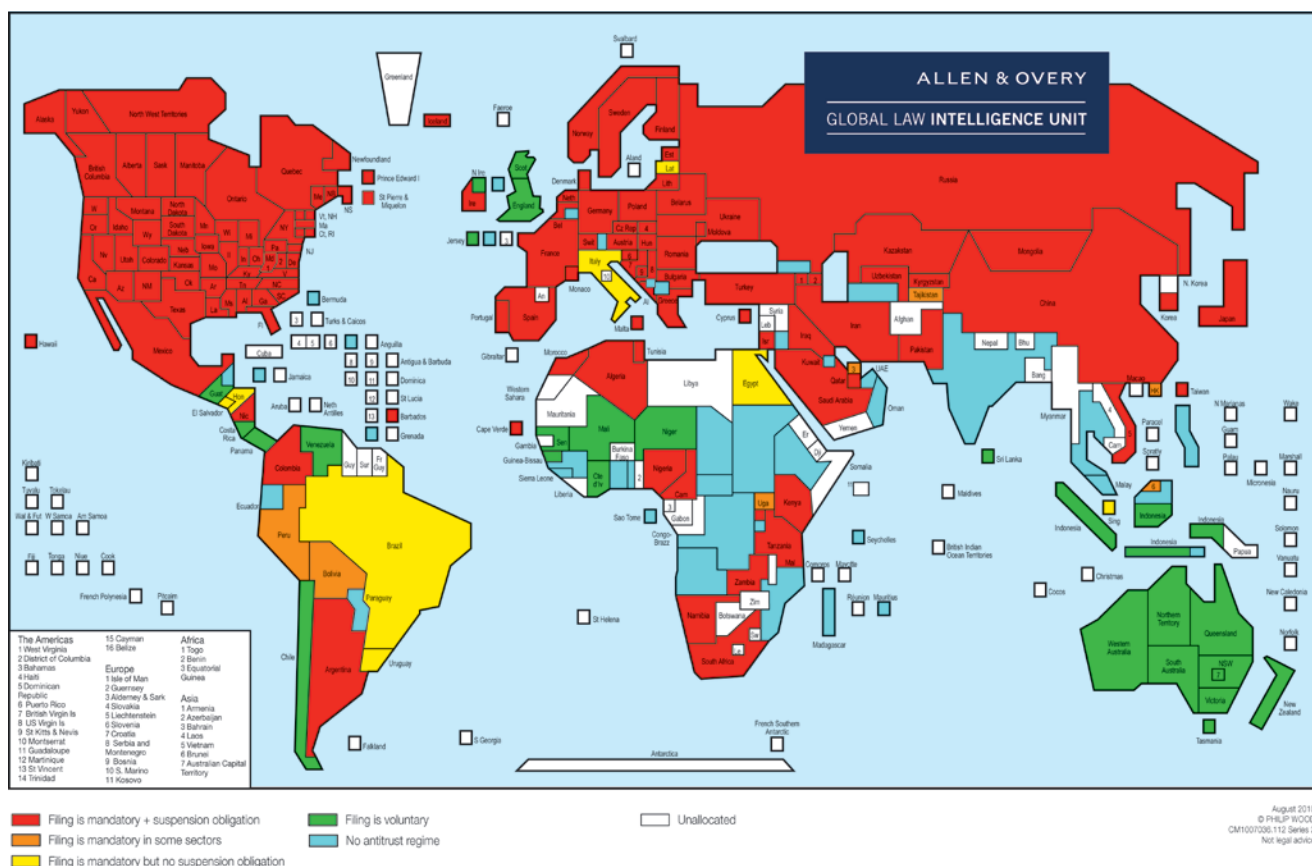
Ultimately, an authority may have competition concerns that it considers cannot be resolved by remedies and so block the deal entirely. The European Commission has prohibited many transactions.

Even if a transaction is unlikely to be prohibited, parties may be put off a deal by the mechanics of the merger control process or the likely remedies required to obtain clearance (such as divestment or behavioural undertakings). In addition, in a bidding situation, the seller is more likely to be attracted by bids that do not require merger control notifications or raise no competition concerns.

Merger control is not confined to just a handful of jurisdictions worldwide. Fairly sophisticated systems of rules can be found in countries as far afield as El Salvador, Tajikistan and Kenya. Over 80 countries have national systems of merger control and a number more have merger control legislation in the pipeline.

Increasingly, authorities are stepping up the enforcement of their regimes, including in relation to foreign-to-foreign transactions, fining companies for late notification or completing prior to clearance.

Merger Control Map



Map 6_Foreign Investment Approval

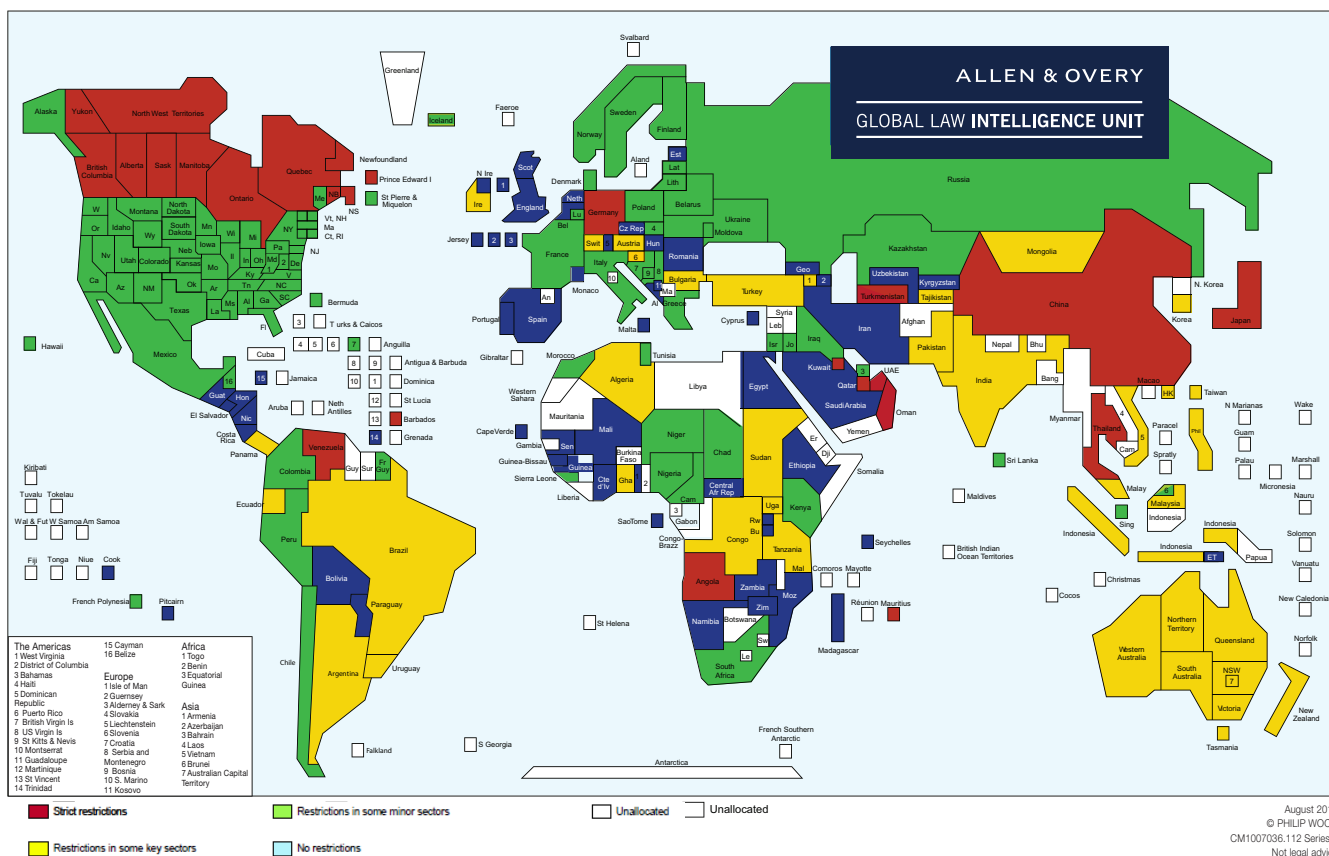
Protectionist rules may prevent foreign investors from acquiring 100% of the shares of a local company or acquiring an indirect interest in a subsidiary which is a local company or impose extra hurdles for foreign investors as an obstacle to acquiring a local target (eg requirement of a licence or approval). The degree of protectionism varies amongst jurisdictions. In some jurisdictions, national ownership is required. In other jurisdictions, only a few sectors considered to be of key national or defence importance (eg nuclear, utilities, transportation) require national ownership. Some regimes allow minority shareholding at a very low level only.

Protectionist rules will often prevent evasion by the formation of a special purpose acquisition company locally which is owned by the foreign interests.

These rules have a crucial impact on an acquisition. If formal approval is required, costs and time need to be taken into account. In some cases, these rules may deter foreign investors – for example, financial sponsors will virtually never take anything less than a controlling interest in a target, since their business model relies on operational control of the target. In addition, less than a given threshold will prevent tax consolidation which would be fatal.

NB EU law prevents restrictions within Europe so, for example, the German regime only applies to investments from outside the EU.

Foreign Investment Approval Map



NB: in relation to the European jurisdictions, the restrictions are considered for non-EU investors

Map 7_Employee Rights

This issue deals with the impact that employees of a target company can have on its acquisition. Do the employees of the target company need to be informed of the acquisition? Do they need to be consulted? Can they delay the transaction? How much are employees protected? All these considerations may be burdensome in structuring an acquisition.

A direct **sale of shares** of a company may trigger information and consultation obligations in certain countries. In France and the Netherlands, there are obligations to consult the local works councils on a proposed sale or acquisition. In the Netherlands, the works council must be asked for its opinion about the proposed transaction at a sufficiently early stage for its opinion to have a material impact on management's decision whether to proceed. In both countries, the consultation process must be completed before signing. In some jurisdictions, failure to inform or consult employee representatives about an acquisition is a criminal offence (eg Belgium, France).

When a **business sale** of a company is involved, very often the employees are transferred from one entity to another by operation of law. In the EU, the Acquired Rights Directive introduced in 2001 required member states to implement legislation safeguarding employees' rights in the event of "transfers of undertakings". However, the scope of this directive is limited and a few jurisdictions do not have any equivalent legislation in place.

In addition, the degree of protection afforded to employees varies around the world. In EU jurisdictions, employees have significant rights (eg in relation to data protection, non-discrimination etc).

4_Analysis of results

One of the most fascinating aspects of this type of virtually universal survey is the revelation of correlations and patterns between categories of jurisdictions. These tell us something about the legal culture which is often historical in its drivers and it also sometimes enables us to generalise to other aspects of the legal orientation of jurisdictions, eg whether their financial law is debtor protective or creditor protective, whether their corporate law favours management or shareholders or creditors, whether they have a business orientation and whether or not they are protectionist.

Probably the most important taxonomy or system of classification of jurisdictions is to divide them into legal families according to their origin. For this purpose there are eight or nine groups, of which some of the most important are the English common law jurisdictions, the American common law jurisdiction, the Napoleonic jurisdictions, the Roman-Germanic jurisdictions and former transaction jurisdictions. There are also Islamic jurisdictions and legal regimes of mixed origin.

Other categories include developed and emerging countries ranked according to GDP per capita and regional groupings eg Latin America, Middle East and the like.

Some of our conclusions are as follows:

(1) Withholding Tax

If a country imposes a withholding tax then it is usually out of the question for the transaction to be financed by foreign banks, although there are sometimes means of structuring the transaction to avoid the withholding. Effectively, the presence of a withholding tax might indicate that the country is not sympathetic to foreign finance or foreign private capital and there could be a number of political reasons for this. In fact, only very few jurisdictions have no withholding tax on loan interest. However, most of the European and North American jurisdictions have a double tax treaty in place with the United Kingdom, reducing the withholding to 0%. The big exceptions in Europe are Italy and Portugal whose withholding tax regimes are known for adding a layer of complexity in acquisition transactions.

(2) Financial Assistance

Financial assistance is a key indicator of the origination of corporate law. Corporate law is generally based on a triangular conflict between creditors, shareholders and management and jurisdictions often have a pronounced bias in favour of one or other of these groups. For example, Delaware corporate law is very favourable to management, whereas the traditional English common law corporate law still found in many parts of the old British commonwealth was orientated to creditors in many cases, although this has changed enormously in the current developed lenders of this group. A strong prohibition against financial assistance indicates creditor protection because it is designed to ensure the subordination of shareholders if there is an insolvency. It also operates as an obstacle to financing acquisitions and might sometimes be seen as a useful poison pill by management.

The intensity of financial assistance has quite a significant connection with the family of jurisdiction, but this is breaking up.

Most of the common law jurisdictions originally had the most stringent financial assistance prohibition in the world apart from the United States which never adopted this doctrine. However, many important jurisdictions have substantially watered down the prohibition. By contrast, most of the Napoleonic jurisdictions did not have a financial assistance prohibition but

many of them now have tough versions, other than most of the South American jurisdictions. So that is a complete reversal of attitude, just as the earth's gravitational field occasionally switches from south to north. Some of the Roman-Germanic jurisdictions have a tough prohibition, reflecting support of creditors against shareholders, but this is quite patchy. This patchiness is also true of many of the former transition jurisdictions.

(3) Security interests

Jurisdictions which favour security interests are broadly creditor protective, or at least protective of the main provider of medium term creditors which are banks. The policy jurisdiction is that banks are just intermediaries and the real creditors in interest are the citizens who put their savings in banks which are then used to make loans, so that protecting the bank is protecting the citizen, according to this theory. On the other hand, a jurisdiction which limits security interests or makes them expensive, is favouring debtors, or rather unsecured creditors of the debtor, such as trade suppliers.

Most of the common law jurisdictions are favourable to taking security: the scope of security interests and of secured debt is generally wide, costs are limited and enforcement can be carried out outside the courts. The Napoleonic jurisdictions tend to have a reduced scope of security interests and secured debt, taking security can be quite expensive and time consuming and enforcement is usually carried out through the courts. Most of the key Roman-Germanic jurisdictions are somewhere in the middle. Former transition jurisdictions have tended to support security interests with varying degrees of enthusiasm, probably out of a wish to attract foreign investment. Almost all jurisdictions give preference to some unsecured creditors (eg taxes).

There is a high correlation between the strength of security interests and legal family.

(4) Clawback

Virtually all jurisdictions have clawback (fraudulent preference) legislation and indeed this is one of the most ancient doctrines of bankruptcy law going back to the classical Romans. The vast majority of the jurisdictions allow security to be set aside when given two years before the insolvency of the relevant company. A small number of jurisdictions have an extremely long suspect period (eg it was be up to six years in the US), and in fact the original fraudulent preference is often unlimited in many countries, although difficult to prove.

A tough clawback rule favours debtors and hence the creditors of the debtor. There is some correlation between family group and the strength of the clawback doctrine.

(5) Merger Control

Most of the jurisdictions have a strict merger regime in place prohibiting a transaction to complete before clearance is received. Very few jurisdictions have yet to adopt a merger regime but many of those have merger control legislation in the pipeline (eg Thailand, Malaysia, India).

There seems to be only very limited correlation between legal family group and merger control. Resistance to mergers can in part be driven by fear of big business or a desire to foster as much competition as possible. The indicator is highly ambiguous.

(6) Foreign Investment Restrictions

Most of the jurisdictions have foreign investment restrictions in a limited number of areas (eg defence, utilities, financial services). A large number of jurisdictions have more important restrictions in industry sectors such as media, transportation, telecommunication, retail. Only a few jurisdictions have very strict restrictions such as foreign investment approval requirement or a cap in the shareholding which can be acquired by foreign investors. The striking observation is that there is no rule or pattern that can be followed to determine which jurisdiction has foreign investment restrictions, but there are some regional trends. For example, there seem to be higher foreign investments restrictions in Latin America.

(7) Employee Rights

Most jurisdictions have some employee protection legislation in place. However there is an important variation of degree of intensity. Europe has a very large number of protective laws in place, and some civil law jurisdictions go even further by giving some very strong rights to work councils (eg Germany, France and the Netherlands). Most of the common law jurisdictions (eg US, Hong Kong) have far less protective legislation in place.

Protective employee legislation is mainly a feature of welfare states which tends to mean rich states, although this is not always so. One needs to be careful in making quick assumptions since some countries which do not possess an elaborate system of statutory employee protection nevertheless operate a system of de facto protection. In any event, the existence of black-letter rules is a very important indicator of whether the society protects employees overall. Some slight correlations of legal group might be discernable but on the whole there are much closer correlations with the degree of development of the society, subject to important exceptions, like the United States.

(8) Conclusion

On the whole, there are significant correlations between legal family and the approach to the issue concerned in the case of aspects of financial law and corporate law. We think that this is borne out by other surveys which the Intelligence Unit has carried out.

On the other hand, as probably one would expect, the links between legal family group and economic or fiscal law, such as withholding tax or foreign investment restrictions, is generally quite tenuous and instead the law is driven by other cultural factors of great intricacy.

5_ Commentary on the colour-coded chart

This chapter contains a brief commentary on each country. The notes are arranged according to the numbered boxes in the main chart appearing in chapter 2 and the countries are listed alphabetically.

The notes have been prepared by contributing law firms whose contact details are given if further information is required.

The commentary is intentionally brief and obviously would have to be filled out for specific transactions.

Albania

- 1_ **Withholding Tax** Interest paid to non-residents is subject to final withholding tax of 10%, unless a Double Taxation Avoidance Treaty is in place. In the case of England, no tax treaty is in force; hence the paid interests would be subject to the withholding tax.
- 2_ **Financial Assistance** Albanian law does not prohibit financial assistance of the target company consisting of the target company securing or guaranteeing a bank loan to the acquiror to finance the purchase price paid by the acquiror. In any event, the validity of such a transaction will not be tested in the courts if challenged by concerned parties (such as other creditors of the target company, other shareholders of the target company, insolvency administrators, etc.).
- 3_ **Security Interests** According to law no. 8537, dated 18 October 1999 “On Securing Charges” as amended, the chargor (in our case the target company) may grant to the chargee (in our case, the bank) a securing charge over all its present and/or future assets. A securing charge is a non-possessory pledge that can be taken only on moveable (either tangible or intangible) assets. The securing charge must be granted by a written contract, and is enforceable only after perfection (ie registration with the securing charges registry). The chargee may enforce/execute the securing charge on a court order that instructs the bailiff to seize the collateral/security and give possession to the chargee. The chargee may sell the security either in public auctions or privately at fair market value, otherwise the chargor may challenge the sale before the court.

A bank can take a mortgage over immoveable properties/assets either present or future. The mortgage, which must be drawn up in a written contract in the presence of a public notary, is enforceable only after being perfected (ie filed and registered with the immoveable property registry office). In order for a bank/mortgagee to enforce a mortgage, the existence of the debt has to be proved through the normal trial process in a court (average time approximately three years) and thereafter the mortgage may be enforced through the bailiff’s office.

The first security (ie securing charge) is more flexible and easy to enforce from a procedural point of view compared with the other form of security (ie mortgage).

Another form of security that a bank can acquire from a target company is a possessory pledge, which is established on the drawing up of a written contract and transfer of possession to a pledgee or to an agent appointed on agreement between a pledgee and a pledgor. A possessory pledge is not very common in Albania. Enforcement mechanisms are unclear.

- 4_ **Clawback** Pursuant to art. 100 of Law no. 8901 dated 23 May 2002 “On Insolvency”, an insolvency administrator may challenge any act performed by a debtor prior to insolvency which damages the creditors involved in the insolvency. According to art. 101, the insolvency administrator may challenge all those acts if it can be established that (a) the relevant act is performed within 90 days prior to the submission of the request for the commencement of insolvency proceedings and (b) the debtor is insolvent and the creditor is aware of the debtor’s insolvency (unless the security is given fraudulently, in which case the security can be challenged up to 10 years before the insolvency filing).
- 5_ **Merger Control** If the relevant thresholds are reached, there is a duty to file with the Competition Authority. There is an obligation to suspend the transaction until clearance or satisfaction of the conditions under which clearance is granted.
- 6_ **Foreign Investment Approval** Albanian legislation allows the purchase of local companies by foreign investors without restriction.
- 7_ **Employee Rights** Pursuant to the Albanian Labour Code, the target company and the acquirer are required to notify the employees’ union (or employees’ representatives) of the acquisition (specifically, the reasons for the acquisition, and the legal, economic and social implications) at least 30 days prior to the acquisition. At the same time, they must consult the employees with regard to all the implications affecting them.

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Algeria

- 1_ **Withholding Tax** There is no specific withholding tax on interest of foreign loans, but the general withholding tax on interest, which is 10%, used for local loans would apply.
- 2_ **Financial Assistance** The target company cannot secure or guarantee a bank loan to the acquiror to finance the purchase price paid by the acquiror.
- 3_ **It is easy to take security:** Registration is cheap, but notarial fees are 0.5% on the amount of the loan (negotiable with certain notaries), and perfection is through the court. Super privileges such as salaries and social security and taxes take priority.
- 4_ **Clawback** Security can be put aside only in an insolvency procedure, so enforcement can be perfected after the final inventory. Security can be avoided in case of forgery.
- 5_ **Merger Control** There are no filing obligations.
- 6_ **Foreign Investment Approval** A foreign company may hold up to 49% in production activities and up to 30% in import, export and trading companies.
- 7_ **Employee Rights** Companies without an employees' committee can be easily merged but, with the presence of an employee committee, the process can be delayed.

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Angola

- 1_ **Withholding Tax** A withholding tax of 15% is applicable.
- 2_ **Financial Assistance** As a rule, Angolan companies cannot secure or guarantee loans to acquirors to finance the purchase price to be paid by them. This rule does not apply to transactions relating to the operations of banks or other credit institutions, provided that such operations do not result in a reduction in a company's net assets to a level lower than the share capital subscribed, plus the reserves which, under the law or By-Laws, may not be distributed.
- 3_ **Security Interests** Security over moveable or immovable property must be created over existing (present, not future) assets. Such types of security (mortgages and pledges) are subordinated to preferential creditors. As the regime applicable to a security depends on the type of security to be granted and (for an equity interest) on the respective By-Laws and purposes of a target company, the assessment of the ease of perfecting the security and on its enforcement must be made on a case-by-case basis.
- 4_ **Clawback** A creditor may request the annulment or termination of certain acts or transactions which determine the inability of a debtor to pay a debt or which increase such inability, provided that (a) in the case of gratuitous acts, the debt has arisen prior to such act and the annulment is requested within a five-year period from the relevant act or transaction; or (b) in the case of onerous acts, solely in the event of misconduct by the parties and if the annulment is requested within a five-year period from the relevant act or transaction. During bankruptcy proceedings, the insolvency administrator and any creditor may also request the annulment or termination of acts or transactions which contribute to the depreciation of the insolvent entity's estate, such as the following: (i) gratuitous acts carried out in the two years prior to the declaration of bankruptcy; (ii) onerous acts and misconduct by the parties carried out in the two years prior to the declaration of bankruptcy; (iii) payment of debts before the maturity date, or after such date when such debts become due in the year prior to the declaration of bankruptcy and involve unusual amounts; (iv) any securities *in rem* executed after the secured obligations during the year prior to the declaration of bankruptcy, or executed simultaneously with the secured obligations in the 90 days prior to the declaration; and (v) any sales made in the 90 days prior to the declaration of bankruptcy. Transactions defrauding creditors can be challenged (there is no time limit).
- 5_ **Merger Control** There is no legal framework providing for merger control in Angola.
- 6_ **Foreign Investment Approval** There are foreign investment approvals in Angola. Approvals and holding restrictions must be assessed on a case-by-case basis as the regime varies in accordance with the type and business of the target company.
- 7_ **Employee Rights** Under the Angolan General Labour Law (GLL), any change to the legal status of an employer or to the change of ownership of a company or workplace does not extinguish the employment relationship and does not constitute just cause for termination. The new employer takes the position of the former employer in the employment contract and is legally assigned the rights and obligations arising from the employment relationship (eg seniority), even if such have ceased before the change of employer. The new employer shall maintain the same working conditions that the former employer was required to maintain under a collective bargaining agreement or internal practice. The GLL grants the relevant employees covered by the rules on the transfer of undertakings the right to resign within 30 days of the change of employer, and they are entitled to compensation for indirect termination (one month's base salary per full year of service, with a minimum level of compensation of three months'

base salary) if they are able to prove that such a change would be detrimental to the employment relationship. The GLL does not provide for an information or consultation procedure, but does provide a procedure for the new employer to limit its liability, as follows: the new employer may limit its liability for any outstanding employee credits that matured prior to or at the time of the transfer of undertaking if it serves a written 30-day notice on the relevant employees informing them that they must claim their credits up to the second day prior to the date scheduled for the transfer of undertaking. The notice must describe the fundamental aspects of the transfer and must be served on the employees by means of a communication affixed at a public location in the workplace, or through communication to the employees' representative body. If the above-mentioned procedure is complied with, the new employer will only be liable for the credits that matured during the 12 months prior to the transfer of undertaking, and the former employer will bear sole responsibility for the non-claimed credits as well as for those that are outstanding prior to transfer. If the new employer fails to comply with the aforesaid procedure, no limitation will apply and the employer will be liable for all outstanding credits. In any event, the former employer will bear joint and several liability with the new employer for the obligations incurred by the latter towards the employees within the 12 months following the transfer (mandatory liability). Lastly, the GLL provides for an additional administrative obligation: within five days following a transfer of undertaking, the new employer must inform the General Inspectorate of Labour about such a transfer, stating the reasons for the change and the future situation of the employees subject and not subject to the transfer of undertaking.

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Argentina

- 1_ **Withholding Tax** Based on existing double taxation treaties with the UK, a reduced 12% withholding tax applies.
- 2_ **Financial Assistance** There are no financial assistance issues in relation to private companies.
- 3_ **Security Interests** It is easy and relatively inexpensive to take security which can cover all the assets of the chargor.
- 4_ **Clawback** Security can be set aside if the granting of security occurs within the suspect period. The suspect period runs from the declaration of bankruptcy until the beginning of the insolvency and, in any case, it could never be extended for more than two years from the declaration of bankruptcy. The granting of security during the suspect period relating to an undue obligation which was originally unsecured is automatically voided. Other transactions during the suspect period may be voided if it is proved that the counterpart in the transaction had knowledge of the debtor's insolvency. A transaction defrauding creditors can always be challenged (there is no time limit) by means of a pauline action. However, the statute of limitations for pauline actions is one year from the day of the fraudulent act or from the day on which the creditor acknowledges such act.
- 5_ **Merger Control** Based on existing antitrust regulations, in certain cases merger approval will be required and there is an obligation to file. Until approval is received, the transaction will not be effective irrespective of whether completion has occurred (however the approval can be requested after the relevant agreements have been executed).

There are a large number of exceptions where Antitrust Approval is not required.

For example, In cases where transactions involve a company's "takeover" and the "volume of business" by the Involved Companies exceeds Arg\$ 200 M in Argentina, the transaction would be exempted from the notification requirement if some particular circumstances were verified, for example, the acquisitions of an only company by an only foreign company that did not previously hold assets or shares in other companies in Argentina.

In order to verify if the first-investment-exception's requirements are met, the following should be considered:

(a) "Acquisition of an only company": The control over economic concentrations is aimed to prevent the generation or strengthening of power over the market sufficient to restrict competition. From that perspective, reference to an "only company" may be understood through an interpretation that goes beyond the existence of various companies whose shares are acquired, to the extent and as specified by the Argentinean Antitrust Authority, such companies even when they are organized as different legal entities, may make up an "only company" if they work as an economic unit, under the control of their common controlling company (Consultative Opinion No. 76 of the year 2000).

And in several consultative opinions issued, it was understood that the exemption applied even when the company selling the shares had subsidiary companies in Argentina, given that the element determining such categorization was that the acquiring company should not hold assets or subsidiaries in Argentina[2].

(b) "Acquisition by an only foreign company": Foreign company is understood as a company whose corporate domicile or main place of business is located outside Argentina. This nature

of foreign company in relation to the exemption from the notification requirement does not change if the acquiring company establishes a corporate domicile in Argentina for the purpose of consummating a transaction of economic concentration[3]. Moreover, the same solution has been offered in the case in which a foreign company forms an Argentine company for the sole purpose of consummating an economic concentration transaction.

(c) The acquiring foreign company should not have prior assets or shares in other companies in Argentina.

In relation to this last requirement, it has been clarified that the purpose of this exception is to allow the first business or investment by the foreign company in Argentina; and the Antitrust Authority goes on to clarify that “The benefit of the exemption extends only to those acquisitions in which the acquiring party carries out its first business in Argentina, but not those in which the buyer has already carried out business activities, and it is therefore irrelevant whether the activity is identical to, or different from, the activities covered by the purpose of the potential transaction ” (Consultative Opinion No. 23 dated 24/1/00).

It should be borne in mind, additionally, that the exam by the Antitrust Authority of whether the exemption under analysis, by application of the principle of economic reality referred above, would include an analysis comprising at least the controlling shareholders of the acquiring company, for the purpose of determining that they have not previously held assets or shares of other companies in Argentina, so that such exception would not be verified if the shareholders controlling the foreign company have shares in Argentina.

Other exceptions considered by the LDC are:

- (i) acquisitions of companies in which the buyer already had more than 50% of the shares;
- (ii) acquisitions of bonds, debentures, shares with no voting rights or corporate debt securities;
- (iii) acquisitions of liquidated companies (that have not conducted business in Argentina in the last year); and
- (iv) if the amount of the transaction and the value of the assets located in Argentina to be absorbed, acquired, transferred or taken over do not exceed, each one, respectively, an specific amount, except that in the previous 12-month period transactions were carried out that exceeded, in the aggregate, such amount or an additional amount in the past thirty-six months, as long as in both cases the market is the same.

6_Foreign Investment Approval As a general principle, Argentine law recognises equal rights for Argentine residents and non-residents for the purposes of investing in economic activities in Argentina. However, restrictions may exist for foreign investors in the specific regulatory framework applicable to different industries, such as those relating to aviation or media companies.

7_Employee Rights No labour regulations apply that could impede or delay a private acquisition in any way.

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Armenia

- 1_ **Withholding Tax** Payment of withholding tax can be avoided if there is a double tax treaty. However, there, for example, is no double tax treaty in place between the UK and Armenia so withholding tax cannot be avoided.
- 2_ **Security Interests** The security can be set aside by a court, if provisions of law are violated while entering into security contracts.
- 3_ **Merger Control** If the thresholds are reached, there is an obligation to file. Clearance needs to be received for the acquisition to complete.
- 4_ **Foreign Investment Approval** Armenian law determines some limitations for foreign investment in some spheres, such as for television and radio companies.
- 5_ **Employee Rights** If one buys all the shares in a company, all the employees continue their employment in the company.

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Australia

- 1_ **Withholding Tax** The Borrower is usually required to deduct and pay to the Australian Taxation Office Australian interest withholding tax (**IWT**) at a rate of 10%. However, by virtue of the double tax treaties with the UK (and the same applies for the US), the IWT rate is reduced to 0% unless one of the exemptions to this tax applies.
- 2_ **Financial Assistance** Financial assistance is prohibited by the Corporations Act 2001. However, a whitewash procedure is available to overcome the issue (shareholders' resolutions of the company providing financial assistance and special resolution of the Australian parent corporation or the ultimate holding company following the acquisition must be passed, and lodged with the Australian Securities and Investment Commission (**ASIC**) within 14 days). Notice of the resolutions must be lodged with ASIC at least 14 days before financial assistance is given. The whitewash procedure can be used both for public and private Australian companies. Under the Corporations Act, financial assistance may also be given if the assistance does not materially prejudice the interests of the company or its creditors or the company's ability to pay its creditors. Whether these criteria are satisfied will be a question of fact, and the board of the company providing financial assistance will need to determine whether this is the case. This subjective assessment means that reliance on this form of "whitewash" mechanism does not provide directors with the same degree of protection as they would otherwise have were shareholder approval to be obtained.
- 3_ **Security Interests** The types of security available in Australia are very similar to those available in the UK. However, a stamp duty of 0.4% is payable in New South Wales on documents creating security by way of mortgage or charge over assets wholly or partly located in New South Wales.
- 4_ **Clawback** Security or guarantee can be set aside during the suspect period. The "standard" term of the suspect period (assuming no fraud is involved) is 6 months. For insolvent transactions with related parties, the look back period is 4 years. It is the same for "unreasonable director-related transactions". However, for breach of directors' duties (which also doesn't involve fraud), one can look back for any period of time at all.
- 5_ **Merger Control** Australia has a merger regime but pre-merger notification is not mandatorily required. However, as the penalties involved can be quite substantial, formal or informal clearance is usually sought.
- 6_ **Foreign Investment Approval** The Foreign Acquisitions and Takeover Act 1975 regulates foreign investments in Australia. Compulsory notification is required when the relevant thresholds are reached. Some sectors such as banking, civil aviation, mining of uranium and the operation of nuclear facilities, defence, telecommunications, shipping, airports and media sectors are usually closely scrutinised.
- 7_ **Employee Rights** The change of ownership of the shares does not trigger the termination of the employment contracts.

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Austria

- 1_Financial Assistance** A very strict system of capital maintenance rules applies to Austrian companies. The concept is based on the idea that the entire set of assets of a company should be protected on behalf of the company's creditors. This rule applies to limited liability companies, stock corporations, and partnerships where any of the foregoing are unlimited partners. Shareholders are only entitled to (a) net profits in accordance with the financial statements of the relevant company subject to a shareholder resolution resolving a distribution (ie declared dividends), (b) payments in the course of a formal reduction of statutory capital, and (c) liquidation proceeds. As a result, the granting of an up-stream or cross-stream security by a company would, generally speaking, be considered an illegal repayment of capital.
- 2_Security Interests** A security interest can, inter alia, be granted over shares, monetary claims (receivables) and certain other transferable rights. In order to be effective vis-à-vis third parties, a security interest has to be perfected. The legal requirements for perfecting a security interest depend on the form of security to be granted and the type of asset over which it is created. There is no system for the registration of security interests over moveable assets (other than vessels and IP rights such as trademarks and patents) in Austria.
- 3_Clawback** Legal acts undertaken by a debtor within certain time periods prior to the opening of bankruptcy proceedings and relating to the assets of the debtor may be set aside and may be held void vis-à-vis the bankruptcy estate's creditors. Only the court-appointed receiver is entitled to challenge any such transactions. The following scenarios are the most relevant:
- (a) Transactions unduly favouring one creditor (or relatives or third parties who should have been aware of such undue favouritism) entered into by the debtor (i) after the debtor has become insolvent, (ii) after the opening of insolvency proceedings has been filed or (iii) up to 60 days prior to the dates mentioned in (i) and (ii). Such transactions cannot be challenged if the undue favouring of such creditor occurs more than one year prior to the opening of insolvency proceedings; and
 - (b) Transactions to the disadvantage of certain creditors entered into by the debtor after the debtor has become insolvent or after the opening of insolvency proceedings has been filed, provided in each case that the other contractual party was or should have been aware of the insolvency/filing for the opening of insolvency proceedings. Such transactions cannot be challenged if they occur more than six months prior to the opening of bankruptcy proceedings.
- 4_Merger Control** The merger control authority can suspend an acquisition or declare that an acquisition is compatible with the applicable merger control provision, such decision being either unconditional or subject to specific conditions (such as divestments).
- 5_Foreign Investment Approval** Foreign investment approval restrictions in Austria apply to acquisitions of certain sensitive businesses, such as military defence as well as real estate.
- 6_Employee Rights** All the numerous and strict EU regulations (relating, eg to redundancies, transfers of undertakings, health and safety, data protection etc) apply in Austria and therefore an acquisition involving employees can be quite time-consuming.

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Azerbaijan

- 1_ **Withholding Tax** Withholding tax applies on payments of interest in all cases except where a loan is made, guaranteed or insured by the United Kingdom Export Credits Guarantee Department. Tax indemnities and gross-up provisions are normally included in loan agreements to impose liability on borrowers.
- 2_ **Financial Assistance** If the target company is a bank, there may be some regulatory restrictions as to the amount of a guarantee.
- 3_ **Security Interests** Although the law on security is quickly developing, there may be some uncertain areas in relation to assets taken as security and as regards perfection of security.
- 4_ **Clawback** Security can be set aside in certain circumstances, eg bankruptcy. Under Azerbaijani law, the administrator of assets may claim invalidity of certain transactions (including the granting of security) that have been entered into within 90 days prior to a declaration of insolvency or bankruptcy.
- 5_ **Merger Control** There are filing obligations if merging companies are of a specified size or have assets of a specified size.
- 6_ **Foreign Investment Approval** Normally, no approval is required for investment from overseas except in certain industries.
- 7_ **Employee Rights** A new owner is required to keep employees of the target company, except for the post of general manager and other senior employees of the target company.

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Bahrain

- 1_ **Security Interests** There are some difficulties with certain types of security, who may hold security, and how security may be enforced. For example, the enforceability of certain types of security, particularly a pledge over shares, would require a notarised and legalised power of attorney, or co-operation from the pledgor. Pledges over vehicles may only be registered by local entities.
- 2_ **Merger Control** There is no general merger control regime in Bahrain but there is a merger control regime in relation to the telecoms industry.
- 3_ **Foreign Investment Approval** Whether there are foreign ownership restrictions will depend on the objects of the target (ie the business it is licensed to undertake). This is easily determined by reference to a “negative list” of activities that may only be undertaken by either Bahraini Nationals or by nationals from the Gulf Cooperation Council (**GCC**). Prior to moving forward with a transaction, the Ministry of Industry and Commerce could also be engaged to confirm whether a foreign ownership restriction exists. It is possible to obtain an exemption from foreign ownership restrictions.

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Barbados

- 1_ **Withholding Tax** The rate imposed presently cannot be avoided or reduced under the Barbados/UK Double Taxation Agreement.
- 2_ **Financial Assistance** The general prohibition on financial assistance has specifically prescribed exceptions. The procedure is subject to the articles of the company but it is not highly regulated.
- 3_ **Security Interests** Universal charges are possible subject to Exchange Control requirements, registration is simple and the security can be enforced without resort to Court. In receivership, taxes and employees' salaries and severance payments have priority over secured creditors.
- 4_ **Clawback** The suspect period is unlimited in relation to fraudulent transfers. The suspect period related to preferences starts three months before the initial bankruptcy event (eg filing of the first petition) unless the companies are related, in which case the period is one year.
- 5_ **Merger Control** Filing is mandatory for mergers that represent 40% and upwards of any market in Barbados and voluntary otherwise. No suspension obligation exists; however, the implementation of the merger must necessarily be suspended until the affirmative clearance from the regulatory body has been issued.
- 6_ **Foreign Investment Approval** Strict Exchange Control requirements exist.

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Belarus

- 1_ **Withholding Tax** Normally, withholding tax at the rate of 10% is applicable. However, it is avoidable on the basis of applicable double taxation treaties, eg interest payments to UK residents are exempt from withholding tax. Another form of carve-out is syndicated loans, interest on which is tax-exempt.
- 2_ **Financial Assistance** No issues arise under Belarusian law in respect of this form of financial assistance.
- 3_ **Security Interests** Although security may be obtained over present and future assets, and registration is required in a limited number of instances (real estate, shares or stock), there exist certain complications in enforcement (which must be predominantly sought through the courts). Tax and wage claims prevail over a secured creditor's claims in the case of liquidation/insolvency proceedings.
- 4_ **Clawback** Security can be set aside upon the commencement of an insolvency, and the limitation periods will vary from six months to three years depending on the type of defect in creation of the security; the longest suspect period of three years is applicable if the insolvency is the result of a crime committed by the debtor, or if the debtor has deliberately jeopardised other creditors' interests by granting the security and its counterparties were aware of and had an interest in that.
- 5_ **Merger Control** Mandatory pre-acquisition filings apply according to specific thresholds; an acquisition must be suspended until clearance is obtained. Failure to obtain clearance might render an acquisition transaction void.
- 6_ **Foreign Investment Approval** No specific shareholding caps apply to foreign investors. Overall quotas for the presence of foreign capital in specific sectors (ie banking and insurance) exist, but these are easily complied with in practice.
- 7_ **Employee Rights** Employment regulations are only applicable to the transfer of a target's employees to an acquiror, and these employees are only entitled to terminate employment if they are unhappy with the change of ownership. An acquisition may not be suspended or delayed because of employment constraints.

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Belgium

- 1_ **Withholding Tax** No Belgian withholding tax is due on interest payments to licensed credit institutions acting through their head office or through a facility office if that head office or facility office is located in the EEA or in a treaty state (irrespective of whether the treaty provides for a withholding tax exemption).
- 2_ **Financial Assistance** The advancing of funds or the granting of loans by a company with a view to a third party acquiring its shares or profit shares is subject to strict conditions (such as shareholders' approval and the availability of distributable reserves).
- 3_ **Security Interests** It is easy and relatively inexpensive to take security over shares in a target company. It is possible to take a security interest which covers all business assets (excluding real estate) of a chargor, but (a) such a security interest is expensive and (b) it can only be granted for acquisition debt if the strict conditions referred to under (2) above are complied with.
- 4_ **Clawback** In the case of the bankruptcy of a company, the commercial court can decide that circumstances dictate that the true date for the cessation of payments by a bankrupt company is not the date of the bankruptcy itself, but a date up to six months before the judgment declaring bankruptcy. The period of time between the date of cessation of payments and bankruptcy is known as the clawback period. The following transactions may be declared not binding when executed in a clawback period:
- abnormal transactions such as gifts or payment of debts not yet due;
 - the granting of sureties for credit which was obtained beforehand; and
 - all payments of debts which are due and all transactions for consideration which are disadvantageous to creditors if the counterparty was aware of the cessation of payments.
- Under Belgian law, all transactions which are intentionally disadvantageous to the debtors of a bankrupt company can be declared not binding, even if not executed within the clawback period.
- 5_ **Merger Control** If the relevant thresholds are reached, filing is mandatory. A transaction cannot complete prior to clearance but an exemption can be requested. Filing must, in principle, be made following conclusion of an agreement, announcement of a public bid or acquisition of a controlling interest.
- 6_ **Foreign Investment Approval** There are no foreign investment restrictions in Belgium.
- 7_ **Employee Rights** An acquisition is likely to trigger information and consultation obligations, although employees and their representatives cannot challenge or block the transfer. If an acquisition qualifies as a 'transfer of undertaking' by operation of law, all the employment contracts of affected employees will automatically transfer to the transferee and the transfer may not in itself be a ground for dismissal. The transferee will generally be bound by all existing terms and conditions of employment and will, together with the transferor, be jointly and severally liable for the payment of all employment-related obligations existing at the time of transfer.

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Belize

- 1_ **Withholding Tax** There is a withholding tax, which cannot be avoided. The only issue that arises is who is made to pay it. The withholding tax is payable by the Bank, but is deductible by the subsidiary which has to pay it over to the revenue. However, most loan agreements will say the interest due is X% free of any and all deductions, charges etc. therefore the subsidiary is usually called upon to “top up” the amount paid to the bank by adding the same amount it has deducted when it remits the interest payment.
- 2_ **Financial Assistance** A company cannot give direct financial assistance to the purchase of its own shares. To the extent that some financial assistance can be given, it would have to be structured through a complex arrangement, which would always bear a high level of risk.
- 3_ **Security Interests** Strong creditor rights. Usual fraud exception. For all intents and purposes, taxes are the only priority; if there is a charge on land, then there are the customary overriding interests under the Registered Land Act.
- 4_ **Clawback** Assuming the security is established by a deed, then the period during which it can be challenged is 12 years. If it is not established by a deed, then the period is six years. The usual mistake and fraud exception applies to effectively extend the period, as time runs from the discovery of the mistake or fraud.
- 5_ **Merger Control** There is no obligation to file and no statutory provision that would impede an acquisition.
- 6_ **Foreign Investment Approval** All that is required is exchange control approval, which is ordinarily granted but can be refused.
- 7_ **Employee Rights** There are no applicable regulations.

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Bermuda

- 1_ **Financial Assistance** Bermudan law contains a general prohibition on unlawful financial assistance but there is a wide solvency exception in S.39A(2A) Companies Act 1981 which usually applies.
- 2_ **Security Interests** It is easy and relatively cheap to take security, which can cover all assets of a chargor company (although special requirements will apply to real property assets in Bermuda). A filing fee of USD541 is payable to register a security interest at the Companies Registry.
- 3_ **Clawback Fraudulent Trading** If, during the course of the winding up of a company, it appears that the company has carried on its business with intent to defraud creditors (of itself or any other person) or for any fraudulent purpose, a court may order that any person who was knowingly a party to the carrying on of such business shall be personally liable for the debts or other liabilities of the company. **Fraudulent Preference** Any conveyance or other disposition of property made by or against a company (including any intra-group disposition) within six months prior to the commencement of its winding up will be invalid if it was made with the intention of giving preference fraudulently to one or more of the company's creditors at a time when the company was unable to pay its debts as they became due. **Fraudulent Conveyance** A creditor may seek to set aside a disposition of property at an undervalue if that disposition was made in circumstances where the transferor's dominant purpose was to put the property beyond the reach of a person or class of persons who is making, or may make, a claim against the transferor. However, such a claim can only be made by an "eligible creditor", which is a person who (a) is owed a debt by the transferor on or within two years after the transfer; (b) on the date of the transfer is owed a contingent liability by the transferor, where the contingency giving rise to the obligation has occurred; or (c) on the date of the action to set aside the transfer, is owed an obligation arising from a cause of action which occurred prior to or within two years after the date of the transfer.
- 4_ **Merger Control** The consent of the Bermuda Monetary Authority is generally required for the acquisition of shares in a Bermudan company, although, normally, general consents are in place to facilitate the sale and transfer of the shares of companies which are listed on a recognised stock exchange. M&A transactions are not subject to what might be called "merger controls" although, where an acquisition is structured as an amalgamation, statutory formalities in the Companies Act must be complied with.
- 5_ **Foreign Investment Approval** See note (5) above. Regulatory consent would also be required to acquire a regulated entity (eg a bank or insurance company).
- 6_ **Employee Rights** The Employment Act of Bermuda does not apply to employees outside of Bermuda. Where there are employees based in Bermuda, the Act provides for minimum severance payments in the event of redundancy and on the occurrence of certain other termination events, and a transfer of non-Bermudan employees may involve work-permit/immigration issues.

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Bolivia

- 1_ **Withholding Tax** The existence of Double Taxation Treaties must be considered. Bolivia has subscribed to various treaties with different countries around the world. For further information, go to www.rree.gob.bo
- 2_ **Financial Assistance** There are no financial assistance issues in relation to private companies, although they are prohibited from pledging their own shares.
- 3_ **Security Interests** It is not easy to enforce security interests in Bolivia. Also, security is subordinated to preferential creditors (taxes and wages).
- 4_ **Clawback** Pursuant to the Bolivian Commercial Code, transactions entered into up to two years before a company becomes bankrupt can be challenged. The suspect period is computed from the bankruptcy declaration (section 1601).
- 5_ **Merger Control** If the company is involved in activities relating to Bolivia's natural resources or public services, the regulator could suspend or delay a merger.
- 6_ **Foreign Investment Approval** The Bolivian Constitution states that Bolivian investments are preferred over foreign investments.

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Bosnia and Herzegovina

1_Clawback Lucrative disposal of a property may be disputed in a lawsuit within one year if at the time of disposition the debtor knew or should have known that the assumed disposal would harm its creditors and if the third party, with whom or in whose favour the legal action is taken, knew or might have known. In other cases, the claim for avoidance may be filed within three years.

In a bankruptcy proceeding, a legally binding transaction that has facilitated or granted security or payment to a bankruptcy creditor is voidable if it was carried out in the six months before the petition to open bankruptcy proceedings, if the debtor was unable to pay its debts when due at the time of the transaction or if at such time the creditor knew of the debtor's inability to pay its debts when due or was unaware of this because of gross negligence. For the same reason, a binding legal transaction is deemed voidable if it was carried out after the petition to open proceedings and if, at the time of the transaction, the creditor knew of the debtor's inability to pay its debts when due or was unaware of this because of gross negligence. A legally binding transaction that has facilitated or granted an unusual security or payment to a bankruptcy creditor, such as a payment that the creditor did not have the right to demand, or did not have the right to demand at that time and in that particular manner, is voidable if the legally binding transaction occurred in the month immediately preceding the petition to open bankruptcy proceedings or after the filing of the petition, or the legally binding transaction occurred in the second or third month immediately preceding the petition to open bankruptcy proceedings and the debtor was unable to pay its debts when due at the time of the transaction.

2_Merger Control There is a filing obligation. In general, after the notification, the transaction cannot complete prior to clearance. However, there is an exemption since the Law on Competition does not prevent the implementation of a public share offer or a series of transactions with securities tradable on the market, ie the stock exchange, by which the acquiror (the business entity party to the concentration) takes control over securities from a number of sellers, under the following conditions: (a) proper notification concerning the relevant concentration was submitted; and (b) the acquiror will not use the voting rights under such securities.

3_Foreign Investment Approval A foreign shareholding in a company which deals in the manufacture and sale of weapons, ammunition, explosives for military use and military equipment, or involves public broadcasting, cannot be greater than 49%.

4_Employee Rights An acquisition involving employees is time-consuming when the purchaser is not only acquiring the majority of the shares of the company but is also merging with the relevant company. In such an event employment agreements must be amended and therefore the approval of the employees is also required.

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Brazil

- 1_ **Withholding Tax** A withholding rate of 15% will apply in the relevant scenario.
- 2_ **Clawback** The judge has the discretion to fix the suspect period which cannot be longer than 90 days prior to the bankruptcy request, the judicial recovery request or the first protest for lack of payment against the debtor.
- 3_ **Merger Control** There are no mandatory pre-merger filing requirements so transactions may be closed and implemented before clearance. Voluntary pre-merger filing may be made without any binding agreement having been signed between the parties.
- 4_ **Foreign Investment Approval** In some areas of economic activity provided for in the Constitution and in some local regulations, it is strictly forbidden for a foreign investor to acquire control of a target company.

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British Virgin Islands

1_ **Financial Assistance** No statutory prohibition.

2_ **Security Interests** It is easy and cheap to take security, which can cover all the assets of a chargor company (although special requirements will apply to real property assets in the British Virgin Islands). A filing fee of USD100 is payable to register a security interest at the Registry of Corporate Affairs.

3_ **Clawback** Under the Insolvency Act 2003, the Court is able to set aside voidable transactions by a company. Voidable transactions are unfair preferences, undervalue transactions, voidable floating charges and extortionate credit transactions. The transaction can be voided if it is entered into when the company is insolvent or the transaction causes the company to become insolvent (and the transaction was entered into with a connected party two years prior to the onset of insolvency or, with an unconnected party, six months prior to the onset of insolvency). The suspect period extends to five years in respect of extortionate credit transactions.

4_ **Merger Control** There are no filing obligations and there is no market practice to notify the company regulator in the British Virgin Islands of mergers or acquisitions. There is a statutory procedure for formal mergers or consolidations in which two or more constituent companies are consolidated into a new company or in which two or more constituent companies are merged into one of the constituent companies, and this requires certain filings with the company regulator in the British Virgin Islands.

5_ **Foreign Investment Approval** There is no foreign investment approval required unless the target is a regulated entity (eg a bank or an insurance company).

6_ **Employee Rights** The Labour Code of the British Virgin Islands does not apply to employees outside the British Virgin Islands. Where there are employees based in British Virgin Islands, the Code has requirements regarding redundancy, and a transfer of employees who are not British Virgin Islands nationals may involve work-permit/immigration issues.

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Brunei

- 1_ **Withholding Tax** There is a withholding tax on interest payments on loans by foreign entities. The standard rate is 20% and this rate would apply in the relevant scenario.
- 2_ **Financial Assistance** The Brunei Companies Act prohibits the giving of financial assistance by companies for the purchase of their own shares.
- 3_ **Security Interests** It is easy to take security over all the assets of a chargor.
- 4_ **Clawback** Fraudulent transactions or transactions that give preference to certain creditors may be voidable in the event of the insolvency of the target company.
- 5_ **Merger Control** There are no approvals required except in relation to certain industries, such as banking and insurance.
- 6_ **Foreign Investment Approval** Foreign investment approval is usually not required, though unwritten local participation policy may exist in certain businesses.
- 7_ **Employee Rights** There are no employee rights that may hinder an acquisition.

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Bulgaria

- 1_ **Withholding Tax** There is withholding tax on interest, which can be reduced, or there may be an exemption on the basis of a bilateral treaty. Under the UK treaty, the withholding tax is zero. There is a procedure to prove the authenticity of the actual beneficiary, and the submission of certain documents in evidence is required for beneficiaries to be individually granted relief.
- 2_ **Financial Assistance** This depends on the type of company, as the prohibition exists only for shareholding companies. There is a catch-all (unclearly worded), strict prohibition (usually compared with the one under French law). There is a vague exemption only for banks and financial institutions, based on normal course of business and subject to asset value ratio.
- 3_ **Security Interests** There are various types of security under Bulgarian law, including a registered pledge pursuant to the EBRD Model Act on Secured Transactions (which answers the above issues, unlike the other types of security). The State can join in enforcement and sometimes share. Therefore – for registered pledge – GREEN, for other security (possessory pledge, mortgage, lien) – RED.
- 4_ **Clawback** This is an insolvency-related issue under Bulgarian law. There is no over-collateralisation in Bulgaria. Shareholder loans are subordinated by operation of the law. Suspect periods vary depending on the type of transaction and the relationship between the insolvent debtor and the secured creditor, between three months and three years. However, a Bulgarian insolvency court can set the date of actual insolvency retroactively without limitation (subject to available evidence), ie it is not bound by the date of filing.
- 5_ **Merger Control** Concentration clearance by the competition authority is mandatory at quite a low level (circa EUR12.6 million for the past year's combined turnover), it takes at least a month and is a condition precedent to closing. Regulated businesses usually require a permit (which is issued within a month or so).
- 6_ **Foreign Investment Approval** The currently restricted asset is land. There are some additional requirements for regulated businesses (but EU companies are treated equally).
- 7_ **Employee Rights** Employees have attendance rights at a general meeting of shareholders to resolve on similar issues and the right to speak, but not to vote. A merger typically does not change the employee relationships, which stay with the target company. In the event of a transfer of business, employees are entitled to follow the transferred business. In privatisations, usually there are covenants to maintain the rate of employment. Collective redundancy is subject to prior notice to the labour agency. Employee dismissal litigation is usually 80% successful for the employees.

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Burundi

- 1_There is a 15% withholding tax rate. In addition a corporation and 'transaction' tax is levied on all profits derived from any activities undertaken in Burundi even though the subsidiary has no administrative headquarters or residence in Burundi. The tax rate is 35% of net revenues (Law No. 1/002, 06.06.96 of the Code on Private and Public Companies, Decree Law No. 01/45, 09.07.93 on the Commercial Code, Law No. 1/011 of 30.12.989, General Tax Code).
- 2_The purchase by a company of its own shares is prohibited (Article 334 of the Code on Public and Private Companies).
- 3_**Security Interests** can cover present and future assets (Article 1 of the Decree Law of 23/03/49 (B), 1949, p.831).
- 4_The suspect period is typically the first six to 9 months following the granting of the security. Security granted without the permission of the Administrator may be challenged by the creditors (Article 27, 34 of Act N°1/08 on Legal Settlement).
- 5_There are no takeover or merger statutory obligations under Burundi law.
- 6_There are no approvals or restrictions governing foreign investment in Burundi (Article 50 of the Act on Exchange Regulation).
- 7_Where there is substitution of an employer resulting from a transfer, all ongoing employment contracts on the day of substitution subsist between the new employer and employees (Article 37 of the Labour Code).

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Cameroon

- 1_ **Withholding Tax** Article 225 of the Cameroonian Tax Code provides for a 15% withholding tax on income paid out of the country for services rendered to a company located in Cameroon. This withholding tax is equally applicable on interest paid on loans by companies to foreign entities.
- 2_ **Financial Assistance** is forbidden in Cameroon. Article 639 of the Ohada Uniform Act relating to commercial companies states that the subscription to or purchase by the company of its own shares, either directly or by a person acting in his own name but on behalf of the company, is forbidden. Similarly, the company may not grant advances or loans or provide security for subscription to or purchase of its own shares by a third party.
- 3_ **Security Interests** can cover present and future assets (article 45 of the Ohada Uniform Act on Securities). Preferential creditors such as wages, customs, social security and taxes get paid before other creditors (article 65 of the Ohada Uniform Act organising collective proceedings for writing off debts).
- 4_ **Clawback** A security can be set aside. The suspect period starts from the date of cessation of payment and ends at the date of the decision initiating proceedings (article 67 of the Ohada Uniform Act organising collective proceedings for writing off debts).
- 5_ **Merger Control** The law on competition in Cameroon has strict rules on mergers, which may result in one company occupying a dominant position in the local market.
- 6_ **Foreign Investment Approval** As a whole, foreign investment is not subject to any special approval, although certain sectors of activity require prior approval from the Minister in charge. These sectors include oil and gas, mining, forestry, air transportation and banking.
- 7_ **Employee Rights** The Cameroonian Labour Code provides strict regulations regarding redundancies in the event of a change to company structure. Also, where there is a change of the employer as a result of a change to the legal structure of a company, the employee has the right to choose whether or not he wants to continue working for the new employer. Employees may delay the acquisition process if it is not in compliance with the applicable laws.

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Canada

- 1_ **Withholding Tax** Interest, other than participating interest, paid to an arm's length lender is exempt from Canadian withholding tax.
- 2_ **Financial Assistance** Each of the 13 provinces and territories has its own company legislation, in addition to federal company legislation. Many jurisdictions (namely, federally, and the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario and Nova Scotia) do not have financial assistance restrictions. The remaining jurisdictions have some form of restriction, though generally with exceptions for financial assistance to a parent company or subsidiary or if a solvency test is satisfied.
- 3_ **Security Interests** Generally, it is easy and inexpensive to take security, which can cover all of the present and after-acquired assets of the chargor. The various provinces and territories have their own legislation regarding the validity and perfection of security interests, all of which are fairly similar (with the exception of the province of Quebec which is a civil law jurisdiction). There are some statutory liens and deemed trusts which can take priority to existing, registered security in respect of certain government (eg taxes), employee (eg wages) and other obligations. Broad stays of proceedings are possible in certain insolvency and restructuring proceedings, which may affect the enforcement rights of secured creditors.
- 4_ **Clawback** As a general matter, the granting of security may be set aside as a fraudulent conveyance, unjust preference or otherwise pursuant to federal bankruptcy and insolvency legislation or laws of similar effect in the various provinces and territories, all of which are fairly similar (in Quebec, the parallel civil law remedy of the Paulian action or "action en inopposabilité" is available); however, absent fraud or other factors, the taking of security in good faith in return for the advance of funds to a chargor is, generally, unlikely to be set aside. The risk of a successful attack is increased if, for example, the chargor is insolvent or near insolvency at the time of the grant, if the parties are related and/or if the transaction shows signs of fraud or bad faith. The "hardening" or "seasoning" period for the grant of security (ie the period after which the risk of attack diminishes) generally ranges between three and 12 months. While this period can theoretically be unlimited under certain legislation, the requirements for application and available defences under such legislation (and the potential application of limitations periods based on general limitations statutes) significantly diminishes the likelihood and risk of attack.
- 5_ **Merger Control** A notification to the Commissioner of Competition (Commissioner) is mandatory pursuant to the federal Competition Act where both a "size-of-parties" threshold (CAD 400 million in assets in Canada, or sales in, from or into Canada) and "size-of-transaction" threshold (CAD 70 million in assets in Canada, or sales in or from Canada) are met. The transaction cannot be closed for 30 days following a complete filing. The Commissioner may issue a Supplementary Information Request (**SIR**), resulting in a further waiting period of 30 days after filing of a complete response to the SIR. If a notifiable transaction does not pose any potential competition issues, the parties may apply for an Advance Ruling Certificate (**ARC**) in lieu of filing a notification, and the issuance of an ARC

precludes a subsequent challenge on the basis of substantially the same information as that provided in the application. Transactions below the notification threshold can be completed without clearance, however, the Commissioner can challenge such transactions post-closing for a period of up to one year.

6_Foreign Investment Approval The acquisition of control of a Canadian business by a non-Canadian is subject to application and review by the Minister of Industry pursuant to the federal Investment Canada Act (**ICA**) where the Canadian business has a book value greater than a prescribed amount (CAD 299 million in 2010). The acquisition cannot be completed until either approval has been given by the Minister or the statutory waiting period (45 days, plus a possible 30-day extension) has expired without a negative determination by the Minister. The Minister may deny approval if he is of the view that the transaction is not of “net benefit to Canada”. In most instances where potential “net benefit” concerns have been identified, the investor has been able to obtain the Minister’s approval by negotiating undertakings. Regardless of the above threshold, the Minister may also review any investment by a non-Canadian in a Canadian business (including a minority interest) if he is of the view that the investment may be injurious to Canada’s national security; the Minister may refer the matter to the federal Cabinet, which may disallow the investment on national security grounds, or impose conditions as it deems appropriate.

7_Employee Rights The various provinces and territories have their own employment laws which generally apply if a business is located in that jurisdiction. Generally, there are no statutory requirements to consult with individuals whose positions may be affected by the transaction. There are both statutory and common law obligations to provide notice of termination of employment (or compensation in lieu thereof) should that be a consequence of the acquisition. Employers who terminate a group of employees (thresholds for a “group” vary from a minimum of 10 to 50 persons depending on the jurisdiction) must comply with certain statutory “group termination” obligations. These statutory obligations require notice to the applicable government authority of the terminations as well as to the bargaining agents who represent the employees at the workplaces and may require extended statutory notice to be provided to the affected employees. Additionally, employers may be required to consult with unions who represent the displaced employees and to create adjustment committees to assist in obtaining alternative employment. In the case of asset acquisitions, there are statutory requirements imposed on employers to recognise the prior service of the employees with the seller for purposes of labour relations, employment standards and, where applicable, pay, equity, and collective bargaining agreements continue in effect post-acquisition pursuant to labour relations legislation.

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Cape Verde

1_Withholding Tax A withholding tax of 15% is applicable.

2_Financial Assistance As a rule Cape Verdean companies cannot secure or guarantee bank loans to the acquiror to finance the purchase price to be paid by the acquiror. This rule does not apply to transactions relating to the operations of banks or other credit institutions, provided that such operations do not result in a reduction of the company's net assets to a level lower than the share capital subscribed, plus the reserves, which under the law or the By-Laws may not be distributed.

3_Security Interests Security may only be taken over existing (present, not future) moveable or immovable assets. As the regime applicable to a security depends on the type of security to be granted and, for an equity interest, on the respective By-Laws and purpose of the target company, the assessment on the ease of perfecting it and of its enforcement must be made on a case-by-case basis. Mortgages and pledges are subordinated to preferential creditors.

4_Clawback A creditor may request the annulment or termination of certain acts or transactions which determine the inability of the debtor to pay the debt or increase such inability, provided that (a) in the case of gratuitous acts, the credit is prior to such act and the annulment is requested within a five year period from the relevant act or transaction; or (b) in the case of onerous acts, solely in the event of misconduct by the parties and if the annulment is requested within a five year period from the relevant act or transaction. During bankruptcy proceedings, the insolvency administrator and any creditor may also request the annulment or termination of acts or transactions which determine the depreciation of the insolvent entity's estate to a court, such as the following: (i) gratuitous acts carried out in the two years prior to declaration of bankruptcy; (ii) onerous misconduct by the parties carried out in the two years prior to declaration of bankruptcy; (iii) payment of debts before their date of maturity or after such date when such debts become due in the year prior to the declaration of bankruptcy and correspond to unusual amounts; (iv) any securities in rem executed after the secured obligations during the year prior to the declaration of bankruptcy, or executed simultaneously with the secured obligations, in the 90 days prior to said declaration; and (v) any sales made in the 90 days prior to the declaration of bankruptcy. Transactions defrauding creditors can be challenged (there is no time limit).

5_ **Merger Control** The acquisition may be suspended by the Government officer in charge of the trade sector in the event of abuse of dominant position under the terms of Competition Law.

6_ **Foreign Investment Approval** In general, there are no legal limitations which apply to a foreign company acquiring a company in Cape Verde. The acquisition of a local company by a foreign investor qualifies as a foreign investment operation. Although the filing of an investment project is not mandatory, it is usually advisable, namely for repatriation of dividends and/or profits, and for access to certain tax benefits. Holding restrictions must be assessed on a case-by-case basis as the regime varies according to the type and business of the target company.

7_ **Employee Rights** Under the Cape Verde Labour Code, any change to the legal status of the employer or the change of ownership of the company does not have any impact on the employment relationship. The new employer takes the position of the former in the employment agreements and is legally assigned the rights and obligations arising from the employment relationship (eg seniority), even if such have ceased before the change of employer. Any change in the legal status of the employer must be communicated to the employees 30 days prior to the completion of the change.

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Cayman Islands

- 1_ **Withholding Tax** Withholding tax can be avoided.
- 2_ **Financial Assistance** No statutory prohibition.
- 3_ **Security Interests** It is easy and inexpensive to take security, which can cover all the assets of a chargor company (although special requirements will apply to real property assets in the Cayman Islands).
- 4_ **Clawback Voidable Preference:** A grant of security made within six months preceding commencement of a liquidation may be set aside if made with a view to giving a preference over other creditors at a time when the company is unable to pay its debts. **Dispositions at an Undervalue:** A disposition of property made at an undervalue with intent to defraud creditors will be voidable at the instance of a liquidator within six years of the disposition. **Fraudulent Trading:** The Court may order any person knowingly party thereto to contribute to a company's assets if, in a winding up, the business of a company has been carried on with intent to defraud creditors.
- 5_ **Merger Control** M&A transactions are not subject to what might be called "merger controls", although where an acquisition is structured as a merger or consolidation, statutory formalities in the Business Companies Act must be complied with.
- 6_ **Foreign Investment Approval** There are no foreign investment approvals required unless the target is a regulated entity (eg a bank or insurance company).
- 7_ **Employee Rights** The Labour Law of the Cayman Islands does not apply to employees outside the Cayman Islands. Where there are employees based in the Cayman Islands, the Labour Law provides for minimum severance pay for all employees whose term of continuous employment exceeds one year and includes specific provisions relating to the transfer of ownership of a business in which a person is employed.

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Central African Republic (CAR)

- 1_ **Financial Assistance** The subscription or purchase by a company of its own shares, either directly or by a person acting in his own name but on behalf of the company is prohibited (Article 639 of the OHADA Uniformed Act on Companies). Similarly, a company cannot advance funds, grant loans or grant security to the subscription or purchase of own shares by a third party.
- 2_ **Security Interests** Security interests can cover present and future assets (Article 45 of the OHADA Uniform Act on Securities). Valid security needs to be registered at the Registry of Commerce and Real Estate in CAR. Preferential creditors include funeral expenses; the most recent medical costs of the debtor; wages; tax and costs due to owners of literary works.
- 3_ **Clawback** The suspect period typically starts from the date of cessation of payment and ends at the date of the decision initiating proceedings. The beginning of the suspect period cannot be earlier than 18 months immediately prior to the judgment opening the procedure (Article 34 of the OHADA Uniform Act organizing collective proceedings for wiping off debts). Security may only be set aside if it has been granted during the suspect period or once formal insolvency proceedings have been commenced. Security cannot be set aside where it has been granted before the suspect period.
- 4_ **Merger Control** There is no merger regime in CAR. However, in order for a merger to be legally enforceable under CAR law it must be registered at the Registry of Commerce and Real Estate (Article 192 of the OHADA Uniformed Act on Commercial Companies).
- 5_ **Foreign Investment Approval** There are no restrictions governing foreign investment in CAR providing such investment complies with the national regulations, in particular the OHADA Uniformed Act on Commercial Companies.
- 6_ **Employee Rights** Employment contracts continue to subsist between an employee and his or her new employer following a transfer of the target company to the purchaser. Employees may not oppose the acquisition.

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Chad

- 1_ **Withholding Tax** Dividends, interest, arrears and all other products of any kind from companies whose headquarters are located abroad give rise to a withholding tax of 20% (Article 66 of the General Tax Code 2006).
- 2_ **Financial Assistance** The subscription or purchase by a company of its own shares, either directly or by a person acting in his own name but on behalf of the company, is prohibited (Article 639 of the OHADA Uniformed Act on Companies). Similarly, a company cannot advance funds, grant loans or grant security to the subscription or purchase of own shares by a third party.
- 3_ **Security Interests** Present and future assets may be covered by a security interest (Article 45 of the OHADA Uniform Act organising securities). Such security may only be enforceable against third parties where it is in written form. Preferential creditors include wages, social security and taxes.
- 4_ **Clawback** The suspect period typically starts from the date of cessation of payment and ends at the date of the decision initiating proceedings. The beginning of the suspect period cannot be earlier than 18 months immediately prior to the judgment opening the procedure (Article 34 of the OHADA Uniform Act organizing collective proceedings for wiping off debts). Security may only be set aside if it has been granted during the suspect period or once formal insolvency proceedings have been commenced. Security cannot be set aside where it has been granted before the suspect period.
- 5_ **Merger Control** All documents relating to a proposed merger, including a statement filed by each company confirming that all acts done in connection with such merger have been conducted in accordance with Article 198 of the OHADA Uniformed Act on Commercial Companies, must be filed at the Commercial Court. In order to comply with local laws on merger, there must also be an announcement in the local gazette of the merger one month before the date of the first general meeting called to approve such merger (Article 194 of the OHADA Uniformed Act on Commercial Companies).
- 6_ **Foreign Investment Approval** There are no restrictions governing foreign investment where such investment relates to government contracts, quasi-public institutions and public authorities where the total proposed consideration is less than or equal to 60 million CFA francs and where such investment relates (in whole or in part) to services or supplies that could be executed or delivered by small and medium national enterprises (Article 5 of the Investment Code).
- 7_ **Employee Rights**) If there is a change in the company's status by reason of sale, merger, or other, all employment contracts in progress at the date of the transfer subsist between the transferee and company's personnel (Article 136 of the Labour Code).

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Chile

1_ **Withholding Tax** Interest on loans granted to Chilean companies by a foreign bank entity in the context of acquisition finance is subject to withholding tax at a rate of 4%. If the lender is a related bank, and if thin capitalisation rules apply, interest is subject to 4% withholding but interest associated to excess borrowing is subject to surtax of up to 35%. There is excess borrowing when the debt to equity ratio of the borrower exceeds 3:1.

2_ **Financial Assistance** A target company may guarantee a loan granted to a third party only with prior approval by the shareholders' meeting or, if the third party is a subsidiary of the company, the board of directors.

3_ **Security Interests** Under Chilean law, a personal guarantee (not pledge or mortgage) covers all present and future guarantors' assets. Securities over assets like mortgages (real estate) and pledges (personal property) require certain formalities for their creation (public deed before a notary public or others) and, in some cases, special registrations (eg in relation to mortgages) and/or publications (eg in relation to certain pledges over equipment and machinery). In the event of the bankruptcy of the debtor, there are legal preferences for payments to creditors (such as taxes and employees' severances). In general, enforcement of security must follow a judicial proceeding before courts, except for a special pledge of shares granted in favour of either local or financial institutions, for which a very straightforward proceeding is permitted.

4_ **Clawback** Under Chilean bankruptcy law, there are various types of actions to obtain a declaration that certain acts or contracts executed within the suspect period are not effective. Mortgages and pledges executed up to two years and 10 days before the bankruptcy declaration may be challenged.

5_ **Merger Control** Filing with the Antitrust Court (Tribunal de Defensa de la Libre Competencia-TDLC) is voluntary. However, if a voluntary consultation is filed the transaction cannot be closed until approval is received from the TDLC. In addition, the National Economic Prosecutor (Fiscal Nacional Económico) or any interested person may challenge a merger before the TDLC.

6_ **Foreign Investment Approval** In general, there are no foreign approval restrictions. Under foreign investment statutes, the investment can be registered by a foreign investment contract with the government of Chile, thereby allowing access to exchange markets and for any action against the Chilean government in international courts if foreign investment is affected. However, there are restrictions for foreign investors in some industries.

7_ **Employee Rights** In Chile, changes in the ownership of a company (total or partial) do not alter the rights and obligations of its employees.

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China

1_ **Financial Assistance** There are no financial assistance issues in relation to private companies under PRC law. However, security provided by a company for its shareholders or actual controller need to be approved by the shareholder's meeting; and the shareholders for whom the security is provided or the shareholders directed by the actual controller described above are prohibited from participating in the voting process (Article 16 of Company Law 2005). Furthermore, article 18 of the Guidelines on the Risk Management of M&A Loans of Commercial Banks (issued by China Banking Regulatory Commission in 2008) makes it clear that the aggregate amount of bank loans borrowed by the buyer for acquiring the target company shall not exceed 50% of the total purchase price. The creation of security by a PRC entity or individual to secure any debt owed to a foreign lender is subject to PRC foreign exchange regulations. Subject to limited exceptions, the approval of the PRC State Administration of Foreign Exchange is required for granting such security (Article 19 of Regulations on Foreign Exchange Administration 2008). Lenders should check the feasibility of any cross-border structure involving security over PRC assets at the early stage of a transaction.

2_ **Merger Control** If certain thresholds are met, merger filing is required in China, which will have the effect of suspending the transaction.

3_ **Foreign Investment** Approval: Foreign investments in certain sectors are restricted (eg exploitation of rare and valuable mineral resources) or prohibited (eg fishing, gambling, publishing, video companies etc).

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Colombia

- 1_ **Withholding Tax** As a general rule there is a withholding tax rate of 33% on payments made abroad. However there are exemptions that apply in most cases, particularly the exemption that applies to interest paid on foreign loans if such loans can be considered of interest for the economic and social development of the country. Most loans fall under this category. There are other exemptions, such as one over interest on short-term import loans not exceeding 12 months.
- 2_ **Security Interests** While it is easy in Colombia to take security, it may sometimes be expensive (up to 1% of the disbursed amount). Not all security is registered in a centralized agency: pledges over assets and commerce establishments are registered at the *registro mercantil*, mortgages over real property are registered at the *registro de instrumentos publicos*, but pledges over stock are registered in the stock ledger of the company. Enforcement of a security is carried out through the courts and there are no self help remedies (ie, securities are enforced through judicial auction). In the event of insolvency, there is a freeze over security and the debtor cannot enforce it for as long as the proceedings last.
- 3_ **Clawback** On insolvency, there is an 18-month period of suspicion under which acts such as granting of securities are subject to a clawback.
- 4_ **Merger Control** There is a mandatory filing obligation for any type of consolidation if certain asset and income thresholds are reached and if the consolidated assets or entities have more than 20% of the relevant market in Colombia. The transaction cannot complete before clearance is received and if it completes it is considered null from a Colombian standpoint. The law does not distinguish between local and international transactions having antitrust effects in Colombia.
- 5_ **Foreign Investment Approval** Foreign investment in Colombia does not require an approval. However there is a filing obligation before the Central Bank for foreign investments in companies, real property, securities, among others. Certain activities such as TV and private security are limited. Investment in the financial sector requires approval from the regulatory authority and foreign investment in Colombia is prohibited in what relates to defence, and the disposal of toxic wastes.

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Congo-Kinshasa

- 1_ **Withholding Tax** Withholding tax would apply in this scenario. Please note that the tax regime differs if mining companies are involved.
- 2_ **Financial Assistance** There is no financial assistance prohibition. The only consideration to bear in mind is that the loan should not contravene the anti-terrorism or anti-money laundering legislation in place.
- 3_ **Security Interests** Ordinance Law 73-021 of 20 July 1973 relating to security interests is the relevant legislation. The secured asset needs to be identified. Real estate security is registered. Private enforcement is generally possible but auctioneers need to be involved.
- 4_ **Clawback** The suspect period starts on the cessation of payment date and continues until the bankruptcy judgment. The bankruptcy judgment deals with (i) the nomination of one or more administrators that will take charge of the bankrupt business and (ii) the establishment of the date of cessation of payment. The cessation of payment date can be modified by an ulterior judgment but this date cannot take place earlier than six months before the bankruptcy judgment.
- 5_ **Merger Control** There is no merger regime and no specific competition requirements.
- 6_ **Foreign Investment Approval** Foreign entities cannot hold more than a 70% shareholding in a telecommunication company; a minimum 30% shareholding must be held by Congolese nationals, with at least 5% being held by the company's Congolese employees (Loi-cadre 013-2002 of 16 October 2002 relating to telecommunications in the Democratic Republic of Congo).
- 7_ **Employee Rights** Employees of the acquired company do not have their employment contracts terminated as a result of the acquisition. In addition, employees of telecommunication companies must retain control of at least a 5% shareholding in the company which has been acquired.

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Costa Rica

1_ **Withholding Tax** There is a 15% withholding tax on interest. However there are three cases in which interest may be exempt from withholding tax:

- If the entity is recognised before the Costa Rican Central Bank as First Order Bank, interests over loans related to an investment on agricultural and industrial activities, are exempt from the withholding tax.
- If the entity is recognized before the Costa Rican Central Bank as an Institution normally dedicated to perform international operations, interests commissions, and financial expenses that are invested in any kind of activity are exempt from the withholding tax.
- If the interest received by the foreign entity is subject to tax in the foreign country and the company does not receive a credit for the tax paid in Costa Rica, it is possible to request an exemption in accordance with article 61 LISR to the Tax Authority for which it is necessary to file the petition and other documents.

2_ **Clawback** The suspect period is up to six months. If fraud is involved transactions may be challenged up to time years.

3_ **Merger Control** There is a voluntary filing obligation. The parties may submit the transaction for analysis before the Competition Commission to determine whether the acquisition or merger may cause antitrust effects and therefore determine that the transaction is illegal.

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Croatia

- 1_ **Withholding Tax** There is no withholding tax in relation to loans with financial institutions.
- 2_ **Financial Assistance** There are no financial assistance rules when the target is a limited company. However, financial assistance is not allowed for joint stock companies.
- 3_ **Security Interests** Security agreements over all the assets of the company are not possible. However, future debt can be secured. In relation to certain types of security interests, enforcement through the court is required (eg mortgage) – however, usually the debtor can enforce outside court but some other formalities may be required (eg notarisation).
- 4_ **Clawback** Between three and five years.
- 5_ **Merger Control** Very strict merger control rules.
- 6_ **Foreign Investment Approval** The sole limitation is that a direct foreign holding over 40% is not allowed for newspapers and publishers. Also, the holding of a stake in some types of companies might be disallowed by the regulator if the purchaser is registered in “off-shore” locations, ie where the usual means of checking companies’ backgrounds are not available.
- 7_ **Employee Rights** If the target is the company, employees’ consultation is not required. If a merger is involved, it is subject to the transfer of employees – it is purely procedural, the employees cannot delay or block the merger.

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Cyprus

- 1_ **Withholding Tax** No Cyprus withholding tax is levied on payments of capital or interest to a non-resident of Cyprus.
- 2_ **Financial Assistance** It is possible for a company to give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of, or in connection with the purchase of, or subscription made or to be made by any person for any shares in, the company, or, where the company is a subsidiary company, in its holding company in cases where the company is a private company and (a) such company is not a subsidiary company of any company which is a public company; and (b) the relevant action has been approved at any time by a resolution of the general meeting of the company passed by a majority of more than 90% of the votes carried by all the shares of the company in issue.
- 3_ **Security Interests** It is easy and inexpensive to take security, which can cover all the assets of the chargor.
- 4_ **Clawback** The clawback risk arises in connection with transactions that can be said to amount to a fraudulent preference; the suspect period is six months. In respect of floating charges, there is a suspect period of two years.
- 5_ **Merger Control** If the statutory merger control thresholds are met, the transaction may not complete until clearance is obtained.
- 6_ **Employee Rights** All the numerous and strict EU regulations (eg redundancies, transfer of undertaking, health and safety, data protection etc.) apply in Cyprus and therefore an acquisition involving employees can be quite time-consuming. If the relevant procedures are not followed, works councils can delay the acquisition process. If the regulations are breached, heavy penalties (including criminal liability) apply.

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Czech Republic

- 1_ **Financial Assistance** Czech guarantors or security providers incorporated as joint stock companies or limited liability companies cannot guarantee or secure any obligations connected with the acquisition of their shares/participations or the acquisition of shares/participations in their parent companies. Rather formalistic “white-wash” procedures available under Czech financial assistance laws are new and untested and there is no clear view on how these should be applied in practice.
- 2_ **Security Interests** It is easy and cheap to take security, which can cover all the assets of the chargor.
- 3_ **Clawback** A security may be set aside as a preference or a transaction at an undervalue if it was granted within the three years preceding the onset of insolvency, if it was for the benefit of a close person or a member of a group of companies; otherwise within one year preceding insolvency. However, if the security was granted fraudulently, the time period within which it can be set aside is five years before the insolvency.
- 4_ **Merger Control** The obligation to file arises if certain turnover thresholds are reached and if there is a merger from the competition law point of view. There is no deadline for filing but clearance must be obtained before the transaction can complete.

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Denmark

1_ **Financial Assistance** According to the Companies Act 1973 it is not possible for a target to provide financial assistance to an acquiror. When the Companies Act 2009 comes into force during 2010 it will be possible to provide financial assistance and the colour will change from red to yellow.

2_ **Security Interests** It is easy to take security, which may be of limited cost. Most types of assets can be secured.

3_ **Clawback** There are various types of suspect periods. If the security is not granted to the creditor when the debt is obtained or the security is not made safe from prosecution without undue delay after the debt is obtained, the security may be challenged if the security is granted later than three months before the onset of the insolvency. If the security is granted to a person connected to the company, the time period is two years. If the security is made in an improper way, eg if it favours one creditor at the expense of others or the debtor's property is deprived of earning a creditor's satisfaction, or the debtor's debt is increased to the detriment of others, the security may be challenged if the debtor was insolvent or because the transaction became insolvent and the creditor knew or ought to have known about the debtor's insolvency and the circumstances that made the transaction unfair. If this is the case, there is no time limit.

4_ **Merger Control** If the merger meets certain financial thresholds, the transaction must be approved by either the European Commission or the Danish Competition Authority.

7_ **Foreign Investment Approval** In general there are no legal limitations with regard to a foreign company buying a target in Denmark. However, for a few areas an acquisition or sale may have to be approved by the authorities. This is the case regarding financial undertakings and financial holding companies, the electricity sector, natural gas sector, subsoil (oil and other commodities) sector and the defence sector.

7_ **Employee Rights** All the numerous and strict EU regulations (eg redundancies, transfer of undertaking, health and safety, data protection etc.) apply in Denmark and therefore an acquisition involving employees can be quite time-consuming, but the employees cannot delay the acquisition process.

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East Timor

- 1_ **Withholding Tax** A withholding tax of 10% is applicable.
- 2_ **Financial Assistance** There are no specific legal provisions dealing with financial assistance in relation to private companies. However, a company cannot grant a guarantee or security in favour of a third party except if the guarantee or security is also provided in its own interest (which must be expressly stated and reasonably justified by the board of directors).
- 3_ **Security Interests** Security over moveable property must be created over existing (present, not future) assets. Such type of security (pledge) is subordinated to preferential creditors. As the regime applicable to a security depends on the By-Laws and purpose of the target company, the assessment on the ease of perfecting it and of its enforcement must be made on a case-by-case basis. There is no real estate public registry. Mortgages may not therefore be granted.
- 4_ **Clawback** Securities can only be set aside if it is proven in Court that they were fraudulently granted. There is a five year suspect period from knowledge of the relevant act.
- 5_ **Merger Control** There is no legal framework providing for merger control in East Timor.
- 6_ **Foreign Investment Approval** There are no mandatory foreign investment approvals in East Timor.
- 7_ **Employee Rights** Although the law is silent on the effects of transfer of ownership of a company on existing employment relationships, other provisions dealing with similar situations maintain the employment relationship as being valid and in force. In view of the foregoing, there are grounds to defend that transfer of ownership does not affect existing employment relationships.

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Ecuador

- 1_ **Withholding Tax** Interests and financial costs of foreign loans that are not registered in the Central Bank of Ecuador are not deductible, for the purposes of determining the taxable amount of income tax.
- 2_ **Financial Assistance** A company cannot use its resources for purposes other than those listed as corporate purposes.
- 3_ **Security Interests** The process of executing and recording an open mortgage, which can cover all present and future assets of the debtor, does not pose major challenges. Creditors secured by mortgages are deemed to be third class creditors. Nevertheless, first or second class credits will not override them, except for amounts owed to workers.
- 4_ **Clawback** The Civil Code in Ecuador does not contemplate a specific suspect period where past transactions of a bankrupt company can be challenged if considered undervalued or preferred. However, absolute nullity (unlawful purpose or cause; omission of a requirement or formality for the validity of certain acts or contracts; acts and agreements executed by individuals with no legal capacity) cannot be validated by a term of under fifteen years. In the event of relative nullity (arising from any other circumstance not listed above) the agreement can be challenged up to four years from its execution. Previous creditors can attempt a “pauline action” (up to one Withholding tax one year) from the granting of the security if the lien is aimed at defrauding said creditors.
- 5_ **Merger Control** There is no merger control regime in place. however our Political Constitution forbids monopolistic activities as a general principle. There is, however, a bill that will be discussed at the National Assembly in the following months for an Antitrust Law and, as of today’s date, only a regulation dealing in general terms with monopolistic activities, issued by the Andean Community, is being applied. However, once the transfer of shares or stock has been recorded in the company’s register of shares and shareholders, it has to be communicated to the Superintendency of Companies.
- 6_ **Foreign Investment Approval** Foreign investment does not need to be authorised by any governmental institution, unless it deals with sectors that are strategically sensitive. Pursuant to the Constitution in effect, the following are deemed to be strategically sensitive areas: all forms of energy, telecommunications, non-renewable natural resources, transportation, refining of hydrocarbons, biodiversity, genetic heritage, radio signals and water. These areas are highly regulated by the State and foreign investors usually need to comply with certain requirements to invest in these sectors.
- 7_ **Employee Rights** The purchasing company is bound to comply with the employment agreements of the target company.

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Egypt

- 1_ **Withholding Tax** If the term of the loan is three years or more, no withholding tax is required. If the term is less than three years a withholding tax cannot be avoided.
- 2_ **Financial Assistance** The law does not address financial assistance. However, there are requirements relating to corporate benefit whereby any assistance by the company must be in its interest (ie in an intra-group context, downstream assistance is acceptable but upstream or horizontal assistance might not pass the test).
- 3_ **Security Interests** To be able to enforce security, the mortgagee must obtain a court order and the assets involved must be sold through public auction. Furthermore, there are fees and delays inherent in registering real securities and there are no floating charges under local law.
- 4_ **Merger Control** There is no requirement for advance notifications or merger clearance or consents.
- 5_ **Employee Rights** There is no requirement for consultations or consents with or from any labour union or authority for an acquisition to take place. However, in the case of an acquisition, it is almost impossible to make employees redundant and the law stipulates that the purchaser and the seller are jointly liable for any employment related claims.

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El Salvador

1_ **Clawback** The suspect period typically starts from the date of cessation of payments and ends with the commencement of the insolvency proceedings. Security may only be set aside if it has been granted during the suspect period or once formal insolvency proceedings have been commenced. Security cannot be set aside where it has been granted before the suspect period.

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England

- 1_ **Financial Assistance** Under English law, a public company (**Plc**) is prohibited from giving financial assistance for the purpose of the acquisition of its own shares or those of a parent company, and a private company (**Ltd**) is prohibited from giving financial assistance for the purpose of the acquisition of shares of a public parent company. No other statutory restrictions apply, so financial assistance will rarely be an issue in a private acquisition of shares. However, other considerations are relevant, for example whether the assistance promotes the success of the company giving it and whether its solvency position may be impacted.
- 2_ **Security Interests** It is easy and cheap to take security which can cover all the assets of the chargor.
- 3_ **Clawback** Security can be set aside if the granting of security is a pauline action. There are various types of pauline actions which have different suspect periods. A transaction defrauding creditors can always be challenged (there is no time limit), whilst a transaction at an undervalue can be challenged two years before the start of the insolvency. A preference occurs if the granting of security took place six months before the insolvency, and a void floating charge applies 12 months before the onset of the insolvency. However, there are some special (harsher) rules if the transaction was with a person “connected” with the company.
- 4_ **Merger Control** There are no filing obligations. However, voluntary filing is market practice either by statutory procedure (“merger notice”) or non-statutory procedure (“informal submission”). The transaction can complete prior to clearance but parties are likely to be required to give “hold separate” undertakings.
- 5_ **Foreign Investment Approval** There are no foreign investment restrictions in England.
- 6_ **Employee Rights** All the numerous and strict EU regulations (regarding redundancies, transfer of undertaking, health and safety, data protection etc.) apply in England and therefore an acquisition involving employees can be quite time consuming. If the relevant procedures are not followed, work councils can delay the acquisition process. If the regulations are breached, heavy penalties (including criminal liability) apply.

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Estonia

1_ **Withholding Tax** Generally, withholding tax is not applicable unless the interest rate is significantly above market value. In such case, interest of 21% could be applicable.

2_ **Financial Assistance** Under the Estonian Commercial Code financial assistance is prohibited with respect to the target guaranteeing or securing a loan to acquire its own shares.

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 PLC Which lawyer? (2010, 2009)
 International Financial Law Review (2010, 2009)
 International Tax Review (2010)
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Ethiopia

1_ **Withholding Tax** No withholding tax. However, a lending bank must, prior to granting any loan to a local borrower liable to pay income tax in the Federal Democratic Republic of Ethiopia, file a declaration in writing with the tax authority informing the tax authority about the loan.

2_ **Employee Rights** There are no foreign approval restrictions in Ethiopia provided the area of investment of the company being purchased is not restricted to Ethiopian nationals or domestic investors.

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Finland

- 1_ **Withholding Tax** A non-resident entity is not liable to pay taxes on interest, provided that the loan is not considered an equity investment or equivalent.
- 2_ **Financial Assistance** The Finnish Companies Act prohibits the target company from granting loans or collateral for the purpose of financing an acquisition of its own or its parent company's shares. However, there are acquisition structures that allow the possibility of using the target company's assets as collateral in acquisitions (one typical structure is to get the acquirer to covenant that it will merge with the target immediately after the acquisition and thereafter provide the lender with additional security. After the merger the acquisition financing and the target assets are at the same level in the structure thus allowing to use the target company assets as security for acquisition financing).
- 3_ **Security Interests** It is possible to create floating charges encumbering all movables owned by a company from time to time. On a general basis the parties may freely agree on security interests in ways which are easily registrable at a minor cost.
- 4_ **Clawback** A security provided later than three months prior to the debtor's insolvency can be recovered if such security was not originally agreed upon, or if the security had not been perfected without undue delay to the transaction. If the provider of the security has a close relationship with the creditor, the time period for potential recovery is two years prior to the debtor's insolvency.
- 5_ **Merger Control** An acquisition has to be notified to the Finnish Competition Authority (FCA) if the parties' combined turnover exceeds EUR350 million and at least two of the parties' turnover accrued from activities in Finland exceeds EUR20 million. The acquisition can only be implemented after the FCA has given its decision in the matter.
- 6_ **Foreign Investment Approval** There are only very limited restrictions on foreign investment. Only in cases where important national interests are at stake can the right of a foreign entity to purchase Finnish companies be restricted. The phrase "important national interest" refers to securing national defence, preventing serious and possibly permanent economic, social, environmental, sectoral or regional damage, and ensuring public order and the security and health of the country's citizens.
- 7_ **Employee Rights** The Labour and Co-operation Regulation only requires that employees are notified via specific procedures of the change of control in the company once the transaction is concluded. In cases of assignment of business, ie an asset sale, the rights and obligations in relation to employees transfer to the new owner.

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France

- 1_ **Financial Assistance** A French company cannot lend money or grant loans or securities in connection with the subscription or the acquisition of its own shares by a third party.
- 2_ **Security Interests** There must be a corporate benefit for a French company to grant security interests over its assets to guarantee or secure the obligations of a related company. Its undertakings must not exceed its financial capabilities and/or jeopardise its long term financial situation or its future development. Analysis of the situation revolves mainly around the relevant facts and ultimately the decision to grant such security interest is a management decision. The enforcement of security granted by a company subject to certain French safeguard or insolvency proceedings can be paralysed.
- 3_ **Clawback** Security granted during the suspect period (*période suspecte*) for pre-existing debt is automatically void and there is no defence for creditors. The suspect period starts at the actual date of cessation of payments and ends on the date on which the court orders the opening of insolvency proceedings. The suspect period cannot exceed 18 months. Security can also be set aside (without any time limit) for certain intentionally fraudulent or collusive transfers (pauline actions) regardless of actual insolvency or transactions at an undervalue, although these are unlikely to affect security for genuine new money.
- 4_ **Merger Control** Filings are compulsory in France when turnover thresholds are reached and assuming that there is no EU filing. No closing can occur before authorisation of the transaction by the competition authority (except, in exceptional circumstances, if derogation to the waiting period is granted). The merger control process can last between approximately one and six months, depending on the complexities of the case (one month for the so-called “Phase I” procedure).
- 5_ **Foreign Investment Approval** A general principle when investing in France is that “financial relationships between France and foreign countries are unrestricted”. However, France does place certain prohibitions/restrictions (prior authorisation or prior declaration) on the ability of foreign entities to invest in certain French business sectors (financial services, defence, media etc.).
- 6_ **Employee Rights** No signing can occur before the works council (if any) has rendered an opinion on the transaction (whether this is positive or negative is of no relevance).

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Georgia

- 1_ **Withholding Tax** Currently, the withholding tax rate on interest is 5% but it is scheduled to go to zero from 1 January 2012. Withholding tax on interest can be avoided under the double taxation treaty existing between the UK and Georgia.
- 2_ **Financial Assistance** There are no issues and the target company can secure or guarantee the loan.
- 3_ **Security Interests** Security can cover all present and future assets. Security can be perfected quite easily by way of registration or taking possession of the collateral. The consensual security is not subordinated to the tax mortgage/pledge but rather ranking between them is determined according to the date of perfection of the security. Consensual security can, however, be subordinated to certain statutory liens (eg mechanic's lien). Private sale of the collateral is allowed in the event that such foreclosure measure is envisaged under the agreement of the parties. Commencement of insolvency proceedings may suspend or otherwise affect involuntary foreclosure on the collateral. Upon bankruptcy, the collateral will be included in the bankruptcy estate and endeavours will be made to sell the bankruptcy estate in its entirety. In the event that the estate is not sold at the first auction, a second auction will be organised where property will be sold either in its entirety at a price sufficient to fully cover the claims falling within the first four rankings of the bankruptcy creditors, including all the claims of the secured creditors, or in allotments. In the event that the property is not sold at the second auction, upon agreement of the creditors, the secured creditor may acquire title to the collateral. In the case of commencement of insolvency proceedings, the secured claims rank fourth after (a) process expenses, (b) indebtedness incurred by the debtor after commencement of the insolvency proceedings, and (c) the salary of the bankruptcy manager and expenses related to his/her activities.
- 4_ **Clawback** Any transaction entered into by the managers of the company can be set aside by the company within 18 months from conclusion of the transaction if the managers lacked the proper authority to enter into the transaction and this fact was known to the other party to the transaction. The same applies to cases where the managers and the other party acted in bad faith with the intention of causing damage to the company. In a bankruptcy scenario, as far as commercial banks are concerned, the suspect period lasts for one year. The administrator or the liquidator of the bank (which has powers under specific bankruptcy legislation which is different from the general statutory framework) can dispute the validity of any transaction which was entered into by the bank within the 12 months prior to the appointment of the liquidator/administrator and can involve persons related to the relevant commercial bank (managers, shareholders etc.) provided that such persons have benefitted from the transaction at the expense of the bank, thereby causing damage to the creditors of the bank. In addition to the foregoing, security can be set aside on a general basis (eg in the case of unlawful, amoral, fraudulent or unauthorised transactions or transactions concluded in violation of mandatory formal requirements). The suspect period may vary depending on the specific ground for invalidation. For instance, involuntary and fraudulent transactions can be disputed within a year, while in certain other cases the statute does not prescribe any suspect period at all.

5_ **Merger Control** There is no filing obligation per se. In the case of acquisition of a controlling stake (more than 10%) in public companies, however, after completing the acquisition, the respective shareholder will need to inform the regulator, issuing company and stock exchange where the shares of the company are listed about substantial acquisition of the shares.

6_ **Foreign Investment Approval** There are no foreign investment approval restrictions in Georgia. Georgian laws disallow investment in certain activities (production of nuclear, chemical and bacteriological weapons, narcotics, human cloning etc.) but these are general prohibitions that are equally applicable to foreign and local investors.

7_ **Employee Rights** There are no such regulations.

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Germany

- 1_ **Withholding Tax** There is no withholding tax in Germany in this scenario.
- 2_ **Financial Assistance** Restrictions on financial assistance differ depending on the legal form of the target company; financial assistance is explicitly restricted if the target company is a stock corporation (*Aktiengesellschaft*) but more relaxed if the target company is a limited liability company (*Gesellschaft mit beschränkter Haftung*) or limited partnership (*Kommanditgesellschaft*).
- 3_ **Security Interests** Security can be granted with respect to most of the assets of the target company. A separate security document is required for each type of asset. Significant notary costs may be involved (Swiss notaries may be an option assuming German courts confirm that notarisation in Switzerland is permissible). Ease of enforcement depends on the type of security and contractual arrangements.
- 4_ **Clawback** Security can be set aside for a period of up to 10 years if there is wilful intent to harm creditors. Other suspect periods range from three months to four years.
- 5_ **Merger Control** German merger controls exercised by the Competition Authority (*Bundeskartellamt*) may result in an acquisition being suspended assuming (a) certain turnover thresholds are met (or exceeded) so that the German merger control regime becomes applicable and (b) the acquisition creates or reinforces a dominant position in a relevant market.
- 6_ **Foreign Investment Approval** All acquisitions (in any industry) by non-EU/non-EFTA investors of more than 25% of the shares in a German business are subject to review by the German Federal Ministry of Economics and Technology (*Bundesministerium für Wirtschaft und Technologie*) and can be prohibited if they significantly endanger the safety of the German public or the country as a whole. A foreign investor interested in purchasing a German company can seek clearance for the investment in advance from the German Federal Ministry of Economics and Technology, which has indicated that it will apply cautiously the powers conferred on it. In addition, some sector specific regulations (eg relating to banks, insurance, stock exchanges, defence and encryption) containing stricter limitations may apply.
- 7_ **Employee Rights** It may be necessary to involve employees in the acquisition and grant them a certain level of protection of their legal position. This may lead to some delay in the implementation of the acquisition.

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Ghana

1_ **Withholding Tax** Under the Internal Revenue Act, 2000 (Act 592) there is a withholding tax of 8% in respect of interest on loans as well as on dividends paid to a non-resident parent company.

2_ **Financial Assistance** The Companies Act, 1963 (Act 179) prohibits a company from providing financial assistance, directly or indirectly, for the purchase of its shares or the shares of its holding company. Exceptions to this prohibition include:

- the payment of commission or brokerage to a person in consideration of his agreeing to procure shares;
- where money lending is part of the ordinary business of the company;
- where a scheme exists allowing the provision of money for employees to purchase shares;
- the making of loans to employees other than directors with the aim of helping them to purchase shares in the company; and
- the payment of a dividend, notwithstanding that the dividend is used to discharge a shareholder's liability on his shares.

3_ **Security Interests** It is lawful to take security over the present and future assets of a company. Shareholder approval may be required in certain cases, for example if the loan exceeds the stated capital of the company. Perfection of security partly depends on the title the company has in the assets. Stamping and registration of security documents is also required.

4_ **Clawback** Under the Companies Code, if a winding up of a company takes place within 12 months of the creation of a floating charge over the undertaking or assets of the company, unless it is proved that the company was solvent immediately after the creation of the charge, the charge will be invalid except in respect of the amount of any cash paid to the company at the time of, or subsequent to, the creation of the charge.

Under the Bodies Corporate (Official) Liquidations Act, 1963 (Act 180), if during a liquidation process it appears to the liquidator that, during the six months before the liquidation process began and at the time when the company was insolvent, the company:

- made a payment or any other transfer of property; or
- paid a mortgage or any other charge; or
- was subject to a court judgment; or
- incurred any other obligations,

with the main intention of preferring some creditors at the expense of others, the liquidator can ask the preferred creditor to restore the money paid or property transferred.

Transactions to defraud creditors are not time bound. Under the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180), a liquidator can at any time take action if it appears to him that a transaction was carried out with intent to defraud creditors of the company.

5_Merger Control There is no antitrust legislation in place.

6_Foreign Investment Approval Under the Ghana Investment Promotion Centre Act, 1994 (Act 478), any enterprise in which there is foreign participation is required to register with the Ghana Investment Promotion Centre. Where the company is wholly-owned by foreigners, there is a minimum capital requirement of USD50,000 and where the company is partly owned by foreigners the minimum capital investment in cash (or an equivalent in capital goods) is USD10,000. The Act does not, however, apply to portfolio investments¹.

7_Employee Rights Pursuant to the Labour Act, 2003 (Act 651), where a company is wound up or undergoes an arrangement or amalgamation and the winding up, arrangement or amalgamation causes a severance of the legal relationship between the employer and employee as it existed before the winding up, and as a result of and in addition to the severance, that employee becomes unemployed or suffers any diminution in the terms and conditions of his employment, the employee is entitled to redundancy pay from the employer. Thus, where an acquisition results in redundancies, the offeror company has an obligation to give redundancy pay to employees of the offeree. The offeror does not have to consult the employees unless it is willing to continue to employ them.

The offeree bears all redundancy obligations, including the obligation to notify employees and their unions three months before the intended redundancies. The amount of redundancy pay and the terms and conditions of payment are subject to negotiation between the employer or a representative of the employer on the one hand and the employee or the trade union concerned on the other hand. Further, any dispute concerning the redundancy pay and the terms and conditions of payment may be referred to the Labour Commission for settlement, and, subject to any other law applicable, the decision of the Commission is final.

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¹“Portfolio investment” is defined as an investment in shares or bonds which must be converted into shares or any other securities traded on the Ghana Stock Exchange.

Greece

1_ **Withholding Tax** No withholding tax on interest is imposed on UK banks, pursuant to the relevant Double Tax Treaty. Furthermore, no withholding is imposed on any foreign lenders, if the financing is structured as a bond loan.

2_ **Financial Assistance** Loans and guarantees by a target company to finance the acquisition of shares are limited to distributable amounts and subject to corporate procedural requirements.

In relation to loans and guarantees for acquisition purposes, Greek law has transposed the second EU company law directive as amended and hence permits loans and guarantees for the acquisition of shares subject to some limitations. However, loans and guarantees to a controlling shareholder (upstream) or an entity controlled by such controlling shareholder (cross-stream) for any other purpose (eg for working capital, for other acquisitions etc.) are regulated by national law, which prohibits entirely upstream and cross-stream loans and subjects upstream and cross-stream guarantees to limitations.

Upstream and cross-stream guarantees for other purposes are subject to restrictions, including in particular subordination to all pre-existing creditors. The most effective method for debt pushdown is a merger, which is, however, subject to creditor objections.

3_ **Security Interests** From a legal point of view, security can be granted over effectively all assets of the chargor, with limited exceptions (eg telecoms licences). Registration requirements are, however, expensive (0.70%-0.80% on the secured amount per registered security) unless the financing is structured as a bond loan, in which case the registration fees are nominal. It is worth noting that certain registrars take the view that the provisions of the bond loan law limiting registration fees are unconstitutional and have to be challenged in court in order that either registration with nominal fees is accepted or proportionate fees unlawfully demanded and paid are returned. Case law to date has been favourable to creditors.

4_ **Clawback** Under general law, security is automatically void if granted during the suspect period for a pre-existing debt unless there is a pre-existing obligation to provide such security. In other circumstances security created during the suspect period is voidable, provided it was to the detriment of the other creditors and the secured party had actual (ie

not imputed) knowledge of the debtor's cessation of payments. The suspect period starts on the date of cessation of payments (as determined by the bankruptcy court), which cannot be more than two years prior to the declaration of bankruptcy, and ends on the declaration of bankruptcy. If the secured party is a bank, the above rules do not apply. The provision of security with the intent to harm creditors is voidable if it took place within the five years prior to the declaration of bankruptcy, provided the secured party was aware of such intent of the creditor.

5_Merger Control If the acquiror and the target have an aggregate worldwide turnover of at least EUR150,000,000 and each has a turnover in Greece, prior notification to the Hellenic Competition Commission (**HCC**) is required and the acquisition cannot be completed prior to approval, unless an exemption is granted. In the case of tender offers or acquisitions of shares in a stock exchange, the acquisition of the shares is permitted, but voting rights may not be exercised until approval of the concentration or exemption is granted by the HCC.

6_Foreign Investment Approval No foreign investment approvals are required (exceptions apply only in relation to the direct or indirect acquisition of land).

7_Employee Rights EU directives on employee protection have been generally transposed into Greek law. While employee approval is not required for an acquisition and unions and work councils do not have the power to delay it, it is worth noting that redundancies involving more than 2% (expected to be increased to 4%) of the staff per month require either union agreement or approval by an authority. Furthermore, employers reducing employee headcount for technical or economic reasons are required to take into account social criteria in choosing among employees in similar positions. As a result, synergies resulting from a reduction of the workforce are difficult to achieve and may take a significant amount of time.

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Guatemala

1_ **Clawback** The suspect period starts 10 days before the date affixed as the cessation of payments, assuming that fraud is involved. There is no suspect period if fraud is not involved.

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Guernsey

- 1_ **Financial Assistance** A Guernsey company can give financial assistance provided that the company can pass the solvency test as prescribed by the Companies (Guernsey) Law, 2008 (as amended).
- 2_ **Security Interests** It is easy and cheap to take security over the Guernsey situs assets of a Guernsey company. The Preferred Debts (Guernsey) Law, 1983 (as amended) ranks classes of debt that must be paid in priority to all other debts in insolvency proceedings. These include any rents owing to a landlord by his tenant secured by goods subject to tacit hypothecation, tax payable to the Guernsey authorities on a Guernsey employee's wages, a proportion of an employee's wages, holiday pay, unpaid income tax, unpaid social security contributions and the costs of the liquidator in a winding up. Any non-Guernsey situs assets of a Guernsey company would need to be charged pursuant to the jurisdiction in which those assets are present. Guernsey law does not recognise floating charges and security is usually taken by way of assignment or possession of a specific asset. Security is perfected by way of a notice of assignment or the fact of possession. There are no registration requirements save in respect of Guernsey real estate and Guernsey registered ships.
- 3_ **Clawback** Transactions may be set aside where they are determined to be a preference over other creditors in the event of insolvency of a company. The liquidator of a company may apply to the Royal Court for an order in respect of the company if the relevant company has given a preference six months (or in the case of a connected party two years) prior to either an application for compulsory winding up of the relevant company or the date of the passing by the company of a special resolution to voluntarily wind up the company. In order for the Royal Court to make an order, it must be of the opinion that the company may, at the time of giving the preference or as a result of giving the preference, be unable to pay its debts. A preference is given to a person if that person is one of the company's creditors or is a surety or guarantor for any of the company's debts or other liabilities and the company does anything, or permits anything to be done, which improves the person's position in the company's liquidation.
- 4_ **Merger Control** There are no filing obligations.
- 5_ **Foreign Investment Approval** None.
- 6_ **Employee Rights** The transfer of undertaking regulations/TUPE does not apply in Guernsey and there are no statutory redundancy procedures. There are health and safety and data protection regulations but on balance the law is relaxed/favourable from a potential acquiror's point of view.

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Guinea

- 1_ **Withholding Tax** When a loan is granted by a UK Bank to a company incorporated or established in Guinea, the interest paid for the repayment of the loan will be subject to a withholding tax of 15 % (Articles 170, 171 and 187 of the General Tax Code of Guinea).
- 2_ **Financial Assistance** The subscription or purchase by the company of its own shares, either directly or by a person acting in his own name but on behalf of the company is prohibited (Article 639 of the OHADA Uniformed Act on Companies). Similarly, a company cannot advance funds, grant loans or grant security to the subscription or purchase of own shares by a third party.
- 3_ **Security Interests** Present and future assets may be covered by a security interest (Article 45 of the OHADA Uniform Act organizing securities). Such security may only be enforceable against third parties where it is in written form. Preferential creditors include wages, social security and taxes.
- 4_ **Clawback** The suspect period typically starts from the date of cessation of payment and ends at the date of the decision initiating proceedings. The beginning of the suspect period cannot be earlier than 18 months immediately prior to the judgment opening the procedure (Article 34 of the OHADA Uniform Act organizing collective proceedings for wiping off debts). Security may only be set aside if it has been granted during the suspect period or once formal insolvency proceedings have been commenced. Security cannot be set aside where it has been granted before the suspect period.
- 5_ **Merger Control** All documents relating to a proposed merger, including a statement filed by each company confirming that all acts done in connection with such merger have been conducted in accordance with Article 198 of the OHADA Uniformed Act on Commercial Companies, must be filed at the Commercial Court. In order to comply with Guinea merger law there must also be an announcement in the local gazette of the merger one month before the date of the first general meeting called to approve such merger (Article 194 of the OHADA Uniformed Act on Commercial Companies).
- 6_ **Foreign Investment Approval** There are no restrictions governing foreign investment in Guinea (Article 2 of the Investment Code).
- 7_ **Employee Rights** If there is a change in the company's status by reason of sale, merger, or other, all employment contracts in progress at the date of the transfer subsist between the transferee and company's personnel (Article 160.3 of the Labour Code).

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Guinea Bissau

- 1_ **Withholding Tax** A withholding tax of 25% is applicable.
- 2_ **Financial Assistance** Guinea-Bissau (GB) companies cannot secure or guarantee bank loans to the acquiror to finance the purchase price to be paid by the acquiror.
- 3_ **Security Interests** The security interests available in GB are defective in most of the stated issues, eg most of the securities cannot cover future assets; registration procedures are not up to date; all securities are subordinated to preferential creditors, such as the GB State for the purposes of tax payments; and the commencement of a collective procedure results in the suspension of individual rights.
- 4_ **Clawback** In GB, a creditor may request the annulment or termination of certain acts or transactions which result in the debtor being unable to pay its debts when due or increase the likelihood of such inability within a six year period from the date of the relevant act or transaction. In the case of insolvency, all acts which occurred during the suspension period (which is defined as starting from the date of cessation of payments and as ending on the date of the decision to initiate insolvency proceedings) may be challenged. Considering there are no time limits for the suspension period in the case of insolvency, it will be possible to set aside security granted 10 or more years beforehand (if it was granted during the suspension period). Fraudulent security is considered null and may always be challenged (there is no time limit).
- 5_ **Merger Control** The transaction may be suspended by the WAEMU (Economic Community of West African States) Commission in the case of concerted practice, abuse of dominant position, or any other situation which violates any of the principles and rules set out in the WAEMU Treaty.
- 6_ **Foreign Investment Approval** There are generally no statutory restrictions in GB on the acquisition of shareholdings in GB companies.
- 7_ **Employee Rights** In the case of a transfer of the target company employees, it will be necessary to obtain the employees' agreement and to pay the employees all expenses which relate to the transfer. In the case of full or partial transfer of the company, an employee may choose to terminate the employment contract and be awarded relevant damages or to maintain the employment relationship.

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Honduras

- 1_ **Withholding Tax** Further to new regulations which took effect in May 2010, there is a 10% withholding tax rate on interest.
- 2_ **Clawback** The suspect period will be determined in the judgment order that declares the bankruptcy. When fraud is involved, all the acts performed by the fraudulent bankrupt company before the start of the bankruptcy are void.
- 3_ **Merger Control** If the legal thresholds are reached the relevant authority has the right to request prior verification or investigation of the intended commercial operation and clearance must be received in order for the merger/acquisition to take effect.

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Hong Kong

- 1_ **Financial Assistance** Subject to certain exceptions, companies are generally prohibited from giving financial assistance for the acquisition of their own shares. These exceptions include, among others, the payment of dividends and allotment of bonus shares.
- 2_ **Clawback** The clawback period is generally six months but is two years when an associate of the company is involved.
- 3_ **Merger Control** There is no general competition/merger law yet in force other than in relation to the telecommunications and broadcasting sectors.
- 4_ **Foreign Investment Approval** There are some restrictions on foreign ownership in relation to a few sectors such as telecommunications and broadcasting.

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Hungary

- 1_ **Financial Assistance** Under Hungarian law, there are strict financial assistance rules which do not include any whitewash provisions. The only possible solution is a downstream merger debt push-down post transaction.
- 2_ **Security Interests** It is easy and cheap to take security which can cover all the assets of the chargor. Enforcement may be time consuming.
- 3_ **Clawback** Security can be set aside if the granting of security is a pauline action. There are various types of pauline actions and these have different suspect periods. A transaction defrauding creditors can be challenged five years before the start of the insolvency, whilst a transaction at an undervalue can be challenged two years before the start of the insolvency. A preference occurs if the granting of security took place 90 days before the insolvency.
- 4_ **Merger Control** Merger filing is mandatory if relevant turnover thresholds are reached. The transaction cannot be completed prior to clearance.
- 5_ **Employee Rights** All the numerous and strict EU regulations (eg those on redundancies, transfer of undertaking, health and safety and data protection) apply and therefore an acquisition involving employees can be quite time consuming. If the relevant procedures are not followed, employees can delay or even block the transaction (if the employer failed to communicate with the employees concerning the transaction before its commencement).

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Iceland

1_ **Withholding Tax** Interest paid to a UK bank, as the beneficial owner of interest in relation to a direct loan to a subsidiary resident in Iceland, is subject to a withholding tax at the rate of 15%. However, in accordance with the double tax treaty concluded between Iceland and the UK, this rate can be reduced to 0% if the UK bank, as the beneficial owner of the interest, files an application for exemption to the Internal Revenue Directorate (*Ríkisskattstjóri*) under form RSK 5.42.

2_ **Financial Assistance** Pursuant to the Icelandic laws on limited companies, a company may not grant a loan or security in relation to the acquisition of its own shares. The articles relating to that prohibition of financial assistance could, however, be construed in a way that would make it quite easy to avoid such prohibition. It is, however, commonly agreed by practitioners that such interpretation would probably not hold before Icelandic courts, as this loophole is generally considered to be due to a misinterpretation of Directive 77/91/EEC and equivalent Danish provisions by the Icelandic legislator. On the other hand, it is a common practice to either (a) merge the purchase vehicle and the target and for the surviving entity to provide security, or (b) refinance the acquisition facility and for the target to provide security in relation to such new financing. However, such structures have not been tested before Icelandic courts so there is no certainty as to whether the structures would be allowed or as to the time that needs to elapse between the acquisition and the restructuring.

3_ **Security Interests** Although it is not possible to take security over all assets of a debtor in one instrument, it is possible to take floating charges over some assets, such as receivables and inventory. It is also possible to perfect security over almost all types of assets by way of registration although possessory charges might be preferred in some instances. Registration of security is subject to stamp duties and a low registration fee. The security is generally not subject to preferred creditors but certain assets may be subject to legal liens, eg in favour of tax authorities in relation to real estate taxes. Security interests are usually easily enforced in Iceland and, for certain types of security, the parties may agree on the enforcement mechanism in the security agreement.

4_ **Clawback** Security can be set aside in the case of insolvency. The suspect period is between six months and two years.

5_ **Merger Control** Mergers are subject to an approval from the competition authority if certain thresholds are exceeded. The Icelandic competition authority generally has to reply within 25 days from the receipt of a merger notice.

6_Foreign Investment Approval Generally there are limited restrictions on foreign investments except for certain industries such as fisheries, certain parts of the energy supply network and airlines. The Central Bank of Iceland has also issued rules restricting foreign investments, but these rules relate to foreign currency restrictions and should be temporary.

7_Employee Rights An employment agreement effective on the date of an acquisition shall remain in force and be transferred to the new entity, which has the same rights and obligations towards the employees under the corresponding employment agreement as did the previous employer. An entity taking over another company must respect the employment terms and conditions according to a collective bargaining agreement upon the same conditions as were applicable to the previous employer. It is prohibited to make an employee redundant due to a transfer both before and after such transfer, except if economic, technical or organisational reasons require such changes. Preparatory documents relating to Act no. 72 of 2002 on Employers' Substitution do not provide guidance on what could be considered sufficient reasons in this regard. As an exception to the general rule that all employment contracts are transferred, this must be interpreted with caution. Act no. 86/2009 on Employee Participation in Cross-border Mergers of Limited Liability Companies has as its objective the safeguarding of the vested rights of employees in relation to issues and decisions pertaining to the operation of a company formed from a cross-border merger. To reach these objectives, a board must be formed to ensure that employees are informed of and kept up to date on issues relating to the acquisition. There are no employee committees that can delay or block a merger.

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India

- 1_ **Withholding Tax** Where the beneficiary of the interest is a UK bank carrying on bona fide banking business, the rate of withholding tax is 10% of the gross amount of interest.
- 2_ **Financial Assistance** No public company or private company that is a subsidiary of a public company can provide financial assistance to the acquiror for the purchase of its shares. The exception to this rule is private limited companies which can provide financial assistance to finance the purchase price paid by the acquiror.
- 3_ **Security Interests** Floating charges can be created on future assets in addition to creating security over current assets. Security may be created on both moveable and immoveable assets. To perfect securities, the loan agreement needs to be properly stamped. If the security is in the nature of immoveable property, the security instrument must be registered with the Registrar of Assurances. The creation of securities over the assets of an Indian company also requires registration with the Registrar of Companies. Upon insolvency, the claims of employees, secured creditors and governmental authorities, so far as they relate to revenues and taxes, have priority over all other claims. Security over immoveable property in favour of a foreign national can be enforced only by way of a sale to resident Indians and thereafter by repatriating the sale proceeds to satisfy the payments due. Enforcement of the security by persons/entities other than Indian banks and financial institutions can only be through the intervention of the court. The court process is usually long-drawn-out and the cost of enforcing the security is also quite high.
- 4_ **Clawback** Indian company law regulates the winding up of companies. The details of antecedent transfers and the corresponding effect each would have is set out below:

Details of Transfer	Effect
A fraudulent preference of the creditors of a company if made within six months prior to the commencement of the winding up.	Invalid
Any transfer, other than a transfer made in the ordinary course of business within one year prior to the commencement of the winding up proceedings.	Void against the liquidator
Any transfer or assignment by a company of all its property to trustees for the benefit of all its creditors.	Void
Creating a floating charge on the undertaking or property of the company that is being wound up within one year prior to the commencement of the winding up proceedings (excluding instances where it can be proved that the company was solvent immediately after the creation of the charge and to the extent of any cash payment made to the company at the time of or subsequent to the creation of, and in consideration for, the charge together with interest on that amount at a prescribed rate).	Invalid

5_Merger Control While there is currently no obligation on private companies to obtain approval for any merger, the Competition Act, 2002 has introduced certain provisions regulating merger control (which are not yet in effect). It is, however, expected that such provisions will be brought into effect shortly. Under the new regime, if a merger is proposed, then intimation of the merger should be made to the Competition Commission of India (CCI) prior to the actual merger. The CCI has the power to enquire into such merger to see if it is likely to cause an appreciable adverse effect on competition in India. There is a 210-day waiting period within which the CCI may pass orders (approving, disapproving or modifying the merger), failing which the merger can be brought into effect.

6_Foreign Investment Approval Foreign investments in Indian companies can be classified into three categories: (a) freely permissible, (b) permissible subject to certain conditions and approvals, and (c) prohibited. Investments in most sectors are freely permissible without any limit on the foreign shareholding. In some specific sectors, foreign investments are subject to certain conditions and require the prior approval of governmental authorities. The maximum percentage of foreign investments is also regulated for certain sectors. Indian companies engaged in activities like chit funds, lotteries, betting and gambling, nuclear power generation, retail trade (except for single brand retailing), real estate (excluding real estate development) etc. cannot have foreign investments in any form.

7_Employee Rights Employment regulations dealing with the transfer of the ownership or management of an undertaking exist in India. However, in relation to private enterprises, they do not expressly cover acquisitions structured as share sales/purchases or impose a statutory obligation on the employer to seek employee consent before such transfer. So long as employees of the target company who have completed a minimum one year of service are offered the same or better terms of employment by the acquiring employer and the duration of their employment under the target company is recognised, no separate compensation need be paid to them. If these conditions are not satisfied, the target entity would need to compensate these employees under the fiction that the target entity has retrenched. Such a transfer may, however, trigger consultations with employees (especially where the work force is unionised) who may seek to challenge the transfer in a court of law and potentially delay the transaction. In the case of mergers structured through the court approval process, employees/unions normally have the opportunity to air their concerns regarding the merger before the court.

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Indonesia

1_Withholding Tax An Indonesian borrower will be required by the laws of the Republic of Indonesia to pay a withholding tax up to 20% for any payment of interest and other payments of similar nature to the offshore lenders, subject to the provisions of any applicable tax treaty. The withholding tax on interest payable under the current tax treaty can be reduced up to 10%.

2_Financial Assistance Indonesian law does not recognise the concept of financial assistance as such, however Law No. 40 of 2007 on the Limited Liability Companies (the Company Law) requires a company to always act in its own interest. Consequently, a target company guaranteeing or granting security interest over its assets (the Transaction) in favour of any third parties (lenders) for a loan that is used to acquire its shares, must establish that it derives corporate benefit from the Transaction. Failing to establish such corporate benefit will risk the Transaction to be challenged by an interested party such as a shareholder or a creditor.

Under Indonesian law any action taken by a debtor may be nullified if (i) such action was not required by law or was in pursuant to the terms of a bona fide agreement or unobligatory action; (ii) the action prejudiced the interest of (other) creditors; and (iii) the debtor and the party which benefited from the action or the counterparty knew or should have known that the action would prejudice the creditors.

To mitigate this risk it is common for the lenders to require the target company to provide corporate resolutions of shareholders, board of directors and board of commissioners confirming that there is a corporate benefit.

3_Security Interests Indonesian law does not acknowledge universal charge. Each security interest securing repayment of existing debts (in foreign or domestic currency) must specifically identify the assets that will be subject to that security interest and the same should be documented in a security document. The types of security interest available under Indonesian law are (i) mortgage over land and building; (ii) hypothec over certain type of vessels; (iii) fiducia security over moveable assets; and (iv) pledge. For example, in the case of mortgage and fiducia security the creation of the security interest must be done by way of signing a deed drawn by a public notary and registered with the relevant authorities. The registration process is relatively easy but expensive for a land mortgage. Secured creditors will have a preferred position vis-à-vis other creditors over the collaterals except for preference claims stated under the act, such as enforcement costs. Enforcement of an Indonesian security document is not an easy process. The general requirement to enforce an Indonesian security interest is through a public auction but under certain other requirements it can be enforced through a private sale. In case the security provider is declared to be bankrupt, enforcement of the security interest shall be subject to a stay for a period of 90 days from the date of such declaration of bankruptcy.

4_ **Clawback** Law No. 37 of 2004 on Bankruptcy and Suspension of Payment (the Bankruptcy Law) recognizes the concept of fraudulent conveyance under which a transaction or an action (eg payment of debts which were not due, the granting of guarantee or security interest over the company's assets) performed prior to the declaration of bankruptcy may be nullified or set aside, if the said transaction or action was performed within a period of one year prior to the declaration of bankruptcy and the transaction or action meets other such criteria as extensively prescribed in the Bankruptcy Law.

5_ **Merger Control** Until recently, Indonesia only had in place a pre-notification with respect to a proposed merger, acquisition or amalgamation with certain criterion. The notification was expected to serve as an "approval" from the KPPU for any merger and acquisition transaction.

However, Indonesia has recently introduced a post merger mandatory filing requirement.

6_ **Foreign Investment Approval** The Indonesian investment regime has relatively relaxed foreign capital participation except in certain industries. The Investment Coordinating Board (**BKPM**), an Indonesian agency overseeing the investments, has the authority to approve the investments in areas where foreign investments are allowed. The Indonesian government recently amended the negative list index by issuing the Presidential Regulation No. 36 of 2010 (**DNI**). DNI identifies the permissible limit of foreign participation in various industries that: (i) allows 100% participation; (ii) requires local participation (joint venture); or (iii) is completely closed for foreign participants.

7_ **Employee Rights** Law No. 13 of 2003 on Labour entitles employees of a target company to terminate their employment and claim for compensation on a change of control basis (akin to redundancy). Employees' rights of first refusal or pre-emptive rights on transfer of shares are also commonly found in Articles of Association of a target company.

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Iran

- 1_ **Financial Assistance** There is no rule that financial assistance can be provided so it would probably fall in both yellow and blue categories. However, if the target so wishes, there is no restriction on guaranteeing such loans.
- 2_ **Security Interests** Security may only cover present assets. Security over real assets needs to be registered. However, such requirement does not exist for moveable properties though the creditor may attempt to register such security (over moveable assets). As to enforcement of the security, if the creditor, through a power of attorney, has the power to sell the secured property, security can be enforced easily; otherwise a court judgment must be obtained. Having no registry for pledges of moveable property may also make the enforcement difficult.
- 3_ **Clawback** There is no law or regulation on this matter and so it is subject to the parties' agreement.
- 4_ **Merger Control** The Law Amending certain Provisions of the Fourth Development Plan (the new privatisation law) contains general provisions on competition issues especially mergers. Article 47 of this law prohibits any merger that leads to a distortion of competition, an unusual increase of prices or severe market centralisation, or creates controlling enterprises within the market. Under Article 61(7) of the above law, the Competition Council has the authority to suspend or annul any such prohibited merger or force the merged company to be split up.
- 5_ **Foreign Investment Approval** There is no limitation on foreign investors taking over a private Iranian company. Pursuant to the Law Prohibiting the Ownership of Land by Foreigners, all foreign persons (real or juridical) are prohibited from owning land in Iran. Under Article 1 of the Law on Company Registration, any company registered in Iran and having its headquarters in Iran will be regarded as Iranian. Therefore, it can be construed that any acquisition would not adversely affect the ownership of land, so long as it is to the name of the company itself and not foreign shareholders. In other words, the land can be owned by an Iranian company itself but not by its own foreign shareholders. Such restriction exists only in relation to land and not other properties such as moveable assets.
- 5_ **Employee Rights** While there are no laws dealing with employee consent to mergers, there are very strict labour laws in place in Iran. For the most part, permanent employees may not be made redundant unless with their consent. As far as the laws on mergers are concerned, they have been classified as green though strict labour laws should be considered.

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Iraq

1_ **Withholding Tax** There is a withholding tax of 3% in relation to companies. If a company deals with the government, the tax gets deducted automatically; if it deals with a private Iraqi company (**PIC**), then it is the PIC's duty to forward the deducted tax to the Iraqi government.

3_ **Security Interests** Security is available over all categories of assets, but the security is subordinated to preferential creditors in the case of taxes or wages, and a freeze applies in the case of an insolvency.

4_ **Clawback** A security can be set aside if established after the entity stops making payments on its loans and before the actual declaration of insolvency.

5_ **Merger Control** The Competition Law No. 14 (2010) (the "Law"), does not impose a filing requirement for mergers and acquisitions that might have a dominating effect on the market share or the economic activity, rather it outright prohibits them if they result in the control of 50% or more of the production or sale of a products or service. There is no mechanism in the Law on how the Competition Board (the "Board"), which is established under the Law, would enforce that requirement. The Law, however, provides the Board with the authority to act on tips and information and it allows rewards for whistle blowers.

In addition, the Board does not have the power to dissolve a violating merger but the Law imposes imprisonment sanctions, and gives the entities that would suffer damages from the merger the right to file a claim before a court. This is a notable exception to the ongoing general principle under Iraqi law that only actual damages can be claimed. Thus, while there is no *written* filing requirement, the above effectively creates a *de facto* filing requirement to assure that any mergers or acquisitions do not cause the Board to react unfavourably.

While there is no filing requirement for mergers, there is one for a commercial agreement that would result in restraints on prices, in restricting the sale of goods, the divvying up of geographical distribution zones within Iraq, or the exchange of cost and price data between counterparties. The Board has the authority to refuse the registration of any such agreement, and can impose unspecific sanctions for failure to register. The Law refers to a court that the Board can refer such agreements to, but it does not mention the purpose of the referral, or what type of court it means.

6_ **Foreign Investment Approval** Generally all sectors are open and foreign investment is welcome.

7_ **Employee Rights** The laying-off of employees will usually result in financial compensation being paid to them. The amount will depend on their tenure and whether they are under a contract or an open-ended arrangement, but the process is not complicated and the calculation of the compensation amount is straightforward and set out in Law. The Labour Law requires the notification of the Minister of Labour before the implementation of any reduction of the work force that results from changed corporate or working conditions.

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Ireland

- 1_ **Withholding Tax** None – this assumes that it is a UK resident bank as opposed to a UK branch of a bank resident in some other country, in which event different considerations may apply.
- 2_ **Financial Assistance** This is prohibited for a public limited company, however, in the case of a private limited company, there is a validation procedure which can be exercised readily by a majority of the directors of the relevant company; an audit report is not required for this procedure.
- 3_ **Security Interests** It is straightforward to take security over all the assets although a security which is not fixed, such as floating, will rank in priority behind preferential creditors, namely Revenue Commissioners, local authority fees and certain rights of employees.
- 4_ **Clawback** The position is the same as in England, that is between six months and two years (for connected parties) on the grounds of fraudulent preference – there is also a separate clawback period for floating charges (which again amounts to between six months and two years, as the case may be, save in respect of cash advanced at the time of and in consideration for the charge plus interest up to a rate of 5% per annum).
- 5_ **Merger Control** Merger control does apply and permission must be obtained, which is dependent on the following three thresholds being satisfied:
- (a) the purchaser and target have a worldwide turnover of not less than EUR40 million;
 - (b) both parties carry on business in some part of the island of Ireland; and
 - (c) one of the parties, either the purchaser or the target, has a turnover in Ireland of not less than EUR40 million.
- 6_ **Foreign Investment Approval** There is control in respect of the media and aviation industries but these restrictions do not apply to other EU entities.
- 7_ **Employee Rights** The employee rights are broadly similar to those in England as Ireland is subject to EU regulations in this regard.

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Isle of Man

- 1_ **Withholding Tax** Dividends and loan interest paid by Isle of Man companies to non-resident companies or non-resident individuals will not suffer withholding tax. Rental income from Manx land and property will be subject to a withholding tax of 20% if it is paid to a non-resident individual or 10% if paid to a non-resident company. Other Manx source income paid to a non-resident individual will also be subject to 20% withholding tax.
- 2_ **Financial Assistance** Financial assistance issues have not been a problem in relation to private companies since the introduction of the Companies Act 2006 and the Companies (Amendment) Act 2009.
- 3_ **Security Interests** It is relatively easy and cheap to take security which can cover all the assets of the chargor.
- 4_ **Clawback** There are a few instances when a security may be set aside. The Fraudulent Assignments Act 1736 provides that “all fraudulent Assignments or Transfers of the Debtor’s Goods or Effects shall be void and of no effect against his just creditors, any Custom or Practice to the contrary notwithstanding”; this provision may be used in relation to transactions at an undervalue and transactions designed to defeat creditors interests. There is no time limit for challenges relating to transactions designed to defeat creditors interests. Based on English case law (which is persuasive in the Isle of Man), it is likely that a limitation period of six years applies so far as the provision relates to a sum recoverable by virtue of any enactment or 21 years so far as the claim is upon a specialty. The provision is the Isle of Man law equivalent in substance to section 423 of the Insolvency Act 1986 (of Parliament). A fraudulent preference occurs if the granting of security took place within four months of the insolvency winding up of the company, and generally an invalid floating charge occurs within six months before the onset of the insolvency winding up of the company.
- 5_ **Merger Control** There is no merger control regime in place.
- 6_ **Foreign Investment Approval** There are no foreign approval restrictions in the Isle of Man.
- 7_ **Employee Rights** In general, save for certain EU Regulations in relation to data protection, the EU Regulations do not apply in the Isle of Man (EU regulations in relation to redundancies also do not apply and the Isle of Man does not have transfer of undertakings regulations). The Isle of Man has its own regulations in relation to health and safety.

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Israel

- 1_ **Withholding Tax** The UK-Israel tax treaty provides for a 15% withholding on interest payments, and it is rare for the Israeli tax authorities to grant relief.
- 2_ **Financial Assistance** Since adoption of the new Companies Law, which came into effect early in 2000, there is no longer any prohibition on granting financial assistance per se. At the same time, however, a company cannot repurchase its own shares or purchase the shares of a parent company – or provide financial assistance in the purchase of such shares – unless it is allowed to pay dividends (that is, these share purchases are treated as dividends under the Companies Law). Very broadly speaking, a company is allowed to pay dividends only if it has retained earnings to support the dividends, or has made a profit in the preceding eight fiscal quarters, as shown by audited or reviewed financial statements, and also meets a solvency test.
- 3_ **Security Interests** In terms of the ease of imposition and scope of the security, the answer would be blue or green. Nevertheless, taxes and wages always have priority, and enforcement is generally only through the court system (unless the creditor is an Israeli bank).
- 4_ **Clawback** Security that has not been obtained by fraud can nevertheless be set aside automatically if it was obtained within three months prior to insolvency, and if obtained within two years prior to insolvency if there is evidence that at the time the creditor knew of the impending insolvency.
- 5_ **Merger Control** There is an obligation to file with the antitrust authorities, which can block a deal that they deem to be anti-competitive.
- 6_ **Foreign Investment Approval** In general, there is no restriction on foreign investments in Israeli companies, except in the case of (a) investments by nationals of a country that is in a state of war with Israel, and (b) investments by foreigners in certain defence or regulated industries, where there are foreign investment limits and regulatory approval may be required.
- 7_ **Employee Rights** Employee approval is generally not required for an acquisition, but the acquiring entity may be required to make severance payments to employees depending on the structure of the transaction and the conduct of the business following the acquisition.

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Italy

- 1_ **Financial Assistance** The target company may secure or guarantee a bank loan to the acquiror to finance the purchase price paid by the acquiror only in compliance with a cumbersome procedure.
- 2_ **Security Interests** The security interest has the following characteristics: it can only cover present assets; its perfection it is not easy because, depending on the nature of the security (eg for a mortgage), the involvement of a public notary is necessary; and it is subordinated to certain creditors or, for example in relation to taxes and wages, and so its enforcement requires that a strict public procedure be followed.
- 3_ **Clawback** Unless the security is given fraudulently, the suspect period is between six months and one year. This period covers the year preceding the declaration of bankruptcy by the Court.
- 4_ **Merger Control** Filings are compulsory in Italy when turnover thresholds are reached and assuming that there is no EU filing. A transaction cannot complete before clearance is obtained from the competition authority.
- 5_ **Foreign Investment Approval** As a general principle, investments in Italy by foreign companies are unrestricted. Limitations may apply only to non-EU based companies, in compliance with the principles of Community treaties on the free circulation of capital and freedom of establishment. With reference to non-EU based companies, limits may apply in connection with the so-called “principle of reciprocity”, according to which foreign persons (inclusive of foreign companies) are allowed to enjoy civil rights attributed to Italian citizens (including Italian companies) only if a reciprocity test is met. On the other hand, the existence of certain international agreements with the countries of origin of the foreign persons (as special provisions of Italian law) may exclude the possible application of the general principle of reciprocity. Finally, please note that additional limits may arise in connection with companies directly or indirectly controlled by the State or public entities or carrying out public services (so-called golden shares). However, this kind of provision has been challenged by the European Court.
- 6_ **Employee Rights** Trade unions must be informed in advance that certain transactions will be carried out. However, they cannot block such transactions.

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Ivory Coast

- 1_ **Withholding Tax** There is no concept of withholding tax in the Ivory Coast.
- 2_ **Financial Assistance** The subscription or purchase by a company of its own shares, either directly or by a person acting in his own name but on behalf of the company, is prohibited (Article 639 of the OHADA Uniformed Act on Companies). Similarly, a company cannot advance funds, grant loans or grant security for the subscription or purchase of own shares by a third party.
- 3_ **Security Interests** Security may be perfected over present and future assets. All forms of security interest (with the exception of moveable securities) require registration in order to be valid forms of security. Preferential creditors include funeral expenses; the most recent medical costs of the debtor; wages and costs due to owners of literary works (Articles 68-69 of the OHADA Uniformed Act on Insolvency).
- 4_ **Clawback** The suspect period typically starts from the date of cessation of payment and ends at the date of the decision initiating proceedings. The beginning of the suspect period cannot be earlier than 18 months immediately prior to the judgment opening the procedure (Article 34 of the OHADA Uniform Act organizing collective proceedings for wiping off debts). Security may only be set aside if it has been granted during the suspect period or once formal insolvency proceedings have been commenced. Security cannot be set aside where it has been granted before the suspect period.
- 5_ **Merger Control** A merger cannot be suspended under Ivorian law unless it is deemed to be anti-competitive and/or where it is deemed to constitute a monopoly between the intended merger companies and the rest of the market. A commission or body set up to ensure fair competition has the right to review any proposed merger where it feels the effect of such merger may cause an unfair concentration in the market (Article 34 of the Law on Competition).
- 6_ **Foreign Investment Approval** There are no restrictions governing the purchase by a foreign company of an Ivorian-registered company (Article 22 of the Investment Code).
- 7_ **Employee Rights** Employees have no automatic right to compensation or otherwise from a new employer following a merger and must conform to the terms of the merger (Article 11 of the Employment Code 1995).

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Japan

- 1_ **Withholding Tax** Great Britain-Japan Treaty exempts the profits of UK banks from payment of a withholding tax.
- 2_ **Financial Assistance** It could be a breach of directors' fiduciary duty if the target company secures or guarantees a bank loan to the acquiror to finance the purchase price.
- 3_ **Security Interests** Revolving guarantees and fixed mortgages, both of which can cover the future debt up to a certain amount agreed beforehand, are available under the Civil Code. A floating lien against a set of assets has also been approved by a decision of the courts and the security can be perfected by registration.
- 4_ **Clawback** The right of avoidance, which can set aside the security given by the debtor within one year after the debtor suspends payments, can be exercised by the creditors.
- 5_ **Merger Control** If the following three conditions are met, a plan of the proposed share acquisition must be filed with the JFTC 30 days prior to the date of the acquisition: (a) the total amount of sales in Japan of the corporate group to which the acquiror belongs exceeds ¥20 billion; (b) the total amount of sales in Japan of the target and its subsidiaries exceeds ¥5 million; and (c) the percentage of the total number of voting rights of the target to be held by the corporate group to which the acquiror belongs will exceed 20% or 50% after the acquisition. In addition, any acquisition deemed to hinder fair competition in Japan is prohibited.
- 6_ **Foreign Investment Approval** The Foreign Exchange and Foreign Trade Act requires a foreign acquiror to file a notification post-acquisition if the acquiror holds 10% or more shares of the target after the acquisition (an exemption applies if the target is a non-listed company and a non-resident company is acquired). However, if the target's business is in a sensitive sector (such as those relating to national security), notification must be filed prior to the acquisition in the case of acquirors intending to purchase any amount of a non-listed company's shares and also acquirors intending to hold 10% or more of a listed company's shares after the intended acquisition.
- 7_ **Employee Rights** There are no work councils in Japan, but there are trade unions. Work rules and internal policies, which are usually quite burdensome, need to be complied with.

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Jersey

- 1_ **Withholding Tax** In these circumstances there is no general withholding tax regime.
- 2_ **Financial Assistance** The prohibition on the giving of financial assistance has been removed from Jersey company law, however it may still be necessary to consider whether financial assistance has been given historically and whether there are any corporate benefit issues if such security or guarantees are given.
- 3_ **Security Interests** It is not possible under Jersey law to create floating charges over Jersey situate assets, however Jersey companies can give foreign law floating charges over assets situated outside Jersey. Fixed charges over Jersey situated property (or obligations to create fixed charges at some future date) will be ineffective unless constituted and created in accordance with Jersey law. Where third party security is being created, it is common for an obligor to enter into a covenant to pay or a guarantee to create a primary obligation with a secured party. There is no currently requirement for security interests to be registered in Jersey.
- A secured party has limited rights in respect of the collateral forming the subject of the security agreement, and where there is an event of default (as defined in the security agreement), may only exercise a power of sale over the collateral and apply the sale proceeds in a specified manner. Before the power of sale or any provision of a security agreement can be exercised, the secured party must serve notice on the obligor specifying the event of default in question. Where such default is capable of remedy the secured party must also require remedy and allow the obligor fourteen days in order to do remedy the default, before exercising the power of sale. There are no statutory priority creditors who rank ahead of fully secured creditors. Depending on the type of security taken, the relevant property may vest with the Viscount (a court official). In such circumstances, a secured party would need to involve the Viscount in the enforcement process. However, in the event of a bankruptcy or winding up, there will be no loss of security. The current security legislation is currently being reviewed and amendments are expected later in 2010.
- 4_ **Clawback** A transaction at an undervalue entered into up to 5 years before an insolvency can be challenged and the relevant time period for a preference is 12 months preceding the insolvency. Where a transaction at an undervalue or a preference involves a “connected” or “associated” person, harsher rules will apply. Obligations created by extortionate credit transactions can also be set aside where the transaction was entered into up to 3 years before the commencement of a creditor’s winding up.
- 5_ **Merger Control**) prior written approval is required where: (i) the entities coming together create an entity with a 25% or more share of supply or purchase (or where a share of supply or purchase of 25% or more is increased); or (ii) where one party has a share of supply or purchase of 25% or more and the other has a “vertical” relationship with that party; or (iii) where one of them already has an existing share of supply or purchase of 40% or more. The parties may exchange contracts without consent, however if any of the thresholds are breached by the transaction then approval must be obtained before completion. There are also restrictions on acquisitions of certain percentage ownership (generally 10%+) in regulated entities in Jersey without prior approval: essentially those conducting financial services business or deposit-taking business.

6_Foreign Investment Approval There are generally no restrictions on overseas investment into Jersey, however there are general restrictions on any person (overseas or otherwise) acquiring a regulated business (see Jersey (5) above) without consent and also restrictions on acquiring other types of business, including the acquisition of real estate.

7_Employee Rights Companies in Jersey which carry on business by employing staff and occupying floor space must hold a licence which restricts the number and type of staff. There are no employee regulations requiring employees of the target to transfer to the purchasing company, however Jersey employment law does have provisions relating to unfair dismissal and redundancy which may need to be considered.

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Jordan

- 1_ **Withholding Tax** A 7% withholding tax applies to income generated in Jordan, but dividends and capital gains are not taxed.
- 2_ **Financial Assistance** Financial assistance is not prohibited in Jordan.
- 3_ **Security Interests** Security can be taken over all categories of assets, but there is subordination of the security to preferential creditors in the case of taxes and wages, and a freeze applies in the case of an insolvency.
- 4_ **Clawback** A security can be set aside if established within 20 days of a court's declaration of insolvency.
- 5_ **Merger Control** A merger requires approval of an extraordinary general assembly, and the Minister of Industry and Trade only if the merger relates to or creates a publicly held company (ie there is no restriction in relation to private companies).
- 6_ **Foreign Investment Approval** Generally all sectors are open and foreign investment is welcome. Some sectors restrict the percentage ownership by a foreign investor or are closed to foreign investors altogether.
- 7_ **Employee Rights** The laying-off of employees will usually result in financial compensation being paid to them, depending on their tenure and whether they are under a contract or open-ended arrangement, but the process is not complicated and the calculation of the compensation amount is straightforward and set out in law.

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Kazakhstan

- 1_ **Withholding Tax** Profit payable to non-resident legal entities by a resident legal entity (including a subsidiary/branch/representative office of a non-resident company) is subject to a 10% withholding tax. Exceptions are provided for profit payable to Kazakh banks, profit for securities, and others.
- 2_ **Financial Assistance** It is quite easy for a target company to secure or guarantee a bank loan to the purchaser to finance the purchase price to be paid by the purchaser.
- 3_ **Security Interests** Security for bank loans can cover all present and future assets. There is very wide security with minimum restrictions but universal charges do not exist. It is easy to register security and the relevant registries are centralised. Enforcement outside court is usually possible. However, there is a freeze on enforcement when the debtor is insolvent and some preferential creditors would rank ahead of the secured creditors in an insolvency event.
- 4_ **Clawback** It is possible to set aside security. There is a suspect period of three years.
- 5_ **Merger Control** There are certain filing requirements set out by the legislation of Kazakhstan for mergers and acquisitions, which is dependent on the main activity of the target company and the details of the transaction. Antitrust filing is involved if the total value of the assets of the purchaser and the target company exceeds the established threshold; filing with the mineral resources state authority if the target company is a subsoil user; and refusal of the state from exercising its pre-emption right for the acquisition of the target company if the target company is a subsoil user, etc. Completion cannot take place before clearance has been received.
- 6_ **Foreign Investment Approval** Normally, there are no such limitations. Certain limitations do, nevertheless, apply to financial organisations, insurance companies and telecommunication companies.
- 7_ **Employee Rights** Employees of the target company do not have their employment contract terminated as a result of a merger or acquisition. However, there are usually no employee consultation requirements for the merger or acquisition to take place. There are some anti-discrimination and data protection laws in Kazakhstan.

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Kenya

- 1_ **Withholding Tax** The Kenyan withholding tax rate on loan interest paid by a resident person to a non-resident person is 20%, which is reduced under the Kenya – UK Double Tax Treaty to 15%.
- 2_ **Financial Assistance** Pursuant to section 56 of the Companies Act (Chapter 486, Laws of Kenya), financial assistance is prohibited save in very limited circumstances.
- 3_ **Security Interests** The inefficiencies of the various registries, particularly land registries, may prolong the process of perfecting securities.
- 4_ **Clawback** Securities can be set aside for various reasons. A security created within six months before the commencement of a winding up is deemed to be a fraudulent preference and therefore void. A floating charge created within 12 months of the commencement of winding up is invalid unless the company can show that it was solvent at the time of its creation.
- 5_ **Merger Control** If the merging entities conduct similar business, then the parties would have to obtain authorisation from the responsible Minister pursuant to the Restrictive Trade Practice, Monopolies and Price Control Act (Chapter 504, Laws of Kenya). There is no deadline for filing but there is an obligation to file and authorisation must be obtained before completion can take place.
- 6_ **Foreign Investment Approval** If the company holds agricultural property, then foreign investment is completely prohibited. Foreign investment in certain sectors, such as banking, insurance and telecommunications, is restricted.

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Kosovo

- 1_ **Withholding Tax** According to law No. 03/L-162 (article 30), when a subsidiary in Kosovo pays interest to a non-residential bank, it should deduct from the payment withholding tax at a rate of 10%.
- 2_ **Financial Assistance** The law does not prohibit the financial assistance of the target company consisting of the target company securing or guaranteeing a bank loan to the acquiror to finance the purchase price paid by the acquiror. In any case, validity of such a transaction will not be tested at court if challenged by concerned parties such as other creditors of the target company, other shareholders of the target company, insolvency administrators, etc.
- 3_ **Security Interests** The law provides for a mortgage over immovable property as well as a possessory and non-possessory pledge over moveable assets, including tangible and intangible. Both the mortgage and pledge are established by written contract (for the mortgage only, in the form of a notary deed) and are enforceable only after perfection (ie registration with the respective registry). Enforcement needs to be authorised by the court. Both mortgage and pledge can be taken over either in respect of present or future assets.
- 4_ **Clawback** Pursuant to art. 50 of Insolvency Law (law no. 2004/4), the insolvency administrator may challenge any act performed by the debtor up to one year prior to the insolvency, on the ground that such act damaged the company and/or the creditors.
- 5_ **Merger Control** The law is silent.
- 6_ **Foreign Investment Approval** The law allows the purchase of domestic companies by foreign investors without restriction.
- 7_ **Employee Rights** The law is silent.

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Kuwait

- 1_ **Withholding Tax** There is no withholding tax in Kuwait.
- 2_ **Financial Assistance** Issues arise in the instance where financial assistance is to be provided to the acquiror of the target's shares in that there would be no corporate benefit to the target. Engaging in such activity would expose the target to an attack by its shareholders and/or the target's creditors.
- 3_ **Security Interests** It is not easy to take security which can cover all the assets of the chargor as perfection requirements under Kuwaiti law are quite strict and may also be time-consuming. In addition, strict requirements apply in the case of enforcement action.
- 4_ **Clawback** Security can be set aside automatically if the granting of security by the target company takes place during the suspect period (two years). A transaction defrauding creditors can always be challenged by a third party.
- 5_ **Merger Control** There would only be filing requirements if the merger results in the merged entity controlling 35% or more of a commercial sector in Kuwait. Any such merger transaction would have to be pre-approved by the Competition Protection Body. Please note, however, that the Competition Protection Body has not yet been formally established under Kuwaiti anti-trust legislation.
- 6_ **Foreign Investment Approval** Foreign ownership restrictions apply in Kuwait. Generally speaking (although there may be certain exceptions), non-GCC persons are restricted from having an ownership interest in excess of 49% in non-listed entities.
- 7_ **Employee Rights** The labour laws of Kuwait provide that, if an entity is sold or merges with another entity, the employment contracts of employees will remain valid and the rights and obligations will transfer to the new entity/employer.

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Kyrgyz Republic

- 1_Withholding Tax** Income derived from sources in the Kyrgyz Republic by a foreign organisation without a permanent establishment in the Kyrgyz Republic will be taxed at the source of payment. Interest payable to a UK bank under bank loan is taxed at the rate of 10%.
- 2_Security Interests** Security can cover all present and future assets. However, in practice, there might be a problem with enforcement of security against future assets. The Pledge Law requires that a pledge agreement contains a description of collateral sufficient for identification of that collateral. Security is easily perfected by registration with the competent public authority. State fees are charged for registration, although these are not considered expensive. Pursuant to the Insolvency Laws, claims of secured creditors have priority over claims of other creditors. Therefore, security is not subordinated to preferential creditors in the case of taxes and wages. Collateral is not included in the liquidated estate and is distributed among creditors pursuant to the ranking priorities specified by Kyrgyz Laws.
- 3_Clawback** Depending on the grounds, security can be either “null and void” or “voidable”. In the case of null and void security, the suspect period is three years. Any stakeholder may request the court to declare the invalidity of the contract. The suspect period for voidable securities is one year. A claim requesting the court to find the contract invalid may be set aside if this contract was entered into during the suspect period.
- 4_Merger Control** Pursuant to the Anti-trust Laws, any individual or legal entity (irrespective of whether the company is foreign or domestic) must obtain the consent of the anti-trust authority in order to purchase a controlling block of shares/interest in Kyrgyz companies which have a dominant position in the market. In accordance with the Banking Law, prior approval of the National Bank of the Kyrgyz Republic is required for the purchase of 10% or more of the shares of Kyrgyz banks.
- 5_Foreign Investment Approval** No foreign investment approval is required.
- 6_Employee Rights** Employees cannot block merger provided that target company has no outstanding obligations with respect to employees (such as payment of salaries, benefits etc.).

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Latvia

- 1_ **Security Interests** The only unfavourable condition is that a freeze for insolvency rescue proceedings exists. However, secured creditors have the right to request enforcement of the respective security. The secured creditors' claims are settled after all the costs of the sale (enforcement) of the security are settled, including payment of the evaluation costs and the remuneration of the administrator.
- 2_ **Clawback** Since the Latvian Civil Procedure Law allows the court to set the date of the company becoming insolvent prior to the date that the insolvency application is submitted to the court, it is not possible to draw a clear line as to when transactions can no longer be challenged, because all suspect periods are set with reference to this date. Although the Civil Procedure Law contains an assumption that the date of a company becoming insolvent is the date of submission of the insolvency application, nevertheless the court has discretion to establish an earlier date of insolvency. In practice, the establishment of such earlier date of insolvency is not unusual.
- 3_ **Merger Control** Market participants who have decided to merge must, prior to their merger, submit a full merger notification report to the Competition Council if the combined turnover of the participants in the merger for the previous financial year in the territory of Latvia exceeded 25 million Lats (about EUR35.6 million). A merger/acquisition cannot complete until clearance is received, and a failure to submit a notification report will result in the merger being declared illegal.
- 4_ **Foreign Investment Approval** If the company owns land in rural areas, then it could be the case that the foreign investor, if he is a third country national, has to request the approval of the municipality to buy the land.
- 5_ **Employee Rights** Employees or their representatives have to be informed of ongoing processes within the company. In the case of a reorganisation, a consultation process has to take place.

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Liechtenstein

1_ **Withholding Tax** None

2_ **Financial Assistance** There is no general prohibition on financial assistance but there are some other considerations (eg directors' duties).

3_ **Security Interests** Security can cover present and future assets but the debt to be secured and the assets serving as security need to be defined clearly.

4_ **Clawback** A transaction by which creditors are intentionally disadvantaged can be challenged within five years. Certain transactions (eg donations) can be challenged within one year. Transactions by a heavily indebted creditor can also be challenged within one year.

5_ **Merger Control** There are no merger control requirements.

6_ **Foreign Investment Approval** There are no foreign investment restrictions.

7_ **Employee Rights** There are almost no regulations and there are no unions/work councils who could delay an acquisition process.

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Lithuania

- 1_ **Withholding Tax** Interest receivable by foreign taxable entities registered or otherwise organised in a state of the European Economic Area, or in a state with which a treaty for the avoidance of double taxation has been concluded and applied, is not subject to taxation. In other cases, the current withholding tax of 10% will be applied.
- 2_ **Financial Assistance** Lithuanian Company Law prohibits directly or indirectly making advance payments, granting loans or providing security for third parties if such actions are aimed at creating conditions for the third parties to acquire shares in the company. Taking into account that there is no court practice confirming that financial assistance is prohibited and the fact that the above-mentioned provision prohibiting financial assistance is incorporated in the article regulating subscription for the shares, in practice many market participants used to ignore this prohibition. However, the current trend tends to be that this prohibition is being observed more strictly.
- 3_ **Security Interests** Under Lithuanian law, not all assets may be covered for security, eg a concept of floating charge is not yet recognised by Lithuanian law. However, according to the new draft law, it is proposed to introduce this. In addition to this, the initiation of bankruptcy or restructuring proceedings suspends any enforcement actions, including enforcement from the pledged assets. However, claims of secured creditors are satisfied as priority claims from income received after the sale of pledged assets. It must be taken into account that secured creditor claims are satisfied after costs related to the sale of the pledged assets as well as other bankruptcy administrator's costs are covered.
- 4_ **Clawback** A security (as any transaction) may be set aside on the basis of pauline action (*actio pauliana*). Such action may be filed within one year from the moment the creditor becomes aware of or had to become aware of the conclusion of the transaction infringing creditors' rights by the debtor. Therefore, theoretically, any security (irrespective how old it is) may be set aside, depending on when the creditor becomes or had to become aware of its existence. In bankruptcy, the administrator must review the company's transactions concluded within three years prior to the institution of bankruptcy proceedings. If it is established that bankruptcy was intentional, the bankruptcy administrator reviews transactions concluded within five years prior to the institution of bankruptcy proceedings. It is presumed that the bankruptcy administrator becomes aware of such transactions from the moment documents evidencing such transactions are transferred to him. Therefore, in practice, it is not likely that security could be set aside if more than five years have passed from its establishment.
- 5_ **Merger Control** Market participants must file notification to the competition authority and obtain a permit for the merger if the total common income of the companies participating in the merger within the last financial year exceeds LTL 30 million (about EUR8.69 million) and the total income of each of at least two companies participating in the merger exceeds LTL 5 million (about EUR1.45 million) within the last financial year. A company performing a merger without the required permit may be committed to perform actions necessary to restore the status before the merger.

6_Foreign Investment Approval Lithuanian law does not establish any limitations for foreign investments except for a limitation (applicable until 2011) on acquiring agricultural land plots as well as a limitation on foreign investments into state security and protection activities (according to the Lithuanian Law on Investments, only undertakings satisfying the criteria of the European and Transatlantic integration chosen by Lithuania may invest in state security and protection activities; however, such investments must be approved by the State protection board).

7_Employee Rights According to the Lithuanian Labour Code, a merger of companies, acquisition or change of control may not be a legitimate ground to terminate an employment contract. Therefore, in the event of a merger/acquisition/change of control, employees of a target company are either transferred to the purchasing company (in case of the merger) or stay in the target company (in case of change of control). However, according to the Lithuanian Labour Code, the employer must inform the employees about the planned merger/acquisition/change of control or other essential changes in the company and, if representatives of employees are elected, the employer must consult with the representatives of employees about the planned changes in the company.

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Luxembourg

- 1_ **Financial Assistance** There is no statutory prohibition in relation to private limited liability companies (S. a r.l.). In relation to public liability companies (S.A.), there is a heavy whitewash procedure to get around the prohibition.
- 2_ **Merger Control** There is a very limited number of foreign investment restrictions.
- 3_ **Employee Rights** The Labour Code specifies that the management of the company must inform and consult staff representatives on decisions which can entail major modifications of the work plan or of employment contracts, including decisions with regard to provisions on collective dismissals and the maintenance of employees' rights in case of transfer of undertaking.

The management of the company must inform and consult the works council on every economic or financial decision which may have a determined influence on the structure of the company or on the level of workforce.

If, however, the information and consultation impedes the management of the undertaking or part of the undertaking or if it impairs the implementation of a planned project, the management must give the necessary information within three days.

Most notably, within the framework of transfers of undertaking, the Labour Code stipulates that the transferor and the transferee are required to inform the legal representatives of the employees concerned by the transfer of (a) the date, (b) the reasons, (c) the legal, economic and social impact of the said transfer, and (d) the planned measures for employees concerned by the transfer. Transferor and transferee must proceed to consultation with regard to the aforementioned measures, so that an agreement can be reached. The transferee must transmit this information on the transfer before the transfer has a direct impact on the working conditions of the employees concerned.

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Madagascar

- 1_ **Withholding Tax** There is no withholding tax in the case of a loan by a UK bank to a foreign subsidiary in Madagascar which brings the profit into account for UK tax (General Tax Code 2009). Capital and interests are solely refundable. The existing withholding tax is called the Tax on Salary Incomes or Impôt sur les Revenus des Salaires et Assimilés and is not applicable.
- 2_ **Financial Assistance** Financial assistance is only permitted in relation to a société anonyme where the Board of Directors has given its prior consent to such assistance.
- 3_ **Security Interests** Malagasy law offers a wide range of securities. Security can cover present and future assets (Article 58 of the Law relating to Securities). The majority of forms of security interest need to be registered at the Register of Commerce where registration fees are high and uncapped making multiple registrations particularly punitive. Although the choice rests with the parties it is advisable to execute security documentation before a notary, further adding to the exorbitant cost of registering security. Preferential creditors include legal costs; funeral costs; wages and tax.
- 4_ **Clawback** Security cannot be set aside unless it has been established during the suspect period (which typically lasts 18 months) and which, in the case of an insolvency, commences from the period of cessation of payments and lasts up to the court's decision ordering either a reorganisation procedure or a winding-up.
- 5_ **Merger Control** A merger may be suspended. Creditors of the target company may challenge the proposed merger before the President of the Commercial Court (Art 700 Law 2003 on Companies) within 30 days from the announcement of the merger. Any legal challenge would only bring relief to the creditors if they were not refunded the amount due to them. Claimants may start proceedings against a proposed merger before the court within six months after the registration of the merger with the Register of Commerce (Article 267 Law 2003 on Companies).
- 6_ **Foreign Investment Approval** There are no restrictions preventing foreign companies from purchasing a Madagascar-incorporated company.
- 7_ **Employee Rights** In the case of a takeover, current relationships between the new employer and existing employees shall continue unless the employees' activity has been completely modified at the time of the takeover (Article 12 of the Employment Code 2004). Employees are entitled to preserve their seniority within the company and shall abide with the new employer's rules. They cannot oppose the takeover.

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Malaysia

- 1_ **Withholding Tax** Where any person is liable to pay interest derived from Malaysia to a non-resident of Malaysia, other than interest attributable to a business carried on by the non-resident in Malaysia, he shall, upon paying or crediting the interest, deduct a withholding tax. The withholding tax rate for interest income of a non-resident is 15% of the gross amount, but this withholding tax rate may be reduced by tax treaties between Malaysia and the relevant country of residence of the non-resident recipient, which provides a lower withholding tax rate for interest payment. There is a double tax treaty between Malaysia and the UK and therefore the withholding tax rate can be reduced to 10%.
- 2_ **Financial Assistance** The statutory rule in section 67 of the Companies Act 1965 imposes a general prohibition against a company from giving, whether directly or indirectly and whether by means of a loan, guarantee or the provision of security or otherwise, any financial assistance for the purpose of or in connection with a purchase of, or subscription for, shares in the company or its holding company, or in any way purchasing, dealing in or lending money on its own shares. Section 67 provides for three exceptions: (a) lending of money by the company in the ordinary course of its business where the lending of money is part of the ordinary business of a company; (b) loans pursuant to employees' share schemes; and (c) financial assistance to employees (save for directors) to enable them to purchase fully-paid shares in the company or its holding company. Malaysia does not allow for whitewash procedures in relation to financial assistance. Section 67(3) provides for criminal consequences against the officers of the company who committed the breach. The penalty is imprisonment for five years or a fine of MYR 100,000 or both.
- 3_ **Security Interests** It is easy and cheap to take security which can cover all the assets of the chargor.
- 4_ **Clawback** Security can be set aside if it constitutes an undue preference which took place within the six months preceding the commencement of the winding up of the company. A floating charge over a company's property created within six months of the commencement of the winding up is invalid, unless the company, immediately after the creation of the charge, was solvent.
- 5_ **Merger Control** There is currently no obligation to file. Currently, Malaysia does not have merger control or antitrust legislation where filings or prior approvals are required for acquisitions and mergers. However, pursuant to a statement made in January 2010 by the Domestic Trade, Co-operative and Consumerism Minister, plans are under way for a Competition Act to be enacted soon in Malaysia. The draft of the new legislation is expected to be read in Parliament in 2010 and the Competition Act is expected to be enforced by the end of 2011. At present, there are specific consumer protection provisions in various legislation, such as the Communications and Multimedia Act 1998 which prohibits a licensee from engaging in any conduct which has the purpose of substantially lessening competition in a communications market and prohibits certain collusive arrangements for rate fixing, market sharing or boycotts, and the Price Control Act 1946 which regulates the price of certain consumer items such as cooking oil, bread and flour.

6_Foreign Investment Approval The Foreign Investment Committee's Guidelines on the Acquisitions of Interests, Mergers and Takeovers by Local and Foreign Interests were repealed effective 30 June 2009, without any new guidelines in their place. These guidelines had previously imposed a 30% Bumiputera (being, broadly speaking, the indigenous people of Malaysia) equity ownership restriction in Malaysian companies. Notwithstanding this deregulation, regulators of certain strategic sectors will be able to continue to impose equity conditions on companies in those sectors. These regulators include the Energy Commission, the National Water Services Commission and the Malaysian Communications and Multimedia Commission. There will no longer be any equity conditions imposed on sectors not deemed strategic. Also, 27 sub-sectors of the services sector were liberalised with no equity conditions imposed. These sub-sectors include aspects of health and social services, tourism services, transport services, business services, computer and related services, sporting and other recreational services. In the financial services sector, foreign investors can hold up to 70% in Malaysian incorporated Islamic banks, investment banks, insurance companies and takaful operators (being Shariah-compliant insurance operators), though foreign investors are restricted from holding more than 30% of domestic commercial banks.

7_Employee Rights For employees who do not earn more than MYR 1,500 a month in wages and for persons engaged in manual labour, operations and maintenance, the Employment Act 1955 (EA) and the regulations thereunder will apply. The EA provides that where the termination of service of the employee is attributable wholly or mainly to the fact that a change has occurred in the ownership of the business for the purpose of which an employee is employed or of a part of such business, the employee is entitled to and the employer must give to the employee notice of termination of service. The length of such notice must not be less than between four weeks and eight weeks, depending on the length of time of employment. The regulations under the EA provide for the minimum amount of compensation payable in the event of a termination or layoff. For employees who are not governed by the EA, the employees' terms and benefits will be governed by their respective employment contracts and general principles of contract.

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Mali

- 1_ **Withholding Tax** Income from the interest received as payment of a loan to a Malian subsidiary is subject to the Debts Income Tax (**IRC**) in Mali at 13%. However, if the income resulted from an associated current account between the bank and its client, in this case, the subsidiary incorporated in Mali, income from the debt is exempt from IRC if the following conditions are met: (i) both companies have quality as traders; and (ii) the operations recorded in the current amounts relate exclusively to the trade. The interest paid by the Malian subsidiary on the loan may be deductible from taxable income if the following conditions are met: (i) the interest rate paid on the current account must be limited to the two points above the advance rate from the BCEAO (Central Bank of West African States); and (ii) within the Malian subsidiary, the total deductible interest must be greater than the share capital of the company provided that the capital is fully paid.
- 2_ **Financial Assistance** subscription or purchase by the company of its own shares, either directly or by a person acting in his own name but on behalf of the company is prohibited (Article 639 of the OHADA Standard Act on Companies). Similarly, a company cannot advance funds, grant loans or grant security to the subscription or purchase of own shares by a third party.
- 3_ **Security Interests** Present and future assets may be covered by a security interest (Article 45 of the OHADA Uniform Act organizing securities). Such security may only be enforceable against third parties where it is in written form. Preferential creditors include wages, social security and taxes.
- 4_ **Clawback** The suspect period typically starts from the date of cessation of payment and ends at the date of the decision initiating proceedings. The beginning of the suspect period cannot be earlier than 18 months immediately prior to the judgment opening the procedure (Article 34 of the OHADA Uniform Act organizing collective proceedings for wiping off debts). Security may only be set aside if it has been granted during the suspect period or once formal insolvency proceedings have been commenced. Security cannot be set aside where it has been granted before the suspect period.
- 5_ **Merger Control** All documents relating to a proposed merger, including a statement filed by each company confirming that all acts done in connection with such merger have been conducted in accordance with Article 198 of the OHADA Standard Act on Commercial Companies, must be filed at the Commercial Court. In order to comply with law on merger in Mali, there must also be an announcement in the local gazette of the merger one month before the date of the first general meeting called to approve such merger (Article 194 of the OHADA Standard Act on Commercial Companies).
- 6_ **Foreign Investment Approval** There are no restrictions governing foreign investment in Mali (Article 2 of the Investment Code).
- 7_ **Employee Rights** If there is a change in the company's status by reason of sale, merger, or other, all employment contracts in progress at the date of the transfer subsist between the transferee and company's personnel (Article 57 of the Labour Code).

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Malta

- 1_ **Withholding Tax** The Income Tax Act grants a tax exemption on payments of interest to any person not resident in Malta. This exemption is subject to two conditions: (a) the interest must not be effectively connected with a permanent establishment, such as a branch, in Malta of the non-resident person; and (b) the non-resident person must be the beneficial owner of the interest and must not be owned and controlled by, directly or indirectly, nor act on behalf of an individual resident and domiciled in Malta.
- 2_ **Financial Assistance** The Companies Act contains a relatively simple whitewash procedure requiring essentially a resolution of the board of directors and of the general meeting. A notification to the MFSA has to be filed before the granting of the financial assistance. The whitewash procedure does not apply to public companies.
- 3_ **Security Interests** Various types of securities are available. Future assets can generally be secured. Most types of securities are cost-free and easy to perfect. Certain securities, in particular the hypothec, involve additional formalities and a cost that is relative to the amount secured. Some securities are relatively easy to enforce (eg pledges). Other securities may involve lengthy judicial proceedings (eg the hypothec). Securities rank in an order set out in the Civil Code and special laws. Insolvency rescue procedures may freeze the enforcement of the security.
- 4_ **Clawback** A transaction at an undervalue and an unlawful preference can be challenged if occurring within the period of six months before the start of insolvent liquidation. A registration of a hypothec is ineffectual if it is made at a time when the company is insolvent. A transaction defrauding creditors can generally be challenged by means of an *actio pauliana*.
- 5_ **Merger Control** There is an obligation to file a notification and obtain clearance from the competition authorities in Malta in the case of a concentration, whether occurring in Malta or outside Malta, when in the preceding financial year the aggregate turnover in Malta of the undertakings concerned exceeded EUR2,330,000 and each of the undertakings concerned had a turnover in Malta equivalent to at least 10% of the combined aggregate turnover of the undertakings concerned.
- 6_ **Foreign Investment Approval** As a general rule, there are no legal limitations applying to a foreign company purchasing a target company in Malta.
- 7_ **Employee Rights** In the context of an acquisition, the Employee (Information and Consultation) Regulations could apply if the undertakings employ more than 50 employees. In terms of such Regulations, the employer is bound to make practical arrangements to allow employees to effectively exercise their right of information and consultation. Amongst other obligations, the employer is bound to provide employees' representatives with information and consultation on decisions likely to lead to substantial changes in work organisation or in contractual relations. In doing so, the employer must ensure that the consultation is conducted inter alia with a view to reaching agreement on decisions within the scope of the employer's powers.

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Mauritius

- 1_ **Withholding Tax** A 0% withholding tax rate applies to interest paid to a UK bank by its Mauritian subsidiary which is a type 1 Global Business Company (**GBC1**). Where the subsidiary is a type 2 Global Business Company (**GBC2**), a withholding at the domestic rate of 15% applies.
- 2_ **Financial Assistance** A company may give financial assistance if its directors first confirm that it satisfies the solvency test. There are further restrictions where the aggregate assistance exceeds 20% of the company's stated capital.
- 3_ **Security Interests** Mauritius has a hybrid legal system. There are various types of security provided for under the French Civil Code, eg pledges, mortgages and guarantees are available. Fixed and floating charges, which are permitted by the Companies Act, remain the more widely used types of security, but they are available only to credit institutions and a limited number of institutions specified under the Act. Advice should be sought prior to taking security over the assets of a Mauritian company.
- 4_ **Clawback** A voidable preference may be set aside if made within two years before adjudication or commencement of winding up. A charge over any property or undertaking may be set aside where the charge was given within two years before adjudication or commencement of winding up and, immediately after the charge was given, the company was unable to pay its due debts. An alienation of property made by a debtor within five years immediately before the date of adjudication or the commencement of winding up with intent to defraud a creditor may be set aside.
- 5_ **Merger Control** There is only a filing obligation with the Mauritius Financial Services Commission if the Mauritian entity is a Global Business Company.
- 6_ **Foreign Investment Approval** The consent of the Financial Services Commission is required before 20% or more of a company's shares may be acquired. Similarly, notice that such an acquisition has occurred must be given to the Registrar of Companies. Separate restrictions apply in the case of regulated entities (such as banks and insurance companies).
- 7_ **Employee Rights** Employment law issues will be governed under the Mauritian Labour Act. The procedure for a transfer of employment is time consuming. If the relevant procedures are not followed, Mauritian workers' unions can delay the acquisition process.

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Mexico

- 1_ **Withholding Tax** Withholding taxes on interest payments can be as low as 4.9% in respect of financial institutions registered as foreign financial institutions with the Mexican Ministry of Finance (*Secretaría de Hacienda y Crédito Público*). 5% applies to UK banks and insurance companies. 15% applies to other UK persons.
- 2_ **Financial Assistance** There are no financial assistance issues.
- 3_ **Security Interests** Blanket security interests can be achieved in respect of moveable assets by entering into a non-possessory pledge agreement (for which certain formalities are required) and filing such agreement with the public registry of commerce of the domicile of the grantor. Security interests on real estate need to be granted on an individual basis and filed with the public registry of property of the location of the real estate. Registration fees vary from state to state and are capped in the majority of states.
- 4_ **Clawback** There is a 270 day suspect period for security interests granted before the start of the insolvency. The secured party is required to provide evidence of good faith if the security interest was granted within the suspect period.
- 5_ **Merger Control** In the case of a merger, a merger notice (along with last available balance sheet) is required to be published in the official gazette of the domicile of the merging entities and the merger agreement filed with the public registry of commerce of their corporate domicile. Merger may become effective immediately if the merging entities agree to the payment of existing debts, or three months after the filing is made if no creditor opposes the merger.

Antitrust Commission (*Comisión Federal de Competencia*) filings may be required if certain thresholds are exceeded based on: (a) consideration paid, (b) percentage being acquired and size of target after acquisition, and (c) size of relevant parties and target. Parties may proceed to close the transaction (at their own risk) after 10 business days have passed from the filing date, if the Antitrust Commission has not issued a stop order. A final resolution must be issued by the Antitrust Commission within 35 business days from the date of filing or date on which additional information was requested.
- 6_ **Foreign Investment Approval** Foreign investment is prohibited outright or restricted only in certain specific areas.

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Ritch Mueller, S.C. was founded in 1975 in Mexico City. Since its creation, the firm has participated in many of the most important and high profile infrastructure, business and financial transactions in Mexico. The firm has been very active in the development and growth of Mexico's financial, securities market, infrastructure, energy and other sectors and it is regarded as having played an important role in the evolution of Mexico's financing and infrastructure contracts and laws and in the financing of Mexico's private and public sector needs, as well as in the most important infrastructure, energy, project finance, real estate, privatization and M&A transactions of the Mexican market, during the last thirty years.

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Moldova

- 1_ **Withholding Tax** In principle, there is withholding tax on interest payable to a foreign bank unless a double tax treaty applies.
- 2_ **Financial Assistance** Financial assistance is not prohibited in Moldova.
- 3_ **Security Interests** Universal charges do not exist but it is otherwise straightforward to take security which is usually registered. Private enforcement is usually possible.
- 4_ **Clawback** Security granted by a company less than 12 months before it becomes insolvent can be set aside by the liquidator.
- 5_ **Merger Control** There is a merger regime in place in Moldova. There is a mandatory filing obligation and the transaction cannot complete before clearance is obtained.
- 6_ **Foreign Investment Approval** In the last few years the foreign investment restrictions in the telecom and insurance sectors have been removed. However, there are still a few restrictions in some minor areas (eg agricultural land, gambling).
- 7_ **Employee Rights** The employees should usually be consulted before a merger takes place. The employees of the target will not have their employment terminated because of the acquisition. There are also some discrimination and data protection regulations.

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Monaco

Please note that the following comments are based on the assumption that the target company is a joint-stock company (*société anonyme monégasque*).

- 1_ **Withholding Tax** There is no withholding tax issue.
- 2_ **Financial Assistance** It is not possible for a target company to secure or guarantee a bank loan to the acquiror to finance the purchase price paid by the acquiror.

Such a mechanism, to be implemented, would need to be provided for in the purpose clause of the target companies, which is very unlikely under Monegasque law.

In addition, such a mechanism would not comply with the interests of the company itself, as such operation is made at a shareholders' level and not in relation to the activity of the company itself.
- 3_ **Security Interests** Whether a security covers all present and future assets or not depends on the type of security (for instance, mortgages cannot cover future assets). The implementation of a security also depends on its type. For instance, a deed of mortgage must be signed before a notary (article 1965 of the Civil Code). The security will be subordinated to preferential creditors' rights, stated by article 1938 and the following of the Civil Code. The enforcement depends on the type of security. A judgment of the Court is required in all cases, except for pledges over cash and financial instruments.
- 4_ **Clawback** The Court may freely determine, on the basis of the evidence provided, the date of insolvency, which may be up to a maximum of three years before the date of the judgment (article 414 of the Commerce Code).
- 5_ **Merger Control** A merger is automatically subject to the condition precedent of the authorisation of the Minister of State of the Principality of Monaco. An application file will have to be submitted to the Monegasque Government, including a "merger agreement" explaining all the modalities and the purposes of the operations. Authorisation is not automatically granted.
- 6_ **Foreign Investment Approval** On the basis of Ordinance n°3066 of 25 July, 1945, French legislation relating to foreign investments is directly and fully applicable in Monaco. Consequently, foreign investments may be freely made in the Principality of Monaco.
- 7_ **Employee Rights** Article 15 of Law n°729 relating to employment agreements states that in case of change of the legal situation of the employer, especially in case of [...] merger, [...] all current employment agreements in force on the day of such change remain in force between the new employer and the employees. Consequently, all employees are automatically transferred to the purchasing company.

There are no other regulations in relation to employees in such a framework.

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Mongolia

- 1_ **Withholding Tax** The usual withholding tax rate on loan interest earned by a taxpayer who does not reside in Mongolia is 20%. However there is a double tax treaty in place between Mongolia and the UK which reduces the withholding tax rate to 7% where interest is paid to a bank carrying on a bona fide banking business which is a resident in the UK and is the beneficial owner of the interest.
- 2_ **Financial Assistance** A Mongolian private company can give financial assistance (eg guarantees and security) in connection with the purchase of its own shares.
- 3_ **Security Interests** Mongolia does not have any specific legal provisions for universal charges. In the case of a bankruptcy of a debtor, the secured creditor shall be ranked first in line with other creditors. It is possible to grant pledges over moveable and immoveable properties. Pledges of immoveable properties require notarisation and registration. Enforcement of a pledge is done by public auction or direct sale of the pledged property; in the case of an agreement between pledgee and pledgor private sales can be carried out outside courts.
- 4_ **Clawback** Pursuant to Article 19 of the bankruptcy law, contracts and transactions made within 120 days to two years (depending on the transaction) of starting a bankruptcy case are void.
- 5_ **Merger Control** Mongolia has antitrust legislation. A merger or acquisition cannot take place until clearance from the Supervisory and Regulating Authority has been received. The legislation does not apply generally to all mergers.
- 6_ **Foreign Investment Approval** Mongolia has specific legislation that encourages foreign investment. However some areas (eg owning and the pledging of land) are prohibited to foreign investors.
- 7_ **Employee Rights** Employment legislation in Mongolia protects basic employee rights, it could not delay or block a merger/acquisition. Works councils (or equivalent) do not exist.

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Morocco

- 1_ **Financial Assistance** Prohibition of financial assistance applies in case of joint stock companies pursuant to the provisions of law 17-95.
- 2_ **Merger Control** Filing is compulsory when the transaction involves two parties having realised together at least 40% of sales, purchases or other transactions. The Prime Minister, following an opinion of competition council, may block the transaction.
- 3_ **Foreign Investment Approval** Foreign investments are generally welcome in Morocco save for certain areas of activity which are reserved for nationals (but they are very few).
- 4_ **Employee Rights** Rules regarding the transfer of employees to a purchaser exist under Moroccan law, as well as rules regarding information to be supplied to the works council in the case of structural transformation or lay-off.

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Mozambique

1_ **Withholding Tax** Mozambican withholding tax rate on loan interest paid to non-resident is 20% unless the rate is reduced under a tax treaty. The UK does not currently have a Double Tax Treaty with Mozambique. The standard withholding tax rate is 20%.

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Namibia

1_ **Withholding Tax** Dividends, royalties and other payments made to non-residents are subject to withholding taxes at a rate of between 5% and 10%, depending on taxation agreements and/or other agreements with the countries involved.

2_ **Financial Assistance** In terms of Namibian law no company can give, whether directly or indirectly, and whether by means of a loan, a guarantee, provision of security or otherwise, any financial assistance for the purchase of or in connection with a purchase or subscription made or to be made by any person for shares of the company, or where the company is a subsidiary company of its holding company. There are therefore two elements to this, namely the giving of financial assistance and the purpose for which it is given. If the direct object of the transaction is not the provision of financial assistance by the company for the purpose of or in connection with the purchase of its shares, then it is irrelevant that the ultimate goal of the transaction is to enable such person to purchase the shares. There are exceptions permitting loans to persons in the employment of the company with a view to enabling those persons to purchase or subscribe for shares in the company.

3_ **Security Interests** Security over immovable assets is generally obtained by the registration of a mortgage bond over the asset in favour of the lender. Security over moveables is obtained by registering a collateral notarial bond over all moveable property of the borrower. All registered securities are centrally filed in the Deeds Registry Office in Windhoek.

4_ **Clawback** Every disposition of property not made for value may be set aside by the Court if the disposition was made by an insolvent more than two years before the sequestration of its estate and it is proved that immediately after the disposition the liabilities exceeded the assets.

Every disposition of property made by a debtor not more than six months before the sequestration of its estate, which has the effect of preferring one of its creditors above another, may be set aside by the Court if immediately after the making of such disposition the liabilities of the debtor exceeded the value of its assets, unless the favoured party proves that the disposition was made in the ordinary course of business and that it was not intended to prefer one creditor above another.

Every disposition made at the time when the debtor's liability exceeded its assets with the intention of preferring one creditor above the other may be set aside.

Any disposition made in collusion with another person disposing of property belonging to an insolvent, which has the effect of prejudicing its creditors or of preferring one of its creditors above another, may be set aside.

In Common Law the *actio pauliana* allows for the disposition of property to be set aside if: (i) the debtor's assets deteriorate in value as a result of the disposition; (ii) the debtor does not receive its own property; (iii) there is an intention to defraud creditors; and (iv) the fraud is effective.

5_ **Merger Control** The approval of the Namibian Competition Commission is required for any transaction. There are presently no thresholds. Any intended merger must be reported to the Commission, whereupon the Commission has 30 days, which can be extended to 60 days, to evaluate the application and to give its decision. Any adverse decision made can be taken on review to the High Court of Namibia. The Commission is presently in its infancy and many contentious and uncertain issues have not yet been resolved.

6_Foreign Investment Approval

Foreign investments are protected by the Foreign Investment Act No 27 of 1990 (as amended). The Act provides for liberal foreign investment conditions, equal treatment of foreign and local investors, openness of all sectors of the economy to foreign investment and no local participation requirements.

Namibia is part of the Common Monetary Area (CMA). Accordingly, investments and transfers of funds from South Africa to other CMA countries do not require the approval of exchange control, but may require the approval of the host country.

Exchange control regulations prescribe procedures that must be followed for making payments, for imports, freight and other services, interest on foreign loans, dividend transfers etc.

Direct investment into Namibia by a foreign investor may be provided by way of equity or loan capital or a combination of the two. Exchange control permission is not required for the inward transfer of equity capital, but permission is required for loan funds.

In general, distributions of profit, including dividends from foreign investment, can be made freely and without prior approval, except by (i) concerns who own 75% or more of interests of a Namibian company, or (ii) non-residents who have been granted local borrowing facilities. In these cases prior approval must be obtained before remittance.

Withholding Taxes on dividends (see above) and royalties (30% of the current tax rate, ie 10.5%, but also reduced for some countries) must be deducted before remittances are made.

Namibia has no capital gains tax or marketable securities tax, nor an inheritance tax.

The only special tax on foreign nationals is a non-resident shareholders tax at 10% of dividends remitted, mitigated by double tax treaties with certain countries.

Interest is transferable, provided exchange control approval has been granted for the loan capital and the interest rate is reasonable.

The local sale or redemption proceeds on non-resident owned assets in Namibia may be regarded as freely remittable or be used freely by non-residents for investment purposes within the CMA.

Where 75% or more of a Namibian company's capital or earnings is controlled directly or indirectly by non-residents, such a company may borrow locally up to an agreed ratio of its total effective capital (currently 60:40). Effective capital consists of share capital, reserves and loans from shareholders as specifically approved by Exchange Control.

7_Employee Rights In the event of employees in the target company being taken over on the same terms and conditions by the purchaser, only notification is required.

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Netherlands

- 1_ **Financial Assistance** Explicit restrictions on financial assistance (eg securing or guaranteeing a bank loan to the acquiror) exist in the current Dutch Civil Code, for private limited liability companies (*besloten vennootschap*). It is, however, allowed that – taking certain conditions into account – the company itself grants a loan to the acquiror. In an upcoming change to the Dutch Civil Code, prohibitions on financial assistance for the acquisition of private limited companies will be deleted. If, and under which conditions, financial assistance is allowed, will then be up to the management board of the company.
- 2_ **Security Interests** Two main security rights exist under Dutch law: rights of pledge and mortgage. Pledges can cover present and future assets of the company. Mortgages can cover the present real estate of the company. The legal requirements regarding the creation of these rights depend on the assets to be secured: shares in a Dutch private limited liability company and real estate, for example, can only be secured with a right of pledge (shares) or mortgage (real estate) by execution of a notarial deed by a Dutch civil law notary.
- 3_ **Clawback** Security rights could be set aside (declared void) if – amongst other things – the granting is qualified as a pauline action. There are various situations and conditions under which this could be the case. However, there is no time limit to challenge transactions entered into before the start of insolvency.
- 4_ **Merger Control** An acquisition can be suspended by the Netherlands Competition Authority (*Nederlandse Mededingingsautoriteit*) or the European Competition Authority. Depending on the circumstances, the acquisition may be approved if certain requirements (remedies) have been met.
- 5_ **Foreign Investment Approval** No foreign investment approval applies under Dutch law.
- 6_ **Employee Rights** When certain criteria are met (> 50 employees) a private limited liability company has the obligation to establish a works council. A works council must – in time – be involved in an acquisition in order to give positive or negative advice to the management board on the intended acquisition. A negative advice causes a delay of at least one month in the acquisition process. If the management board [ignores] the advice of the works council, the works council has the right to start a specific court procedure before the Enterprise Chamber of the Amsterdam Court. With respect to the transfer of (a part of) an undertaking specific rules apply. If the acquisition concerns a company with more than 50 employees, an obligation of the management board to inform trade unions and the Social and Economic Council of the Netherlands (*Sociaal-Economische Raad*) also applies.

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New Zealand

- 1_ **Withholding Tax** New Zealand withholding tax on interest is 10% under the New Zealand/United Kingdom Double Tax Agreement. However, there will be no withholding tax if the New Zealand subsidiary pays the Approved Issuer Levy (**AIL**). AIL is a levy on the borrower of 2% of the amount of interest being paid to a non-resident lender. The levy is deductible to the borrower. AIL cannot be used if the lender and the borrowers are “associated”.
- 2_ **Financial Assistance** New Zealand has a financial assistance regime. In most cases, the issue can be resolved by obtaining the agreement of all entitled persons (being, in most cases, the shareholders of the relevant companies). If the agreement of all relevant parties cannot be obtained or is not a practical option (eg because a company has a large number of shareholders), there are other means of granting financial assistance which involve the directors making a number of factual assessments. However, financial assistance by this method is much less common. In all cases, financial assistance may not be given unless the company satisfies the statutory solvency test (that test includes both a cashflow solvency and balance sheet solvency component).
- 3_ **Security Interests** It is easy and cheap to take security which can cover all the assets of the chargor.
- 4_ **Clawback** Security can be set aside in certain circumstances. An insolvent transaction is voidable by a liquidator within two years. A charge is voidable by a liquidator within two years if, immediately after the charge was given, the company was unable to pay its due debts. A transaction at an undervalue can be challenged within two years.
- 5_ **Merger Control** There are no statutory obligations in relation to public notification of private mergers in New Zealand. Each party to the merger will be a party to one or more contracts and therefore will have obligations to the other party/parties under those contracts only. If the merger may present competition issues, voluntary filings may be advisable. In any case, a decision on a voluntary filing application is not binding.
- 6_ **Foreign Investment Approval** The Overseas Investment Act 2005 (**OIA**) regulates investments by an “overseas person” and its associates in New Zealand’s “sensitive land”, or into “significant business assets”, which both require the prior written consent of the Overseas Investment Office, a government regulatory body. The definition of “sensitive land” is broad and includes certain specified land as well as land generally that exceeds certain area thresholds (for example, non-urban land is sensitive if the area of the land is in excess of five hectares) or land adjoining sensitive land. “Significant business assets” are those which attract consideration for acquisition of more than NZ\$ 100 million, or where the underlying assets are worth in excess of NZ\$ 100 million. The OIA also applies in relation to the establishment of a new business, as consent is required to the establishment of a business intended to be carried out for 90 days or more per year which incurs establishment expenditure in excess of NZ\$ 100 million. The process to obtain consent can be quite time-consuming (perhaps up to six months) but most applications are approved when the information provided is sufficient.

7_Employee Rights The acquiror has no obligation to consult with employees over an acquisition bid. However, assuming the acquiror is successful and controls the employer entity then the employer has obligations to its employees in terms of restructuring the business and the like should it subsequently decide to do so.

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Nicaragua

1_Withholding Tax There is an exemption for interest due under loans granted by international credit institutions and development agencies or institutions of foreign governments.

“International credit institutions and development agencies or institutions of foreign governments” are understood to be the organisations constituted exclusively by funding of Governments, such as: International Monetary Fund, World Bank, Interamerican Development Bank, Central American Bank for Economic Integration, among others, as well as their official credit agencies. The Ministry of Finance, via Ministerial Decree will publish the list of exempted international credit institutions and development agencies or institutions of foreign governments.

The Ministry of Finance published the referred list on 15 June 2010, also allowing for further entities to be included in such list and also establishing that entities which are not exclusively by funding of Governments may be granted partial exemption. This in our opinion exceeds that which is mandated by law and may be contested in the future.

4_Clawback There is a suspect period of 30 days if fraud is not presumed. If fraud is presumed, this timeframe is extended to 3 months.

6_Foreign Investment Approval The acquisition may be subject to authorisation from the local competition authority.

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Niger

- 1_ **Withholding Tax** Interest derived by a non-resident company is subject to a final withholding tax on the gross amount.
- 2_ **Financial Assistance** The subscription or purchase by a company of its own shares, either directly or by a person acting in his own name but on behalf of the company is prohibited (Article 639 of the OHADA Standard Act on Companies). Similarly, a company cannot advance funds, grant loans or grant security to the subscription or purchase of own shares by a third party.
- 3_ **Security Interests** Security may be perfected over present and future assets. All forms of security interest (with the exception of moveable securities) require registration in order to be valid forms of security. Preferential creditors include funeral expenses; the most recent medical costs of the debtor; wages and costs due to owners of literary works (Articles 68-69 of the OHADA Standard Act on Insolvency).
- 4_ **Clawback** The suspect period typically starts from the date of cessation of payment and ends at the date of the decision initiating proceedings. The beginning of the suspect period cannot be earlier than 18 months immediately prior to the judgment opening the procedure (Article 34 of the OHADA Uniform Act organizing collective proceedings for wiping off debts). Security may only be set aside if it has been granted during the suspect period or once formal insolvency proceedings have been commenced. Security cannot be set aside where it has been granted before the suspect period.
- 5_ **Merger Control** A merger cannot be suspended under Niger law unless it is deemed to be anti-competitive and, or where it is deemed to constitute a monopoly between the intended merger companies and the rest of the market.
- 6_ **Foreign Investment Approval** There are very limited investment restrictions in the sectors considered sensitive for national security purposes.
- 7_ **Employee Rights** Employment contracts continue to subsist between an employee and his or her new employer following a transfer of the target company to the purchaser. Employees are not allowed to oppose any proposed merger (Articles 90-91 Niger Employment Code 1996).

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Nigeria

- 1_ **Withholding Tax** Interest payments due on the loan are subject to withholding tax at the rate of 10%, but where the loan has been made by a bank resident in a country with a double taxation treaty, the tax rate would be 7.5%.
- 2_ **Financial Assistance** Section 159(2)(a) of the Companies and Allied Matters Act CAP C20 LFN 2004 (CAMA) prohibits a company from giving financial assistance, directly or indirectly, to any person for the purpose of acquiring or proposing to acquire shares in the company.
- 3_ **Security Interests** It is easy and cheap to take security which can cover all the assets of the chargor.
- 4_ **Clawback** There are a number of clawback provisions under Nigerian law. For instance, a security such as a floating charge created within three months of a winding up is invalid unless there is proof of solvency at the time of creation, and except to the amount paid at the time of or subsequent to the creation and in consideration for the charge together with interest on the amount at the current bank rate. Also, a transaction may be set aside as a fraudulent preference if the granting of the security took place three months before insolvency.
- 5_ **Merger Control** There are no filing obligations for a 'small merger', but there is room for voluntary filing. However, there are filing obligations for 'intermediate' and 'large' mergers.
- 6_ **Foreign Investment Approval** Under Nigerian law, there are no restrictions against a foreign company investing or acquiring a local company except companies that engage in business on a negative list.
- 7_ **Employee Rights** There are no strict employee rights in Nigeria in the context of a merger or acquisition, but the interests of the employees are considered in approving a merger.

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Northern Ireland

1_ **Withholding Tax** – Blue

2_ **Finance Assistance** The position in Northern Ireland is the same as in England.

3_ **Security Interests** The position in Northern Ireland is the same as in England.

4_ **Clawback** The position in Northern Ireland is the same as in England.

5_ **Merger Control** The merger control regime is the same as in England. Northern Ireland is regarded as being a substantial part of the UK in its own right.

6_ **Foreign Investment Approval** The position in Northern Ireland is the same as in England.

7_ **Employee Regulations** The position in Northern Ireland is much the same as in England (save for Fair Employment legislation which should not delay any merger).

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Norway

- 1_ **Withholding Tax** There is no withholding tax in Norway on interest payments.
- 2_ **Financial Assistance** There are very strict financial assistance rules in Norway, implying that a target company cannot secure or guarantee a bank loan to the acquiror to finance the purchase price paid by the acquiror for the shares in the target.
- 3_ **Security Interests** Subject always to the financial assistance rules (see Norway (2)) it is relatively easy and cheap to take security. Although Norwegian law does not recognise the concept of a floating charge it is to a large extent possible to take security over most assets. Enforcement of security will be subject to mandatory provisions of the 1992 Norwegian Enforcement Act and, if applicable, mandatory provisions of the 1980 Norwegian Pledge Act. Enforcement of security may also be subject to a six month waiting period, according to the 1984 Norwegian Bankruptcy Act, in a bankruptcy situation. Pursuant to the 1980 Norwegian Pledge Act, the bankruptcy estate of a party which has pledged assets as security for obligations owed has a statutory lien over any such pledged assets as well as over assets which a third party has pledged as security for the bankrupt party. The statutory lien has priority over all other liens or security interests in the relevant asset. The statutory lien for the bankruptcy estate is limited to 5% of the value of the sales proceeds for the pledged asset (subject to a maximum upper amount equal to 700 times the court fee applicable from time to time).
- 4_ **Clawback** Security can be set aside based on fraudulent preference rules (pauline action) with a 10 year suspect period. Security granted for the grantor's own old debt can (subject to certain conditions) be challenged three months before the start of the insolvency, or two years if security is made in favour of close associates.
- 5_ **Merger Control** According to Norwegian merger regulations, all mergers and transactions involving acquisition of control (a **concentration**) must be notified to the Norwegian Competition Authority if (a) the undertakings involved in the transaction have a combined annual turnover in Norway of NOK 50 million or more; and (b) at least two of the undertakings concerned each have an annual turnover exceeding NOK 20 million. An automatic standstill period ending, at the earliest, 15 working days after a filing has been made applies to all notifiable concentrations.

6_Foreign Investment Approval As a main rule there are no foreign approval restrictions in Norway. Within certain industry sectors, in particular companies owning fishing vessels, there are certain foreign ownership restrictions or requirements for a minimum holding by persons from within the EEA.

7_Employee Rights Norwegian law has employee protection rules that apply in connection with transfers of businesses and therefore an acquisition involving employees may, depending on the circumstances, be more time consuming.

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Oman

- 1_ **Withholding Tax** Although there is a 10% withholding tax in Oman, it is relatively restricted in scope. Nevertheless, it would apply if the foreign purchaser intended to enter into a management agreement with, or license IP rights to, the Omani target.
- 2_ **Financial Assistance** There are no specific Omani laws relating to financial assistance in connection with the acquisition of private companies. Nevertheless, the grant of such assistance by the target would need to be properly approved, usually by the shareholders. Many private companies in Oman in the form of limited liability companies do not have Boards of Directors.
- 3_ **Security Interests** An Omani company can create (a) a legal mortgage over its real estate assets which is registrable at the Ministry of Housing and (b) a commercial mortgage over all its other tangible and intangible assets which is registrable at the Ministry of Commerce & Industry. The priority of mortgages depends on the date of registration, in the absence of consent from prior mortgagees.
- 4_ **Clawback** The suspect period is two years. In addition, transactions which create security when the mortgagor is insolvent may be set aside. The effect is that the mortgagee must contribute the benefit of the security to the general pool of unsecured creditors.
- 5_ **Merger Control** Any foreign company acquiring a private company in Oman has to consider the following:
 - it is limited to a maximum shareholding of 70%, unless it obtains the approval of the Council of Ministers (limited to projects of national economic importance);
 - in any event, there are no compulsory buy-out provisions, once a certain ownership threshold has been crossed;
 - private shareholders have pre-emption rights, which must be waived;
 - a standard package of documents must be filed by the foreign investors, duly notarised, legalised and translated into Arabic. The share transfer must be signed in Arabic before the authenticator at the Ministry of Commerce & Industry. This may be done pursuant to a notarised and legalised Power of Attorney. This must be followed by the filing of a Shareholders Resolution and a Deed of Amendment of the Constitutive Contract (ie the contribution of the company).
- 6_ **Foreign Investment Approval** The Foreign Capital Investment Law approval is now automatic, provided that 70% is not exceeded (65% in the case of engineering consultancy companies).

7_Employee Rights If employees remain employed by the target, they have no blocking powers.

If a new company is established in Oman to buy the business (or parts of the business) of the target, employees cannot be forced to be transferred. If they agree, their accrued benefits eg end-of-service benefits in the case of expatriate employees, must be transferred as obligations of the new company. Care needs to be taken if the new company does not wish to take over all employees, because redundant employees may claim that it is a successor entity and that they have a right to be employed by it.

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SASLO is a pre-eminent law firm in the Sultanate of Oman, founded by Said Al Shabry in 1992 following a distinguished legal career in Government, latterly as director of the legal department at the Ministry of Petroleum and Minerals. He was also a member of the Majlis al Sibura (Parliament) from 2003-2007 and Chairman of the Legal Committee as representative for Salalah, Governorate of Dhofar.

SASLO has a blend of highly experienced senior Omani and foreign multi-lingual lawyers with extensive local and international expertise. It is organized in two complementary contentious and non-contentious departments which draw strength from each other's specialisation and the leadership of a management team with a wealth of Omani and international experience. The legal practice of the firm is supplemented with its in-depth knowledge of the laws and practice in Oman.

The firm prides itself in representing a prestigious client base, operating locally, regionally or globally and being both market leaders and boutique niche industry players. It is the only Muscat based firm with a well established branch office in Salalah, capital of the fast developing Dhofar Governorate in the south of Oman and in Sohar, the industrial hub of the Batinab coast. SASLO is also associated with a network of leading law firms in the Gulf region and Yemen.

SASLO's lawyers are well connected with the Omani government and British, Egyptian, European, Indian, Pakistani, New Zealand, Sudanese, US and other expatriate communities in Oman. Our clients report greater trust and confidence in our services as a consequence of our cultural compatibility approach but with standards maintained to the highest in the Gulf region.

Pakistan

- 1_ **Withholding Tax** If it is assumed that a direct loan to a foreign subsidiary in Pakistan by a UK bank will cause profit (by way of dividend) to be repatriated out of Pakistan for UK tax purposes, then a 10% withholding tax in Pakistan is unavoidable. Pakistan's tax regime refers to four types of cross-border funds transfers by a locally incorporated company – dividends, interest, fees for technical services, and royalties. In the case of such transfers from Pakistan to the UK, dividends are subject to a 10% withholding tax, interest to a withholding tax of 0–30%, fees for technical services to a withholding tax of 0–15%, and royalties to a withholding tax of 10–15%. It is also noteworthy that while a dividend represents a distribution of profits arising after all expenses have been deducted, each of interest, fees for technical services, and royalties, are in themselves deductible expenses from the perspective of the locally incorporated company. The rate of corporate tax on profits earned by a company incorporated in Pakistan is currently 35%.
- 2_ **Financial Assistance** There are no financial assistance issues in relation to a Pakistan-incorporated private company unless such private company is a subsidiary of a public company incorporated in Pakistan. Accordingly, the statutory prohibition involving financial assistance would be easy to avoid if the relevant foreign entity ensures that it is directly acquiring the shares of a private company incorporated in Pakistan, and not through a parent entity that is a Pakistan-incorporated public company.
- 3_ **Security Interests** It is easy and cheap to take security which can cover all the assets of the chargor. All charges created by a company incorporated in Pakistan, with the exception of a pledge of its moveable property, must be registered in the prescribed manner, within 21 days of their creation, at the Company Registration Office having territorial jurisdiction over the company. The prescribed manner of filing and registration of charges is a routine and straightforward matter involving nominal registration fees. By contrast, a pledge of moveable property (typically shares or finished goods stocks) is perfected by handing over actual or constructive possession of the pledged goods to the security holder, which is also a routine and straightforward matter. The first in time to perfect a charge is also first in right, but this priority can be impaired in the case of the chargor's non-payment of taxes, government utilities and other fiscal levies.
- 4_ **Clawback** A security interest would be void if not registered in the prescribed manner, within 21 days of its creation, at the Company Registration Office having territorial jurisdiction over the chargor company. Once perfected as such, it can be set aside in insolvency proceedings if created within three months prior to the chargor company's formal declaration of insolvency. In addition, if compulsory winding up proceedings have been filed in Court against the chargor company by its creditors, and the Court has ordered the compulsory winding up of such company, or has appointed a provisional manager thereof in such winding up proceedings, then no enforcement of a security interest created by the chargor company can occur or continue except by leave of the Court, and subject to such terms as the Court may impose.
- 5_ **Merger Control** Filing is mandatory if certain minimum thresholds are exceeded by the net worth of the acquiror or the target, or by their combined net worth, or by the value of the transaction. Empirical evidence suggests that almost all cross-border mergers or acquisitions involving a Pakistan-incorporated target company exceed these minimum thresholds. The transaction cannot complete prior to clearance. If substantial prevention or lessening of competition is preliminarily or finally determined, the consummation of the transaction may be: (a) suspended or delayed but eventually unconditionally approved; (b) prohibited;

(c) approved subject to conditions; or (d) approved on the condition that the concerned undertakings enter into certain specified contracts.

6_Foreign Investment Approval When a foreign entity acquires shares in a company incorporated in Pakistan, such acquiror must apply to, and secure registration of its share ownership with, the State Bank of Pakistan, which keeps track of repatriation/outflow of foreign exchange from Pakistan by way of dividends and divestment proceeds. Foreign exchange regulations concerning the repatriation of dividends are relatively relaxed, but those concerning the repatriation of divestment proceeds involve a larger set of restrictions that usually require obtaining certain special permissions from the State Bank of Pakistan. Foreign exchange regulations applicable to the servicing of subordinated shareholder loans (or other financings) extended from overseas to companies incorporated in Pakistan are often viewed by the overseas entities concerned as commercially unreasonable. On a separate note, serious national security concerns come into play if any investment originating in countries like India or Israel is proposed to be made in Pakistan, such investments as a rule being prohibited.

7_Employee Rights No specific employment laws, rules or regulations apply in a situation involving a merger or acquisition in Pakistan. However, employee-related restrictions could be triggered in a merger or acquisition scenario if provided for in a collective bargaining agreement between the target company and the collective bargaining agent of its employees – contractual obligations to this effect would normally be binding upon and enforceable against the target company.

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Panama

- 1_ **Withholding Tax** According to the tax code, persons in Panama who pay a loan to a foreign entity must retain a withholding tax of 15% over the amount of the interest.
- 2_ **Financial Assistance** There are no financial assistance issues.
- 3_ **Security Interests** It is easy, subject to compliance with legal formalities, to create a guarantee or security in favour of a bank loan. Depending on the type of the guarantee some formalities must be complied with (for example, a mortgage over assets).
- 4_ **Clawback** Security can be set aside if it was defrauding creditors, and a bankruptcy procedure begins. The suspect period is four years before the start of the bankruptcy procedure at the Court.
- 5_ **Merger Control** There are only filing obligations in relation to the acquisition of a public company registered at the National Exchange Commission.
- 6_ **Foreign Investment Approval** The Constitution of the Republic of Panama established that the “minor commerce” (detail sales) applies only to Panamanian citizens.
- 7_ **Employee Rights** There are several regulations that protect the rights of employees and in the event of merger those rights must be respected by the new owner. Violation of this regulation could have labour and civil consequences.

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Paraguay

1_ **Withholding Tax** The rate of withholding tax varies depending on the creditor bank.

2_ **Security Interests** Universal charges are not possible. There are some preferred unsecured creditors who rank ahead on insolvency. Private enforcement of security is the exception, judiciary enforcement is the norm. There is a freeze on enforcement if the company is insolvent (unless the security is a pledge or a mortgage).

3_ **Claw Back** There is a 12 month suspect period.

4_ **Merger Control** There is no merger control legislation. There are however some formalities that need to be complied with (eg it is compulsory to file the merger at the Public Registry of Commerce).

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Peru

1_Withholding Tax Interests originated in a loan paid by a Peruvian resident to a UK bank will be levied with a 4.99% withholding tax provided that: (a) the loan is in cash and the remittance of funds into Peru is duly documented; (b) the loan is subject to an annual interest rate not greater than the LIBOR rate plus 7 points; and (c) the lender and the borrower are not economically related parties and no back-to-back operation is being concealed. If any of these are not complied with, a 30% withholding tax will be applicable.

2_Security Interests The direct sale or adjudication by the guaranteed creditor of a security interest is allowed in the case of security over chattels; in the case of a mortgage over real estate, a judicial proceeding to execute it is required. Regarding preferential creditors, in the case of an insolvent company, the following order of priority has to be considered according to the Bankruptcy Law: (a) employees' remuneration and wealth benefits; (b) alimony payments; (c) secured debts; (d) tax authorities; and (e) unsecured debts different from (a), (b) and (d).

3_Clawback The suspect period is one year.

4_Merger Control There are no merger controls in Peru, except for mergers (vertical or horizontal) in the electricity sector (any direct or indirect concentration of companies involved in generation, transmission and distribution activities that involves a certain market share threshold – 15% in the case of horizontal concentration and 5% in the case of vertical concentration – require previous authorisation from INDECOPI, the market regulator).

5_Foreign Investment Approval As a general rule, there are no legal limits to foreign investment in Peru. Nevertheless, in cases of national security, certain restrictions are imposed on foreign ownership or possession of certain assets, such as a restriction on foreign investors owning directly or indirectly mines, land, forests, water, fuel or energy sources (excluding upstream oil and gas), within 50km of the Peruvian borders, unless the government approves such ownership. Foreign investors are also restricted from owning more than 49% of a Peruvian aviation company.

6_Employee Rights Employees of the target company will be transferred to the purchasing company in the event of a merger, where the latter is the surviving company.

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Philippines

- 1_ **Withholding Tax** A final withholding tax at the reduced treaty tax rate of 15% is imposed on interest received by a non-resident UK corporation from a Philippine organisation. (See National Internal Revenue Code and the RP – UK Tax Treaty).
- 2_ **Financial Assistance** The power to enter into security agreements must be specifically provided for in the purpose clauses of the target company's Articles of Incorporation pursuant to guidance issued by the Philippine Securities and Exchange Commission on 16 April 2008.
- 3_ **Security Interests** Security agreements can cover all present and future assets. To be enforceable against third parties, a pledge should appear in a public instrument, while real and chattel mortgages have to be registered in their respective registries. However, a stay order issued by the insolvency or rehabilitation court will prevent the secured creditor from enforcing the security agreement.
- 4_ **Clawback** Security can be set aside at any time if in fraud of creditors. Under the Insolvency Law, transfers made within a month from a petition of insolvency by or against the debtor are void, except when shown to be made in good faith and for value.
- 5_ **Merger Control** There is no obligation to pre-file or clear the acquisition with a merger control office. The Corporation Code only requires the articles of merger or consolidation to be submitted to the Securities and Exchange Commission for post-transaction approval.
- 6_ **Foreign Investment Approval** The Philippine Constitution and several special laws contain foreign ownership restrictions. Foreign ownership restrictions include ownership of private lands (up to 40% foreign equity), operation and management of public utilities (up to 40% foreign equity), and advertising (up to 30% foreign equity).
- 7_ **Employee Rights** The transfer of employees from the target to the purchasing company will require the target to inform the employees of the proposed transfer but employees do not have the ability to block or delay a merger.

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Poland

- 1_ **Withholding Tax** According to provisions of the UK/Poland double taxation convention (signed on 20 July 2006) interest on a loan granted by a UK bank to a foreign subsidiary in Poland is taxable only in the UK.
- 2_ **Financial Assistance** Financial assistance, although possible, is subject to several conditions, among others: (a) a written report of the management board concerning the financial assistance is required, (b) financial assistance shall be granted only under “market conditions”, and (c) financial assistance is possible only if reserve capital was created earlier for this purpose and only from surplus cash.
- 3_ **Security Interests** Taking security which can cover all of the assets of the company is subject to fees of non-substantial amounts.
- 4_ **Clawback** As a general rule, transactions defrauding creditors can be challenged during a five year period. If the transaction renders claims of a third person ineffective, the third person can claim its ineffectiveness during a one year period. According to the provisions of the Bankruptcy And Reorganisation Law, a gratuitous transaction or an undervalued transaction is ineffective against an insolvent’s assets (the subject of the transaction will be returned to the insolvent’s assets) if it was concluded 12 months before the filing date of the application for insolvency. Similar rules apply if the granting of security or payment of a debt which was not due took place two months before the filing date. However, if the transaction was concluded with individuals or entities “connected” with the insolvent entrepreneur, even if not an undervalued transaction, it will be deemed ineffective against the insolvent’s assets.
- 5_ **Merger Control** In the case of significant concentrations the President of the Competition and Consumer Protection Office will, by way of decision, issue a consent to implement a concentration, if it does not result in significant impediments to competition in the market.
- 6_ **Foreign Investment Approval** A permit issued by the Minister of Interior and Administration is required for a foreigner (a company with its registered seat outside the EEA) when the transaction concerns shares of a Polish company which owns or is a perpetual usufructuary of real estate.
- 7_ **Employee Rights** Acquiring the business of the company has certain consequences in the area of employment law (ie it results in a transfer of business undertaking, which makes the new owner obliged, during a one-year period, to fulfil all of the obligations assumed by the previous owner under the collective employment agreement). As opposed to acquiring the business, an acquisition of shares does not trigger the transfer of business undertaking.

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Portugal

1_Withholding Tax Pursuant to Portuguese domestic tax law, loan interest payments to non-resident beneficiaries are subject to withholding tax at 20%. However, the standard Portuguese withholding domestic tax rate can be reduced under the provisions of a relevant tax treaty (10% with recourse to the UK/Portugal tax treaty), provided that some formal requirements are met. An additional withholding tax reduction can be achieved via the application of the so-called EU Interest and Royalties Directive (5% until 30 June 2013; 0% as from 1 July 2013), which, however, should be out of the scope of a standard financing arrangement as it implies the loan arrangement is set between related entities. Notwithstanding the foregoing, loan interest charged by banks in Portugal (either tax resident or branches of non-resident banks), does not attract withholding tax. In fact, where the loan is granted, say by a London branch of a bank tax resident in Portugal, no withholding tax will be levied as the said London branch is still an entity which is tax resident in Portugal and its profits are taxed therein. Also, in the case of a Portuguese branch of a non-resident bank in Portugal, loan interest is also exempt from Portuguese withholding tax when the borrower is resident in the Portuguese territory. (Regardless of the foregoing, it is expected that the Portuguese withholding tax exemption applicable to banks as described above may be amended as a result of the EU Commission determining that the current tax regime may be discriminatory for non-resident banks). Also of note is the fact that bond interest from bonds issued by Portuguese entities may also benefit from a Portuguese withholding tax exemption. In fact, according to the special regime applicable on the taxation of corporate debt securities, in force as of 1 January 2006, a withholding tax exemption may be achieved on cross-border financing through the subscription of corporate bonds. Furthermore, corporate bonds are not subject to stamp duty (except for the issue of related guarantees). This regime is applicable to corporate debt securities provided that they are traded through a clearing system covered by the Portuguese Securities Code. The bonds need to be issued for a term or duration of more than one year. This special tax regime is only applicable to non-resident bondholders without a permanent establishment located in Portuguese territory to which the bonds are allocated, and the bonds meet the following cumulative conditions: (a) they are not held, directly or indirectly, as to more than 20% by Portuguese tax resident entities; and/or (b) the same are not domiciled or located in tax haven jurisdictions. Of note is the fact that this solution, albeit being attractive, should be carefully considered as it may entail the risk of the respective arrangement falling within the scope of the general anti-avoidance rule whenever a single related bondholder subscribes its entire debt issued.

2_Financial Assistance The Portuguese Company Code (article 322) states that a company may not grant a loan or in any way supply funds or give guarantees for the purpose of allowing a third party to acquire its shares. There are exceptions, namely transactions in the normal course of business of financial institutions and share purchases for or by employees of the company, or a company within the same group, within the limitations foreseen therein.

3_Security Interests According to the Portuguese Civil Code, the creation of a security interest is recognised as a mechanism to grant priority to creditors (article 604), except vis-à-vis certain preferential creditors. The secured obligations may be future or conditional, and secured future assets are to a certain extent used in market practice, provided that the scope of the security interest is clearly established (Portuguese Civil Code, article 666), although, in respect of the latter, one cannot exclude that those may be challenged by a Portuguese court. Security interests over book-entry shares must be clearly registered in the securities account with an indication of the amount of securities burdened by the security interest, the secured

obligations and with identification of the beneficiary (Portuguese Securities Code, articles 68, 70 and 81), in an order of priority established chronologically (Portuguese Securities Code, article 75). The security interest can be enforced by private sale, if so established by the parties in the relevant agreement (Portuguese Civil Code, article 675). A special regime applies to financial collateral arrangements under Decree-Law 105/2004.

4_Clawback Pursuant to article 120 of the Portuguese Insolvency Code, transactions defrauding creditors can be challenged if entered into within the four years preceding the commencement of insolvency proceedings. In particular, security interests in relation to pre-existing obligations created in the six months prior to the beginning of insolvency proceedings may be challenged.

5_Merger Control The filing is mandatory where one of the following conditions is fulfilled: (a) the transaction creates or reinforces a shareholding exceeding 30% of the national market, or of a substantial part thereof, for a particular good or service; or (b) in the preceding financial year, the participating undertakings in Portugal have recorded an aggregate turnover exceeding EUR150 million, net of directly related taxes, provided that the individual turnover in Portugal of at least two of said undertakings exceeds EUR2 million.

6_Foreign Investment Approval There is no legal limitation in Portugal.

7_Employee Rights If the acquisition is construed as a “share sale”, there are no legal regulations or formal requirements to observe, since a share transfer does not involve a change of employer and the employment relationship remains unaltered. However, it is advisable to provide written notice of the sale to the workers’ representatives or the workers individually (of the target company). Workers (of the target company) may have to be informed in writing of any changes to the employer’s corporate alliance relationship due to a share transfer within 30 days of these changes becoming effective.

If the acquisition is construed as a merger, transfer of undertakings regulations apply (pursuant to Articles 285 to 287 of the Portuguese Labour Code): the employment status of the workers of the target company, including all rights and benefits acquired throughout their employment, are transferred to the new employer (the merging/purchasing company) unaltered and automatically. Moreover, the law sets out the following information and consultation duties: (a) both target company and merging/purchasing company must inform and or consult with the respective workers’ representatives or, if there are none, the workers themselves on the date and give reasons for the merger, the legal, economic and social consequences for the workers, and the measures (if any) to be taken with regard to the latter; and (b) such information must be given in writing and with adequate prior notice in relation to the merger becoming effective. Broadly, workers or their representatives have the right to participate in any restructuring processes, particularly where changes in working conditions are planned. Workers’ representatives may be entitled to issue a written and non-binding opinion/report with regard to such restructuring processes.

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Qatar

- 1_ **Withholding Tax** There is currently no withholding tax in Qatar however the position may change due to the implementation of a new law in Qatar (the new tax law was due to come into effect on 1 January 2010 but the withholding tax provisions are currently suspended). Qatar introduced a withholding tax on certain payments from resident entities to non-resident entities of 5% on payments including royalties, technical, managerial, and consultancy fees and 7% on payments of interest, commissions, intermediary fees and board remunerations.
- 2_ **Financial Assistance** There is nothing in Qatari law expressly prohibiting financial assistance by a company for the purchase of its shares, however Qatari law does prohibit a company from making loans to or guaranteeing loans on behalf of any of its board members.
- 3_ **Security Interests** It is not easy to take security which can cover all the assets of a chargor as there is no concept of a floating charge (save in the case of very limited circumstances) and perfection requirements under Qatari law are quite strict. There are no self-help remedies available on a default scenario and so security interests can only be enforced through court proceedings.
- 4_ **Clawback** The Commercial Law (Law no. 27 of 2006) contains detailed provisions relating to insolvency and bankruptcy. Transactions entered into by a borrower who is subsequently declared bankrupt are potentially open to being challenged and set aside by the appointed bankruptcy manager if the transaction was entered into during the relevant period. The relevant period is the period between the date of “cessation of payment” but before the date of “adjudication of bankruptcy”. It is for the court to determine the date of cessation of payments – and in deciding the court cannot declare the cessation of payments date to be a date preceding the adjudication date by more than two years.
- 5_ **Merger Control** Filing is mandatory and an answer is required to be given within 90 days (or otherwise clearance is deemed to be given). The transaction cannot complete before clearance is given or the 90 day period has passed.
- 6_ **Foreign Investment Approval** Non-Qatari investors may only invest in Qatar in accordance with the strict provisions of the Foreign Investment Law (Law No. 13 of 2000 and as amended). Non-Qatari investors may invest in all parts of the national economy (other than real estate businesses with some exceptions) with a Qatari partner who must own at least 51% of the enterprise. Approval from the Council of Ministers is required for foreign investment in banking and insurance. There are some specific industries where up to 100% foreign ownership is permitted (such as agriculture, tourism and education).
- 7_ **Employee Rights** There is a Qatarisation quota requirement for all private sector entities incorporated within the State of Qatar (not applicable to Qatar Financial Centre entities) and so this quota would need to be maintained. All employment contracts for private sector employees are governed by the Labour Law (Law No. 14 of 2004) and there is a requirement to pay end of service benefits to all employees. In the M&A context, the transfer of employees between sponsors can be time consuming and delays could cause breaches of the Labour Law. There are no trade unions and very few minimum rights for employees.

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Romania

- 1_ **Withholding Tax** The UK-Romania tax treaty provides for a 10% withholding tax on interest payments.
- 2_ **Financial Assistance** Romanian joint stock companies may not grant financial assistance (advance funds, grant a loan or a guarantee) to third parties for the purpose of subscribing for or purchasing the company's shares. The aforementioned provisions are stipulated in the title of Companies Law No. 31/1990 regarding joint stock companies and therefore there are different opinions on whether these rules also apply with respect to limited liability companies.
- 3_ **Security Interests** Security can cover all present and future assets of the guarantor. The security agreement must be concluded and registered for third party opposability with the National Securities Archive (**NSA**). Share pledges must also be registered in the company's shareholder registry. The date of registration with the NSA is used to determine the ranking of the security (ie once registered, the security takes precedence over future securities). However, there are certain preferential creditors (including the state for debts arising out of taxes and fines) that take precedence over the registered security, but only if the preferential right is also registered with NSA or the preferential creditor is in possession of the asset the object of the security.
- The creditor may request enforcement of the security based on the written agreement with the guarantor. Enforcement proceedings are suspended upon commencement of insolvency proceedings, but the creditor may request the court, if several conditions are met, to allow the continuance of the enforcement proceedings.
- 4_ **Clawback** A security may be set aside as a preference or undervalue transaction in the insolvency proceedings if the security was fraudulently given. The suspect period is (a) 120 days, if the security was created with a view to giving preference over other creditors; or (b) three years, if giving the security qualifies as an undervalue transaction.
- 5_ **Merger Control** The Romanian Competition Council must be notified if the following conditions are met: (a) the sum of the turnovers of the companies involved in the transaction exceeds EUR10,000,000; and (b) at least two parties involved in the transaction obtained each in the year preceding the transaction a turnover in Romania exceeding EUR4,000,000. The implementation of the merger is prohibited until the Competition Council issues its approval of the merger.
- 6_ **Foreign Investment Approval** There are no foreign investment restrictions.
- 7_ **Employee Rights** Share transfers do not affect the employees of the target company. In the case of a transfer of undertaking, the legislation implementing EU 2001/23/EC on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings applies. Transfers of shares do not represent a transfer of undertaking within the meaning of this legislation.

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Russia

- 1_ **Financial Assistance** Russian law does not recognise a concept of financial assistance and any party (including the target) can secure the obligations of the acquiror to pay the purchase price.
- 2_ **Security Interests** Russian law does not recognise a concept of general debentures covering all the assets in relation to all the debt (including future debt). Furthermore, it is prohibited to cover future assets in relation to the debt, while it is not prohibited to secure a future debt. Russian law is also quite restrictive and provides that moveable and immoveable property can be a subject of security upon different documents. Security in relation to immoveable property must be registered in a public register.
- 3_ **Clawback** A three-year clawback starts running from the moment when a claimant knew or should have known about the violation of his rights unless Russian law provides otherwise. Where a transaction is void, the three-year clawback would start running from the moment of the execution of a transaction.
- 4_ **Merger Control** Under Russian law there are a number of events (**Trigger Events**) that trigger the need for anti-monopoly clearance before the completion of the acquisition. The Trigger Events which are relevant for private acquisitions are as follows: (a) an acquisition of more than 25%, 50% or 75% of the voting shares in a Joint Stock Company; (b) acquisition of more than one-third, 50% or two-thirds of the participation interests in a Limited Liability Company; (c) acquisition of the right to determine the terms of the business conduct of the target or to act as its executive body (for example, under the terms of a shareholders' agreement). The financial thresholds (value of assets/turnover of the parties and their relevant groups) envisaged by Russian anti-monopoly legislation should also be considered in order to understand whether anti-monopoly clearance is required.
- 5_ **Foreign Investment Approval** If the target is a Russian company carrying out activities within one of the sectors of strategic significance for national security and defence, before the acquisition, a foreign investor will need to obtain prior clearance in accordance with the Foreign Investments in Strategic Industries Law (**FISIL**). Under FISIL, a transaction completed without a prior approval is void.
- 6_ **Employee Rights** There is no requirement to consult employees prior to an acquisition.

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Rwanda

- 1_ **Withholding Tax** There is a withholding tax of 15% on interest payments on loans by foreign entities.
- 2_ **Financial Assistance** A company may not grant advances or loans or provide security for subscription or purchase of its own shares unless the board of directors has previously resolved that (i) giving the financial assistance is in the interests of the company, (ii) the terms and conditions on which the assistance is given are fair and reasonable to the company and to any shareholders not receiving that assistance and (iii) immediately after giving assistance, the company satisfies the solvency test (Article 114 of the Law relating to Companies). In addition a company may not provide financial assistance exceeding 10% of its share capital (Article 115 of the Law relating to Companies).
- 3_ **Security Interests** Security interests can cover present and future assets (Article 1 of the decree of the Mortgage system). Article 1 of the order on preferential creditors adds that secured creditors include taxes, court costs, funeral expenses, medical expenses and wages.
- 4_ **Clawback** In case of bankruptcy of the debtor within six months following issue of the certificate of bankruptcy all acts taken by the debtor without permission of a court judge are null and void (Article 25 of the decree of 12 December 1925 on the certificate of bankruptcy).
- 5_ **Merger Control** An acquisition may be suspended and even be declared void (Law governing Companies 1988). Third parties have the right to bring action before the court within three months after publication of the merger where it is deemed that the acquisition will cause them a disadvantage.
- 6_ **Foreign Investment Approval** There are no restrictions governing foreign investment in Rwanda (Article 2 of the Investment Code).
- 7_ **Employee Rights** Third parties retain all rights they had before the merger and may also, within three months from the publication of the notice of merger, require the commercial court to void the merger, if it does not provide them sufficient guarantees (Article 49 of the Law 06/1988 on Companies).

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Sao Tome

- 1_ **Withholding Tax** A withholding tax of 20% applies.
- 2_ **Financial Assistance** There are no financial assistance issues in relation to private companies.
- 3_ **Security Interests** Security over moveable or immoveable property must be created over existing (present, not future) assets. Such types of security (mortgage and pledge) are subordinated to preferential creditors. As the regime applicable to a security depends on the type of security to be granted and, for an equity interest, on the respective By-Laws and purpose of the target company, the assessment on the ease of perfecting it and of its enforcement must be made on a case-by-case basis.
- 4_ **Clawback** A creditor may request the annulment or termination of certain acts or transactions which determine the inability of the debtor to pay the debit or increases such inability, provided that (a) in the case of gratuitous acts, the credit is prior to such act and the annulment is requested within a five year period from the relevant act or transaction; or (b) in the case of onerous acts, solely in the event of misconduct of the parties and if the annulment is requested within a five year period from the relevant act or transaction. During the bankruptcy proceedings, the insolvency administrator and any creditor may also request the annulment or termination of acts or transactions which determine the depreciation of the insolvent entity's estate to a court, such as the following: (i) gratuitous acts carried out in the two years prior to the declaration of bankruptcy; (ii) onerous misconduct of the parties carried out in the two years prior to declaration of bankruptcy; (iii) payment of debts before the date of maturity or after such date, when such debts become due in the year prior to the declaration of bankruptcy and correspond to unusual amounts; (iv) any securities *in rem* executed after the secured obligations during the year prior to the declaration of bankruptcy, or executed simultaneously with the secured obligations, in the 90 days prior to said declaration; and (v) any sales made in the 90 days prior to the declaration of bankruptcy. Transactions defrauding creditors can be challenged (there is no time limit).
- 5_ **Merger Control** There are no filing obligations.
- 6_ **Foreign Investment Approval** It is not necessary to submit an investment project.
- 7_ **Employee Rights** In the case of a transfer of undertakings, the legal position of the former employer in the employment contract will be transferred to the new employer only if there is an agreement between both employers setting forth that the employees shall continue working for their former employer with the same or a superior job position.

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Saudi Arabia

- 1_ **Financial Assistance** There are no financial assistance laws in Saudi Arabia as such, however, some types of financial assistance might not work due to accounting guidelines.
- 2_ **Security Interests** Taking security in Saudi Arabia is not easy and straightforward, as notaries regularly refuse to notarise mortgages in favour of banks; also transfer to a security agent might not always work if the notary considers it to be a transfer by way of security. There is no central land or charges register.
- 3_ **Clawback** There are no statutory provisions. Neither the Capital Market Law, the Investment Fund Regulation, nor any of the Capital Market Laws or other implementing regulations, expressly discuss the possibility of a “clawback” of payments that have been erroneously, preferentially or fraudulently made by a manager. However, under certain circumstances in the context of investment funds, such clawback is possible. However, funds are rarely involved in an M&A transactions. There are, however, Sharia law provisions that can set aside transactions in certain circumstances, for example preferences, fraud or error. However, how a court will view a particular transaction cannot be foreseen.
- 4_ **Merger Control** Article 7 of the Competition law (which does not apply to state-owned companies and public corporations) sets out that notification and approval is required. If the result of a merger is the restriction of commerce, it is prohibited.
- 5_ **Foreign Investment Approval** Any entity with a foreign shareholding requires a licence by the Saudi General Investment Authority; some industries are closed to foreign investments altogether, these categories are published on the “negative” list.
- 6_ **Employee Rights** Companies need to bear in mind they need to maintain their Saudisation quota, which varies from industry to industry. A Saudisation certificate must be obtained attesting compliance. Furthermore, in an M&A context, the transfer of employees between sponsors can prove to be slow and an employee working for a company other than his sponsor may cause the sponsor and the employee to be fined. In practice, it is difficult to terminate contracts of Saudi citizens, especially in government-owned companies. However, management rarely has golden-parachute provisions. There are no trade unions and very few minimum rights for employees, and there are no statutory provisions for redundancy pay (except for end of service payment).

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Scotland

1_ **Withholding Tax** The position in Scotland is exactly the same as the position in England.

2_ **Financial Assistance** The position in Scotland is exactly the same as the position in England.

3_ **Security Interests** It is possible to take security over all the assets of a chargor and it is relatively cheap and easy to do so.

- **Floating charges:** Scottish companies can grant floating charges under statute (Part 18 of the Companies Act 1985) but not under common law or under the Law of Property Acts. The charge need not extend to the whole property and undertaking of the company, however, as in England, in order to be recognised as a “qualifying floating charge” and give the holder of that charge an out-of-court way of appointing an administrator of the company, it must extend to all or substantially all of the property and undertaking of the company. Scots law does not recognise the concepts of “by notice” or “automatic” crystallisation of a floating charge. Under Scots law a floating charge will crystallise only on the winding up of the company or on the appointment of an administrator by the floating chargeholder. A receiver must be appointed in respect of all of the property comprised in a floating charge and, unlike a Law of Property Act Receiver in England, it cannot be appointed in respect of only part of that property. It is possible for a company to grant fixed and floating charges over the same assets. The floating charge and any fixed charges are not, under Scots law, constituted by a single composite security document but are constituted separately. This is in contrast to the position in England where a composite debenture will normally incorporate fixed charges over specific asset classes and a floating charge over those assets which are not subject to those fixed charges.
- **Fixed Charges:** There are several differences between taking fixed security in Scotland and taking equivalent security interests in England. The two main differences are, in summary, as follows:
 - (i) **Security over land** Scots law relating to fixed security over land is derived from statute rather than common law (Part II of the Conveyancing and Feudal Reform (Scotland) Act 1970, (as amended) and the only competent way to take a fixed security over land and buildings situated in Scotland is by way of standard security; and
 - (ii) **No concept of equitable charge** The concept of equitable charge does not exist under Scots law. Consequently, if a creditor wants to have the benefit of its fixed security, that security must be fully perfected. For example, in the case of an assignation, it is essential under Scots law that the assignation is properly intimated to the relevant counterparty. There are several ways in which an assignation can be validly intimated, however, the main form is found in the Transmission of Moveable Property Act, which involves notifying each relevant counterparty, providing them with a certified copy of the relevant assignation and requiring that they acknowledge such notification. In the case of a share pledge, security is only constituted by entering the name of the creditor (or its nominee) in the register of members of the company whose shares are being charged. The Scots law requirements for constituting a fixed security are consequently more onerous than the English law requirements. As a result it is, as a practical matter, often more difficult to take an effective fixed security over an asset in Scotland, and this is why a floating charge over all the assets of a company is usually taken in addition to any fixed security.
- **Future Assets:** Under Scots law it is possible to take security over future assets in the form of a floating charge. It is not possible under Scots law to create a fixed security over future assets as these assets must be identifiable when the charge is given and the chargee must have possession and control over the assets charge. As discussed above, the concept of equity is not a feature of Scots law and so consequently there will be no security interest over a future asset

unless steps are taken to perfect the security once the relevant assets come into existence.

4_Clawback The main reasons why under Scots law a security may be challengeable despite security being drafted and registered properly are as follows.

1_Insolvency Act 1986 – s245 – Avoidance of certain floating charges – A floating charge on a company's property may be automatically invalid to the extent that there is no new consideration given following its creation. Therefore, if there is a presentation of a petition to wind up the company or for the administration of the company or of a resolution to wind up the company in a voluntary winding up within the relevant challenge period, the floating charge will only be valid in respect of debt arising after the date of the relevant floating charge and not before. A floating charge may be avoided in the course of an administration or winding up under section 245. The challenge periods are:

1.1_if the floating charge is granted in favour of an “unconnected person”:

1.1.1_it was made within 12 months ending with the onset of insolvency; and

1.1.2_at the time the floating charge was created the company was insolvent or became insolvent as a consequence of the transaction under which the charge is created; or

1.2_if the floating charge is granted in favour of a person connected with the company and it was made within two years of the onset of insolvency.

2_Insolvency Act 1986 – s242 – gratuitous alienations – A transfer by a company is challengeable by a creditor, liquidator or administrator of that company if it was not made for adequate consideration. The court may grant decree for restoration of property to the company's assets or other appropriate redress. The granting of a guarantee can be construed as a gratuitous alienation. The challenge periods are:

2.1_transfer to an associate within five years before winding up or administration; or

2.2_transfer to an independent third party within two years before winding up or administration.

A court order will not be made if the company was solvent at the time of the relevant transfer or the transfer was made for adequate consideration or if the transfer falls within certain categories of a conventional gift or is for a charitable purpose.

In addition a third party purchaser is protected if he acquires the property in good faith and for value from or through the transferee. If the purchaser is put on notice of an issue affecting the transfer he must, to be in good faith, investigate the position.

3_Insolvency Act 1986 – s243 unfair preferences – A transaction which has the effect of creating a preference in favour of a creditor to the prejudice of the general body of creditors within six months of the commencement of the winding up or administration of the company will be challengeable by a creditor, liquidator or administrator unless it was:

3.1_a transaction in the ordinary course of trade or business;

3.2_a cash payment of a debt which was payable and which did not contribute to the prejudicing of the general body of creditors;

3.3_a transaction whereby the parties undertook reciprocal obligations (including at different times) unless it contributed to the prejudicing of the general body of creditors as above; or

3.4_the granting of a mandate in favour of arresting creditors.

4_There are other reasons why under the Insolvency Act a security may be capable of challenge (for example section 207 – transactions to defraud creditors, section 212 – summary remedy against delinquent directors, liquidators etc, section 213 – fraudulent trading, and section 214 – wrongful trading or section 244 – extortionate transactions). The position in Scotland in relation to these matters is the same as under English law. In addition there are grounds under Scots common law which make a transaction challengeable by creditors, liquidators and administrators which apply from the onset of insolvency and are not subject to any time limit.

5_**Merger Control** The position in Scotland is exactly the same as the position in England.

6_**Foreign Investment Approval** The position in Scotland is exactly the same as the position in England.

7_**Employee Rights** The position in Scotland is exactly the same as the position in England.

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3_Article 3 contains the following definitions:
 “(1) A Non-resident of Serbia (hereinafter a non-resident taxpayer) is subject to taxation of profits achieved through a permanent business unit located in the territory of Serbia.
 (2) A Non-resident taxpayer, for the purposes of this Law is a legal entity established and managed and controlled outside of the territory of Serbia.”

Senegal

- 1_ **Withholding Tax** If the UK bank has its principal office in Senegal, withholding shall tax apply. Any sum of money paid or repaid by a debtor who has a permanent residence in Senegal to a creditor who is resident outside of Senegal with regard to any services or any payment of any kind used in Senegal is subject to withholding tax. If not, there is no withholding tax (Art 133-1 of the Law 2004-12 dated 2004 relating to the General Tax Code Reform).
- 2_ **Financial Assistance** The subscription or purchase by the company of its own shares, either directly or by a person acting in his own name but on behalf of the company is prohibited (Article 639 of the OHADA Standard Act on Companies). Similarly, a company cannot advance funds, grant loans or grant security to the subscription or purchase of own shares by a third party.
- 3_ **Security Interests** Present and future assets may be covered by a security interest (Article 45 of the OHADA Uniform Act organizing securities). Such security may only be enforceable against third parties where it is in written form. Preferential creditors include wages, social security and taxes.
- 4_ **Clawback** The suspect period typically starts from the date of cessation of payment and ends at the date of the decision initiating proceedings. The beginning of the suspect period cannot be earlier than 18 months immediately prior to the judgment opening the procedure (Article 34 of the OHADA Uniform Act organizing collective proceedings for wiping off debts). Security may only be set aside if it has been granted during the suspect period or once formal insolvency proceedings have been commenced. Security cannot be set aside where it has been granted before the suspect period.
- 5_ **Merger Control** A merger cannot be suspended under Senegal law unless it is deemed to be anti-competitive and, or where it is deemed to constitute a monopoly between the intended merger companies and the rest of the market.
- 6_ **Foreign Investment Approval** There are no restrictions governing foreign investment in Senegal.
- 7_ **Employee Rights** Employees do not have the right to oppose a takeover. Their status is deemed to be unchanged. The new employer may be required to modify some working conditions in accordance with the requirements of the Employment Code (Article 66 of the Employment Code 1997).

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Serbia

- 1_ **Withholding Tax** According to Article 40 of the Law on Corporate Income Tax, the income of a non-resident taxpayer arising out of, inter alia, interest is taxed by 20% withholding tax, unless there is a double taxation treaty relevant to the parties. Note that there is a double taxation treaty in place between Serbia and the UK, according to which, if interest is taxed in the country of the payer of the interest, it cannot exceed 10%. However, the definition of a “non-resident taxpayer” is quite unclear and requires detailed investigation as it is not certain whether the “non-resident taxpayer” must possess permanent business units in order to be taxed in Serbia or not.²
- 2_ **Financial Assistance** According to Article 123, ie Article 190 of the Company Law, neither a limited liability company nor a joint stock company may give any loan or financial benefits to an acquiror nor may they provide any security for the acquisition of their shares.
- 3_ **Security Interests** The legal system of Serbia relating to securities over both moveable assets and immovable assets (different laws regulate securities over moveable and immovable property) is quite relaxed (security can cover all present and future assets, registration of the security is neither a documentary nor lengthy process, enforcement may be achieved by private sale if so agreed under the pledge agreement, etc.). However, it should be noted that the Law on Mortgages has been adopted only recently and thus the application thereof may still involve certain difficulties and may take a considerable time.
- 4_ **Clawback** Under the general principles of the Code of Obligation, any legal transaction (including one involving security) may be set aside, if certain terms and conditions are met, within one to three years depending on whether the transaction was made with or without compensation. Bankruptcy Law provides for different terms of annulment of security depending whether the transaction was made in the ordinary course of business or in an extraordinary course of business. The suspect period varies between six to twelve months.
- 5_ **Merger Control** Any acquisition where the acting entities’ turnover exceeds certain thresholds must be cleared by the Competition Commission, otherwise the transaction may be suspended (or annulled).
- 6_ **Foreign Investment Approval** There are no limitations in respect of foreign participation in the capital of a domestic company – it can be 100%, save for very exceptional cases in very specific areas, eg armaments and broadcasting with a national licence.
- 7_ **Employee Rights** Employees only have to be informed/consulted on an acquisition 15 days in advance of it, but they can neither influence it nor delay it.

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Seychelles

- 1_ **Withholding Tax** International Business Companies are exempt from withholding taxes and Seychelles Special License Companies (ie **CSLs**) are exempt from Seychelles withholding taxes on dividends, interest and royalties.
- 2_ **Financial Assistance** Financial assistance is prohibited.
- 3_ **Clawback** The suspect period in the Seychelles is six months.
- 4_ **Merger Control** In the case of a merger, a company is required to file its articles of merger or consolidation with the Registrar.
- 5_ **Employee Rights** In the case of a transfer of undertaking, regulations require an employer to pay compensation to its workers. There are no other regulations which apply.

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Sierra Leone

- 1_Withholding Tax** Under section 118(b) of the Income Tax Act No.8 of 2000 as amended, withholding tax payable on dividends out of the jurisdiction is 10%. Under section 119(1)(b) of the Income Tax Act, withholding tax on interest payable out of the jurisdiction is 15%. However, Sierra Leone has a double tax avoidance treaty with the UK which supersedes local legislations based on which 0% is charged on interest and the same as in domestic law is charged on dividends.
- 2_Financial Assistance** The Companies Act 2009 prohibits a company from providing financial assistance, directly or indirectly, for the purchase of its shares or the shares of its holding company. Exceptions to this prohibition include:
- where money lending is part of the ordinary business of the company;
 - the company has a scheme for the provision of money for the purchase of shares by employees;
 - the making of loans to employees other than directors with the aim of helping them to purchase shares in the company; and
 - if (i) the company's principal purpose in giving financial assistance is not to give it for the purpose of the acquisition if giving the assistance for that purpose is but an incidental part of some larger purpose of the company, and (ii) the assistance is given in good faith in the interest of the company.
- 3_Security Interests** Security interests can cover present and future assets (sections 142-152 of the Companies Act 2009). They are easy to register and relatively easy to enforce. Preferential creditors such as taxes, customs, social security and wages get paid before other creditors in a winding up (section 438 of the Companies Act).
- 4_Clawback** Under section 170 of the Companies Act 2009, security is void if not registered. Section 439 of the same Act makes security voidable if deemed a fraudulent preference of creditors. Also under section 446 if in liquidation a company is unable to meet its debts, then the liquidator may order that the security or charge or part of it created by the company over any of its properties or undertaking in favour of a director and/or his relative or a related company be set aside by the court if just and equitable to do so.
- 5_Merger Control** There are currently no regulations or rules in force relating to mergers. However, under section 494 of the Companies Act 2009, the Corporate Affairs Commission (which regulates the activities of companies) is empowered to make such regulations.
- 6_Foreign Investment Approval** Foreign investment is generally not subjected to any special approval. However, certain sectors of activity require prior approval from the Ministry of Trade and Industry. These sectors include: banking, mining, oil and gas, and air transportation.
- 7_Employee Rights** Under the Industrial Relations Act No. 18 of 1971, the appropriate Trade Group Council would negotiate on behalf of the employees. There is a general requirement that employees should be given three months' notice or salary in lieu of notice in addition to any end of service benefits, retirement or pension scheme benefits.

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Singapore

- 1_ **Withholding Tax** Subject to a double taxation treaty applying between Singapore and a foreign jurisdiction which may operate to reduce or exempt payments from withholding tax, withholding tax is levied at a rate of up to 20% depending on the type of payment being made. Singapore, however, has a large number of double taxation treaties.
- 2_ **Financial Assistance** Under section 76 of the Companies Act, financial assistance by a Singaporean company is generally prohibited if it is made for the purposes of (or in connection with) the acquisition of shares in that company or its holding company, unless one of the three whitewash procedures set out in section 76 can be, and is, appropriately carried out. The measures applied in England with respect to how private companies give financial assistance have not been adopted in Singapore.
- 3_ **Security Interests** The taking of security over private companies' assets is normally straightforward and quick.
- 4_ **Clawback** Under Singaporean law, there are a number of categories of transactions entered into by companies and individuals which are vulnerable to being set aside or rendered void. Under the Companies Act, dispositions of a company's property are void if effected after the presentation of a winding up petition under which a winding up order is later made, registrable charges which are not duly registered are void in the liquidation of a chargor, and a floating charge granted by an insolvent company without receiving any fresh monies is void if the company is placed in liquidation less than six months later. Any conveyance of property with intent to defraud creditors is, under the Conveyancing and Law of Property Act, void at any time. Separately, the Bankruptcy Act prohibits certain (a) unfair preferences, and (b) transactions at an undervalue. For an unfair preference transaction to take place, such a transaction must have been entered into within two years of the presentation of the petition or the commencement of winding up where the person said to have been preferred is an "associate" and, in other cases, within six months of the same date. For a transaction at an undervalue to be applicable, it must have occurred within five years of the day on which the relevant bankruptcy application was made.
- 5_ **Merger Control** Mergers that have resulted, or may be expected to result, in a substantial lessening of competition within any market in Singapore for goods or services are generally prohibited under the Competition Act. However, competition concerns in respect of an acquisition are unlikely to arise unless a merger results in (a) a merged entity with a market share of 40% or more; or (b) a merged entity with a market share in the relevant market of between 20% to 40% and a post-merger CR3 ratio of 70% or more. The CR3 ratio refers to

the concentration ratio of the market shares of the three biggest firms in the relevant market. The thresholds are based on the guidelines published by the Competition Commission of Singapore (the **CCS**), and are merely indicators of potential competition concerns that the CCS may have and are not determinative. Notification to the CCS is voluntary. The CCS may in ruling, inter alia, impose directions which (a) require the merger parties not to carry out the anticipated merger or (b) are structural in nature (eg requiring divestments). The CCS may also impose financial penalties.

6_Foreign Investment Approval In most sectors of the Singaporean economy, there are no restrictions on foreign ownership nor requirements for approval because of an investor's nationality. However, in a relatively small number of sectors such approval requirements or prohibitions do exist – particularly in the “local” financial sector as well as in the media, telecommunications, air transport, public utilities and defence sectors.

7_Employee Rights There are provisions in the Employment Act governing the rights of certain employees in circumstances where the business they are employed to support is sold, or transferred, to another party as a going concern. Not all employees will benefit as the Employment Act applies to a limited class of employees only, and employees such as those engaged in managerial or executive positions are excluded from the protection of the Employment Act in this regard. There are no statutory obligations to inform or to consult any employees or their representatives, and no employees have any special statutory protection against dismissal, in the context of a share purchase. As a purely contractual matter, employees' employment contracts should be complied with (eg concerning notice provisions).

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Slovakia

- 1_ **Withholding Tax** Interest paid by a Slovak company to a UK bank is free from withholding tax upon the application of the Slovak-UK Double Taxation Treaty. UK banks should be able to produce a tax residency certificate upon payment of the interest.
- 2_ **Financial Assistance** The prohibition of financial assistance is absolute in nature and cannot be waived by any party or contracted out in an agreement. However, this only applies to joint stock companies (a.s.).
- 3_ **Clawback** There are three types of transactions that can be challenged upon the debtor's bankruptcy: (i) undervalue transactions, (ii) transactions preferring creditors and (iii) so called "intentional preferences". The right to challenge these transactions exists with respect to the acts made within one year before the commencement of the bankruptcy proceedings, or three years, in case of related parties. However, if the transaction is of the "intentional preference" type (ie it is an act of the bankrupt party that was made with the intention to curtail other creditors, and if the counterparty knew of this intention), then the right to challenge the transaction exists with respect to acts made within five years before the start of the bankruptcy proceedings.
- 4_ **Foreign Investment Approval** Foreign ownership restrictions apply in respect of real estate assets (arable land and forest land).
- 5_ **Employee Rights** Cross-border mergers involving employees can be time-consuming but employee committees cannot block a merger.

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Slovenia

- 1_ **Withholding Tax** There are limited exemptions to the withholding tax at a rate of 15% on interest, dividend and royalty payments. Slovenia has double tax treaties with numerous countries which reduce the tax rate applicable, and also some double tax treaties pursuant to which the withholding tax rate on interest payments is zero. The double tax treaty between Slovenia and the UK reduced the withholding tax rate to 5%.
- 2_ **Financial Assistance** Target companies are prohibited from assuring advance payments or loans to third parties to acquire their shares.
- 3_ **Security Interests** Except as described in comment 2 above, it is relatively easy and cheap to take security over the shares in the target company. A security interest can also be granted on most types of other assets. Perfection is required and depends upon the type of assets secured. Enforcement may be time-consuming, but private sale is often permitted.
- 4_ **Clawback** The bankruptcy administrator and creditors of the bankruptcy debtor may – under conditions set forth by law – challenge the bankruptcy debtor’s legal actions if performed to the detriment of other creditors within a period of one year before the bankruptcy proposal, and provided that the opposite party knew of the bad financial or economic position of the bankruptcy debtor. It shall be presumed that such knowledge exists if the challenged action took place within three months before the bankruptcy proposal.
- 5_ **Merger Control** Transactions representing notifiable concentrations and not subject to review by the European Commission pursuant to the EC Merger Regulation have to be notified to the Competition Protection Office. Concentrations are notifiable if the following threshold is achieved: the aggregate annual turnover on the Slovenian market of the enterprises participating in the concentration (together with other members of their groups) exceeded EUR 35 million in the last business year; and the aggregate annual turnover on the Slovenian market of the target company (together with other members of its group) exceeded EUR 1 million in the last business year, or, in case of creation of a joint enterprise, the aggregate annual turnover on the Slovenian market of at least two enterprises participating in the concentration (together with other members of their groups) exceeded EUR 1 million in the last business year. Also if this above threshold is not met, the Competition Protection Office has the right to require a notification if the enterprises participating in the concentration (together with other members of their groups) achieve more than a 60% market share in the Slovenian market, and the Competition Protection Office has to be informed of the transaction to be given the opportunity to require a notification.
- 6_ **Foreign Investment Approval** In general, there are no legal limitations with regards to a foreign bidder acquiring a Slovenian target company. Certain limited investment limitations and approval requirements exist in certain regulated sectors (such as banking, media, insurance, defence, gaming, energy etc.), but these apply equally to domestic and foreign bidders.

7_Employee Rights Information and consultation obligations (works council or workers representative) are likely to be triggered by a takeover, although employees or their representatives cannot challenge or disapprove the transfer. In case of any change of the employer carried out within the meaning of the Acquired Rights Directive (as implemented in Slovenia), the contractual and other rights and obligations deriving from the employment relationship as of the day of transfer, shall be transferred from the employer-transferor to the employer-transferee. The rights and obligations deriving from collective agreements applicable for the employer-transferor shall be generally assured by the employer-transferee for at least one year. The employer-transferor and the employer-transferee shall inform the trade unions (or, if no trade unions are established, all employees) in advance, and the employer-transferee shall, not later than 15 days before the transfer, consult with the trade unions about the legal, economic and social consequences of the transfer and the envisaged measures for the employees.

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South Africa

The South African Companies Act is expected to be replaced by a new Companies Act (New Act) in the second half of 2010. The New Act (and the associated Regulations which have not yet been published) will result in extensive changes to South African company law and a number of the responses below may need to be revisited when the New Act comes into force.

1_ **Withholding Tax** None.

2_ **Financial Assistance** Financial assistance is not permitted under South African law, save in the case of companies that lend monies in the ordinary course of their business, in accordance with any scheme for the benefit of the employees of the company, for loans to persons (other than directors) in the employment of the company with a view to enabling those persons to purchase or subscribe for shares in the company or its holding company or the company buying back its own shares from its shareholders. In terms of a recent amendment to the Companies Act, a company is not prohibited from giving financial assistance if (i) the company's board is satisfied that the company is solvent and liquid, and (ii) the terms of the assistance are sanctioned by a special resolution (given by at least 75%) of its members.

3_ **Security Interests** It is easy and relatively cheap to take security, which can cover all the assets of a debtor.

4_ **Clawback**

- (i) "Dispositions" which include the granting of security can be set aside following the insolvency of a security grantor in certain circumstances and subject to different suspect periods:
 - (a) dispositions without value may be set aside if made more than two years before insolvency and it is shown that at the time of the disposition the liabilities of the insolvent company exceeded its assets. Dispositions without value made within two years of insolvency will be set aside unless the person benefiting from the disposition can show that, immediately after the disposition, the assets of the insolvent company exceeded its liabilities;
 - (b) a disposition made within six months of insolvency that has the effect of preferring one creditor ahead of others will be set aside if, after making the disposition, the liabilities of the insolvent company exceeded its assets, unless the favoured party can show that the disposition was made in the ordinary course of business and was not intended to prefer one creditor above others;
 - (c) a disposition made, at a time when a debtor's liabilities exceeded its assets, with the intention of preferring one creditor above another may be set aside; and
 - (d) any disposition made in collusion with another person which had the effect of prejudicing a debtor's creditors or of preferring one of its creditors above another can be set aside (there is no time limit).
- (ii) At common law, the *actio Pauliana* allows for a disposition to be rescinded if:
 - (a) the debtor's assets are diminished by the disposition;
 - (b) the debtor does not receive its own property;
 - (c) there is an intention to defraud creditors; and
 - (d) the fraud is effective.

5_Merger Control The approval of the South African competition law authorities would be required if there is a change in control of the whole or part of a business and certain financial thresholds are met. If such approval is required, the acquisition cannot be implemented until the approval is obtained. The approval will take up to 60 working days (if the transaction qualifies as an “intermediate merger”) or in excess of 90 working days (if it is a “large merger”). If the transaction is opposed by the Commission or a third party, the approval process could take longer than six months (and up to two years in the case of particularly complex mergers). There may also be certain other regulatory approvals depending on the industry in which the target operates, such as mining, gambling, financial services, banking, etc. It is also important to note that the South African Securities Regulation Code on Takeovers and Mergers would apply to certain private companies, ie private companies that are resident in South Africa that have more than ten shareholders and the shareholders’ interest (shares and loans) exceed R5 million. Although there is no filing required, compliance with the SRP Code would be required.

6_Foreign Investment Approval Prior exchange control approval from the South African Reserve Bank is required in respect of cross-border loan funding and/or the granting of security by a South African resident in favour of a non-resident. Prior exchange control approval to acquire shares in South African companies is not required but certain administrative requirements need to be complied with where shares are transferred to or acquired from non-residents.

7_Employee Rights With the taking over of a business as a “going concern”, employees are transferred automatically, and in the case of an acquisition through a sale of shares, the employer remains unchanged.

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South Korea

- 1_ **Withholding Tax** There is a withholding tax equivalent to 10% of interest accrued on a direct loan by a UK bank under Article 11 of the Korea-UK tax treaty and section 93.1 of the Corporate Tax Act of Korea; provided, however, if the lender is the Bank of England or a financial institution wholly owned by the UK government, there will be an exemption from withholding tax.
- 2_ **Financial Assistance** The Supreme Court of Korea has held that, where the target company secures or guarantees a bank loan to the acquiror to finance the purchase price, such provision as security for or guarantee of a bank loan constitutes a breach of directors' fiduciary duty. A breach of directors' fiduciary duty is subject to penalty.
- 3_ **Security Interests** In the case of security interests in real property and certain tangible properties (eg automobiles), registration is required for perfection (which means it would be difficult to create security interests therein to be acquired in the future). To a limited extent, the security can be subordinate to preferential creditors such as taxes or wages etc. It is permissible to enforce the security through private sale, but this is subject to certain restrictions.
- 4_ **Clawback** The custodian of a debtor can set aside, among others, (a) any act of furnishing any security; and (b) any gratuitous act or act for valuable consideration that may be deemed identical to the former, in each case if such act is performed by the debtor before or after six months from the date on which the debtor suspends his/her payment. Further, if the purpose of a debtor's furnishing any security to a certain creditor is to cause damages to any other creditors, such other creditors may cancel it by bringing a cancellation lawsuit within one year from the date on which they become aware of the cause for cancellation, or within five years from the date on which such provision takes place.

5_Merger Control If a company of a certain size or greater acquires 20% (or, in the case of a publicly listed company, 15%) of the total issued and outstanding shares of another company of a certain size or greater, filing of a merger report with the Korean Fair Trade Commission (**KFTC**) is required. Filing should be made before or after the merger depending on the size of the acquiror or the target. KFTC can suspend the acquisition (if pre-merger filing is required), or KFTC can order the acquiror to sell the stock purchased (if post-merger filing is required) if it is determined that the acquisition would restrict competition in the relevant market.

6_Foreign Investment Approval In principle, there is no restriction on foreign investment, though simple reporting is required. However, exceptionally in some sectors (such as, media, telecommunications etc.), foreign investment may be restricted.

7_Employee Rights A change in the major shareholders of a company through the sale and purchase of stock does not affect the status of its employees. However, in the case of a business transfer, in principle, employees in the division of the transferred business of the target company must be transferred to the purchasing company under Korean law. In such case, in principle, their working conditions at the purchasing company must be at least equivalent to the working conditions at the target company.

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Spain

1_Financial Assistance Article 81 of the Joint Stock Company Law sets forth that a joint stock company (hereinafter, the **S.A.**) may not advance funds, grant loans, extend guarantees, or provide any type of financial assistance to a third party for the purchase of its shares or those of its controlling S.A. This restriction shall apply neither to activities directed to facilitate the acquisition of shares by the employees of the S.A., nor to transactions carried out by banks within their ordinary course of business if such activities are backed by unencumbered assets of the S.A.

2_Security Interests According to Spanish Law, security can be granted over any present asset of a company (security over future assets is not allowed), such security can also be subject to conditions. Note that universal securities does not exist and particular securities needs to be implemented on each type of assets with different perfection formalities. Securities must be granted before a public notary, since its raising to public document is necessary for its perfection. The applicable notarial fees shall depend on the value of the secured asset but in most of the times, due to the value of the asset, that fees are negotiated between the parties and the notary. In certain cases, such as mortgages over real estate or over IP rights, stamp duty can be triggered (1% over maximum secured liabilities). In relation to the enforcement of security, in general, the following procedures are available: (i) judicial auction (public auction led by the court) and (ii) notarial auction (public auction led by a notary). Certain specific type of security may allow a direct enforcement by the executing party according to Royal Decree 5/2005. Finally, under bankrupt situation, freeze on enforcement applies.

3_Clawback The Spanish Civil Code states that any agreement that has been entered into which defrauds creditors (*fraude de acreedores*), provided that such creditors are not capable of collecting their debt, can be rescinded. This action expires after four years from the execution of the relevant agreement.

In addition, and within a bankruptcy procedure, there exists a clawback period of two years which can apply to any agreement generating a damage against the insolvency a state (apart from the four year claw-back period indicated in the first paragraph that can also apply within this process).

4_Merger Control To be analysed on a case by case basis, in certain cases there is a filing obligation, and clearance must be obtained before completion.

5_Foreign Investment Approval According to Spanish Law there is no relevant procedure in this respect. The only formality to comply with (and only for statistical purposes) is the filing of the D1-A form with the General Directorate of Commerce and Investments, coming under the Spanish Ministry of Industry, Commerce and Tourism. The D1-A form has to be filed each time that a foreign company acquires share capital (whether by means of an acquisition or a share capital increase) in a Spanish company.

6_Employee Rights Under the Spanish Workers' Statute, the workers' representatives (or, in the absence of such representatives, the workers themselves) are entitled to be provided with the same information as shareholders. The recommended timing for giving such information is 15-30 days before completion of the transaction. The duty to inform is typically met by putting together a dossier containing the basics of the transaction and publicly available information. Workers' representatives should continue to be given relevant information as and when it becomes available if this information is supplied to shareholders.

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Sri Lanka

- 1_ **Withholding Tax** Ordinarily a person paying interest on a loan to a non-resident is entitled to withhold tax at a rate of 20% (or such other rate specified under a double tax treaty) when paying the interest component. If that person does not withhold the tax, he is liable to be assessed and charged for that amount of tax in addition to any income tax otherwise payable by him. However, when it is interest payable on a loan made by a banker, then the person paying the interest is not required to withhold the tax. Nevertheless, it should be noted that the interest income will be deemed to be profit and income arising in Sri Lanka of that bank and liable to taxation in Sri Lanka.
- 2_ **Financial Assistance** The Companies Act permits financial assistance, subject to satisfying the criteria specified in the Companies Act. In the event the guarantee is given to a foreign bank, the approval of the Controller of Exchange will have to be obtained before guaranteeing the loan or debt; this also applies to the remittance of capital in the event of a default.
- 3_ **Security Interests** It is easy to obtain security, which can cover all the present and future assets of the chargor. Claims of the holders of floating charges over the assets of a company are subordinate to preferential claims, such as liquidation costs, statutory dues to employees, eg provident fund, gratuity etc., rates and taxes due to the government, salaries and compensation payable to employees. Claims of secured creditors holding fixed charges are not subordinate to preferential claims. At present, stamp duty is payable on mortgages (fixed or floating) at a rate of 0.1% of the amount secured. Enforcement of a charge may be a time-consuming procedure.
- 4_ **Clawback** Certain transactions are voidable on an application being filed in court by the liquidator. Examples include (i) transactions taking place during a specified period when the company was unable to pay its debts as they fell due and the company intentionally enabled a person to receive more benefit under such transaction towards the satisfaction of a debt than under the liquidation; (ii) all charges given within a specified period over the company's property or undertaking other than charges securing monies advanced or paid, value of property sold or supplied to the company or any other valuable consideration given in good faith by the grantee and immediately after the charge was given the company was able to pay its debts falling due and charges given in substitution for similar previous charges; (iii) uncommercial transactions entered into by the company within a specified period at a time the company was insolvent. The specified period referred to above is: (a) two years before commencement of winding up/filing of winding up petition in court in the case of a transaction with a connected person, or (b) one year before commencement of winding up/filing of winding up petition in court in every other case. Transactions taking place up to one month before commencement of winding up are presumed to have been made when the company was unable to pay its debts. The liquidator also has the power, with leave of court, to disclaim certain contracts as onerous contracts.
- 5_ **Merger Control** There is no specific legislation which provides for control of mergers of private companies which have been incorporated in Sri Lanka. However, a merger could be subject to control if and only if it amounts to the prevalence of an anti-competitive practice within the meaning of the Consumer Affairs Authority Act No. 9 of 2003. An anti-competitive practice is deemed to prevail under the Consumer Affairs Authority Act when a "person in the course of business, pursues a course of conduct which of itself or when taken together with a course of conduct pursued by persons associated with him, has or is intended

to have or is likely to have the effect of restricting, distorting or preventing competition in connection with the production, supply or acquisition of goods in Sri Lanka or the supply or securing of services in Sri Lanka”. A merger which gives the acquiror a position that has or is likely to have the effect of restricting, distorting or preventing competition can be terminated only if it is “against public interest”.

6_Foreign Investment Approval Restrictions for foreign companies investing in/purchasing target companies located in Sri Lanka depend on the activity carried on by the target company. Except for areas of business which are totally reserved for Sri Lankan citizens (such as pawnbroking) or regulated areas, a foreign investor can invest up to 100% of the capital of a company incorporated in Sri Lanka.

7_Employee Rights The mere purchase of the majority of shares will not trigger the change of employer unless the target is no longer able to employ the employees.

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Sudan

1_ **Foreign Investment Approval** Foreign Investment Approval is only required if the target is a trading company.

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Sweden

- 1_ **Withholding Tax** In general, no withholding tax is applicable to interest payments from a Swedish company.
- 2_ **Financial Assistance** A Swedish limited liability company cannot provide financial assistance (loans or security/guarantees) in connection with the acquisition of shares in itself or another company that belongs to the same group of companies (defined as a group headed by a Swedish company). Where the target is a non-Swedish entity, no financial assistance restrictions apply. There are no whitewash procedures available under Swedish law. However, the prohibition on financial assistance applies only in connection with closing of the acquisition, but not when a reasonable time period has passed thereafter (typically parties tend to wait a few months).
- 3_ **Security Interests** Security can be taken over most kinds of assets and is in general easy to take and perfect (perfection steps include, for example, delivery of share certificates/mortgage deeds/floating charge deeds/promissory notes and notifications to third parties). Certain security may be impractical, such as bank accounts which may need to be blocked in order to be validly perfected (similar issues with trade receivables), and pre-agreed releases may render security invalid. No material fees or costs are payable save that stamp duties will be triggered on the registration of new mortgage deeds or floating charge deeds. Enforcement action can typically be carried out through public auction or private sale or as otherwise deemed appropriate.
- 4_ **Clawback** Security may be vulnerable to being set aside as a preference where the security is granted for “old” debt (ie the security is provided after the secured liabilities are incurred) or where perfection does not occur in a timely manner. The suspect period is three months unless the provider of the security is an affiliated entity, in which case the hardening period may be up to two years. There is also a general “catch-all” provision in the Swedish Bankruptcy Act which applies to improper transactions where the debtor is insolvent or became insolvent through the transaction (five years unless an affiliate).
- 5_ **Merger Control** There are filing obligations based on the merging parties’ revenues. The process is similar to the EU process and is fairly predictable. The transaction may not be completed prior to approval by the Competition Authority. The Competition Authority cannot decide to block a transaction; the Stockholm City Court is the exclusive forum therefor (in the first instance).
- 6_ **Foreign Investment Approval** There are no limitations that apply to foreign investors only, except that some restrictions may apply in respect of certain war equipment manufacturing businesses.
- 7_ **Employee Rights** If the acquisition is considered as a transfer of undertaking according to EU Directive 2001/23/EC, the acquisition will trigger several statutory provisions relating to a transfer of business; inter alia the employees of the target (the transferor) are automatically transferred to the purchasing company (the transferee). There is also an obligation for both the transferor and the transferee to consult and inform the relevant unions prior to the decision to acquire/assign the business in question. This may to some extent delay the acquisition, but the unions cannot by statutory powers actually oppose the acquisition. If the acquisition is simply a share transfer however, this will not trigger the EU Directive 2001/23/EC, but the obligation to consult and inform the relevant unions will to some extent still apply.

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Switzerland

- 1_ **Withholding Tax** There is no Swiss withholding tax if the loan is at arm's length and the 10/20 non-bank creditor rule is observed, ie, a borrower that is a tax resident in Switzerland and has more than 10 non-bank lenders per facility is deemed to have issued a bond; further a borrower that is a tax resident in Switzerland and owes its interest-bearing money to more than 20 non-bank lenders is qualified as a bank for withholding tax purposes. In both cases, interest payments become basically subject to Swiss withholding tax at the rate of 35%.
- 2_ **Financial Assistance** A Swiss target company can basically secure acquisition financing provided that such assistance (a) is covered by the target company's purpose; (b) is in the target company's interest; (c) complies with the principles of adequate risk diversification/ proportionate consideration (duty of care); (d) has been approved by the target company's board of directors; and (e) may be limited to freely disposable equity of the target company. In addition, shareholder approval and other procedural requirements may apply. Nevertheless, in case of bankruptcy of the target company, such assistance may be voidable pursuant to fraudulent conveyance rules.
- 3_ **Security Interests** Debt instruments may be secured by guarantees, sureties, by security assignments as well as pledges over shares (certificated or not), intellectual property rights and (including future) claims, and by pledges over moveable property and real estate (mortgages). Floating charges, ie, pledges over moveable assets, which remain in the debtor's use and possession, are not possible in Switzerland. Moveable property may only be pledged by way of actual transfer of possession to the creditor or security agent to the exclusion of the debtor. Upstream financial security is, subject to certain restrictions, basically allowed (see above, note 2). Enforcement against a Swiss debtor is governed by Swiss law and entails Swiss enforcement agencies, unless the creditor has reserved the right of private enforcement sales of the pledged assets.
- 4_ **Clawback** As a principle, the Swiss Debt Enforcement and Bankruptcy Act provides that a transaction may be voidable if (a) an overindebted company repays debts early or grants collateral for previously unsecured liabilities; (b) a debtor disposes of assets for free or for an inadequate consideration; or (c) the debtor intentionally prefers some creditors to others. These actions are available both in a bankruptcy and composition scenario of the debtor. The granting of collateral for pre-existing liabilities which the debtor was not bound to secure is voidable if the granting occurred during the year prior to the opening of bankruptcy or the granting of a stay or moratorium (the **suspect period**) and at a time where the grantor was already overindebted. As long as the creditor does not have actual or constructive knowledge of the grantor's overindebtedness, the granting of collateral is not voidable. The bona fide creditor is therefore protected. However, the law presumes the creditor's knowledge of the grantor's overindebtedness. The creditor bears the burden to prove his good faith. The granting of collateral as a security for the debt of a third party without adequate consideration would be deemed to be a gift and therefore – if made during the suspect period – be voidable. As a catch-all provision, Swiss statutory law states that any and all transactions carried out five years prior to the opening of bankruptcy proceedings or the granting of a stay or moratorium are voidable if carried out by the debtor with the intention to favour certain creditors over others and such intention was apparent to the other party of the transaction.
- 5_ **Merger Control** Under the Swiss Federal Act on Cartels and Other Restraints of Competition and its implementing regulation, an undertaking intending to acquire sole or joint control must file a notification with the Swiss Competition Commission before the concentration

is completed. This is if, in the last accounting period before the concentration, (a) the undertakings concerned reported worldwide joint sales of at least CHF 2bn or joint sales in Switzerland of at least CHF 500m; and (b) at least two of the undertakings concerned reported individual sales in Switzerland of at least CHF 100m each. Special rules apply for insurance companies, banks, saving institutions and media enterprises. Within one month of receiving the notification, the Competition Commission decides whether there are grounds for investigating the concentration. During the preliminary assessment period, the undertakings must not carry out the concentration without the Competition Commission's authorisation. A detailed investigation is completed within four months. The Competition Commission will then decide whether the concentration can be carried out unconditionally, carried out subject to conditions or obligations, or is to be prohibited.

6_Foreign Investment Approval There are no general restrictions on capital transactions between Switzerland and foreign investors that would allow governmental agencies to influence or restrict the completion of business combinations or other M&A transactions. There are, however, industry-specific restrictions, such as with regard to financial services, radio and television, telecommunications and transportation.

7_Employee Rights If an employer transfers the enterprise or a part thereof to a third party, the employees' representative body or, if there is none, the employees shall be informed in due time prior to the transfer of (a) the reason for the transfer; and (b) the legal, economic and social consequences of the transfer for the employees. If, as a result of the transfer, measures affecting the employees are planned, the employees' representative body or, if there is none, the employees shall be consulted in due time prior to decision on these measures. The crucial point is that Swiss law requires that the employees be informed and consulted with prior to a decision being taken; Swiss case law is very strict on this. Therefore, neither at a local level in Switzerland nor abroad should decisions be taken prior to consultation of the employees having taken place.

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Taiwan

- 1_ **Withholding Tax** The withholding tax on interests paid to a foreign entity is 20% and cannot be avoided.
- 2_ **Financial Assistance** Taiwan companies are not allowed to provide guarantees on behalf of third parties unless their articles of incorporation explicitly authorise such action, and if there is such authority, it would be an issue for the lending institution to decide according to its internal guidelines. In general, banks in Taiwan tend to be conservative and may not lend on this basis, but it may be different with foreign banks.
- 3_ **Security Interests** Taiwan banks tend to be conservative and usually only accept “hard” assets, such as real estate and cash as security, but not future assets. Since Taiwan banks only tend to deal with real estate and cash, perfection and registration is straightforward. Security would be subordinate to taxes and wages and the like.
- 4_ **Clawback** There is no statutory rule on this issue.
- 5_ **Merger Control** Merger transactions meeting the threshold requirements are required to apply for approval from the Fair Trade Commission. The Fair Trade Commission is entitled to prohibit a merger if the overall economic benefit of the merger outweighs the disadvantages resulting from competition restraint or it may alternatively attach conditions or require undertakings by the parties to the transaction.
- 6_ **Foreign Investment Approval** There is a foreign investment approval requirement in Taiwan. Approval is usually obtained without difficulty unless the investor has interests in the People’s Republic of China or if the transaction involves regulated industries.
- 7_ **Employee Rights** The Taiwan Merger and Acquisition Act only requires the buyer to assume the seniority of the employees of the seller who decided to stay after the transaction, and for those who decide to leave, the seller shall provide severance payments.

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Tajikistan

1_Withholding Tax The Tajik Tax Code provides for 10% of withholding tax on the interest payable at the source of the payment located in Tajikistan. There is currently no Treaty on the avoidance of double taxation with the UK.

2_Financial Assistance There are no financial assistance issues. The target company is not restricted in securing or guaranteeing a bank loan. Any security or guarantee must be provided in the form of a written agreement. The notarisation and registration of any pledge agreement (or equivalent) may be required.

3_Security Interests The notarisation and registration of a moveable property pledge is not mandatory. The registered pledge gives a priority right of foreclosure to the creditor in relation to the other secured creditors, which have not registered the pledge. The immovable property pledge is subject to compulsory registration.

Tajik law provides for enforcement through the courts, as well as via an extrajudicial procedure. It should be noted, however, that enforcement usually takes place through the courts as the extrajudicial procedure is normally disputed in practice.

The procedure for the registration of security is not burdensome. Registration of the moveable property pledge is made by the Ministry of Justice of the Republic of Tajikistan. Registration is made by the Ministry of Finance, in respect of certain types of moveable property such as securities or shares. Registration of the immovable property is made by the State Registration Office.

As a general rule, the creditors with the registered security have a preferential right against the creditors who have the unregistered security. In the event of the liquidation of a legal entity, the claims of citizens to whom the liquidated legal entity is liable for injury to life and health, are satisfied first, followed by payments for the labour and wages of individuals working under the employment contract, including the payment of remuneration under copyright agreements. The liabilities to the secured creditors are discharged next. The claims of the individuals are satisfied as a matter of priority upon the liquidation of the banks or other lending institutions taking deposits of the individuals.

The priority of the claims of the secured creditors is the same as in the case of liquidation, ie they are ranked as third in the line of creditors. Secured creditors shall exercise their rights under the bankruptcy proceedings by filing a relevant claim.

4_Clawback Security may be removed only in compliance with the terms of the pledge or any other security agreement. There are statutory rights to cancel the security, although such rights are rather limited and relate only to the cases of fraudulent entry into the security agreement. There is no specific suspect period in this event.

5_Merger Control There is no direct merger control authority in Tajikistan, although certain merger transactions are subject to antitrust control in this jurisdiction. Please note that execution cannot take place before consent is obtained.

6_Foreign Investment Approval The permission of the National Bank of Tajikistan is required in certain cases in order to receive foreign loans, which are treated as movements of capital.

7_Employee Rights The consent of employees or their counsel (Trade Union or any other employee representative body) is not required unless the collective bargaining agreement provides for the prior consent of, or consultation with, the Trade Union or any other

employee representative body in case of an acquisition, which has been never been the case in our experience. The employment relationship shall continue with the employee's consent in the event of the change of shareholders, as well as the reorganisation of the company (merger, acquisition, separation, transformation).

The termination of the employment contract by the employer in such cases is only possible on the grounds provided by the Labour Code and subject to the set of guarantees granted to the employee. The new shareholder of the employer shall be entitled to re-sign or cancel the employment contracts with the management executed by the former shareholder within six months after becoming a shareholder of the employer.

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Tanzania

- 1_ **Financial Assistance** Financial assistance restrictions only apply to public companies.
- 2_ **Security Interests** Security creation is relatively straightforward. Floating charges are subject to certain preferential creditor claims.
- 3_ **Clawback** Clawback periods are between 12 – 24 months.
- 4_ **Foreign Investment Approval** Certain sectors such as telecoms, shipping and insurance require mandatory local shareholding.
- 5_ **Employee Rights** Retrenchment would require mandatory consultation procedures.

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Thailand

- 1_ **Withholding Tax** The normal withholding tax rate at 15% is reduced to 10% by virtue of the Thailand/UK double tax treaty where the interest is payable to banks or financial institutions based in the UK.
- 2_ **Financial Assistance** Thai laws do not have a concept of financial assistance. But this may be subject to the director's duties under company law.
- 3_ **Security Interests** Taking a pledge of moveable properties requires delivery of the pledged properties by the pledgor to the pledgee. Thai laws do not have a concept of floating charges. Certain assets, such as bank accounts, may not be charged.
- 4_ **Clawback** A transaction defrauding creditors can be challenged within one year from the date the cause is made known to the creditor or within 10 years from the date of such transaction. A transaction at an undervalue can be challenged one year before the start of the insolvency and a preference occurs if the granting of security took place three months before the insolvency. The court has the power to cancel a preference transaction if the transaction was made with a person "connected" with the debtor.
- 5_ **Merger Control** Under the current regulatory regime, the threshold for merger control has not been determined yet and it may be issued by the relevant authority at any time.
- 6_ **Foreign Investment Approval** The business operations of foreigners are governed by the Foreign Business Act. The Foreign Business Act contains three lists of businesses which foreigners are either prohibited from or restricted in carrying on. List One businesses are prohibited for foreigners for special reasons such as national security/safety. Foreigners may operate the businesses in List Two only when they have obtained a permit and foreign business licence from the Ministry of Commerce (**MOC**) with the approval of the Cabinet. Foreigners may operate the businesses in List Three only after they have obtained a permit from the Director-General of the MOC with approval from the Foreign Business Committee. Generally, manufacturing activities do not fall on any of these lists and therefore can be carried out by foreigners while services business falls under List Three and may be carried out only if a foreign business licence is granted. In addition, ownership of freehold land in Thailand is generally restricted to foreigners, subject to certain exceptions.
- 7_ **Employee Rights** An acquisition of shares in a Thai company does not require any consent of employees of the company while a transfer of an employee requires the written consent of that employee.

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Togo

- 1_ **Withholding Tax** Loan interest is subject to withholding tax at a rate of 15% according to article 1176 of the Togo general tax code. However, for loans of more than five years granted to a local legal entity, a tax exemption may be granted subject to the approval of the Ministry of Finance.
- 2_ **Financial Assistance** The company law act prohibits a target company from offering security to the acquiror in order for the acquiror to purchase the target company's shares (article 639).
- 3_ **Security Interests** According to the security law act, securities may be given for a past, present or future debt. The preferential creditors (tax administrations, social security and employees) must be paid in priority (articles 65 and 96 of debt settlement law act).
- 4_ **Clawback** The bankruptcy and reorganisation uniformed act deals with the issue. Pursuant to this act, the beginning of the suspect period cannot be earlier than 18 months immediately prior to the judgment opening the procedure. As a result, any security given can be set aside by the judge, who should take into account the beginning of the suspect period.
- 5_ **Merger Control** In principle, merger control is free. However, some transactions that lead to a dominant position, cartels and fair practice may be subject to the perusal of West African anti-competition authorities.
- 6_ **Foreign Investment Approval** In principle, there is no restriction prohibiting a foreign company from holding more than 50% of the assets of a local target company. However, for some regulated sectors such as security companies, the law requires that 51% of the capital must be held by a national(s).
- 7_ **Employee Rights** In the event of a change in the employer's situation, the labour code states that all the labour contracts in force at the date of the change continue to apply between the new employer and the employees. The possibility for the new employer to terminate the contracts is subject to the payment of the rights of the workers who have been laid off.

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Trinidad & Tobago

1_ **Foreign Investment Approval** s.5 (2) Foreign Investment Act states that a foreign investor should not own 30% or more cumulative shares in a local company.

2_ **Clawback** further to section 41 of the Bankruptcy Act there is a suspect period of three months.

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Tunisia

- 1_ **Withholding Tax** Further to the application of application of Article 52 e of the Tax Code on natural person's Income Tax and the Company, interest on loans paid to banks are subject to a withholding tax of 2.5%. However, we draw your attention to the fact that this advantage is exclusively allocated for interest on loans paid by a resident borrower to a credit institution not based in Tunisia. In addition, for countries linked with Tunisia by an agreement on avoidance of double taxation that withholding tax is recoverable in principle to the tax department of the local tax authority.
- 2_ **Clawback** According to Tunisian law, the length of the suspect period is not set in stone: this period is estimated by the Tribunal who takes into consideration the economic situation of the company. Thus, transactions that occurred prior to the commencement of bankruptcy proceedings are likely to be set aside if they have been entered into by the debtor since the time of cessation of payments.
- 3_ **Merger Control** There is a mandatory duty to file and pursuant to Article 8 paragraph 3 of Law number 31-64 dated on 29th July 1991 relating to Competition and Prices (*Loi relative à la Concurrence et aux prix*): "The silence maintained by the Minister responsible for Trade for during six (6) months from its seizure is tacit acceptance of the proposed merger or concentration as well as commitments attached thereto". Before clearance is received (either explicitly or tacitly) the companies involved in the merger project may not take any action which would make the concentration irreversible or which would permanently change the market conditions.
- 4_ **Foreign Investment Restrictions** There are restrictions in some areas such as commercial activities that can be carried by foreigners subject to obtaining a merchant card, whose chances of obtaining it are almost non-existent. Furthermore, service activities are largely open to foreigners.

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Turkey

- 1_ **Withholding Tax** Pursuant to the Council of Ministers Decrees, interest payments under loans from foreign banks and other financial institutions are declared exempt from withholding tax. Zero rate withholding tax is available depending on the status of the foreign lender (ie banks and financial institutions). 1% interest on subordinated loan facilities to Turkish banks is subject to the provisions of the supplementary capital in compliance with Turkish Banking Law and interest on loans received by banks and other corporations by way of securitisation based on a cash flow or an asset portfolio from abroad. 5% withholding tax is applied for interest on instalments or credit for the purchase of imported goods. 10% withholding tax is available on other loans and transactions that are not within the above mentioned loans.
- 2_ **Financial Assistance** Financial assistance is not regulated under Turkish Law.
- 3_ **Security Interests** Security is a reliable, certain and swift way to guarantee the repayment of the loan particularly if it is set up as a mortgage. However laws relating to security are heavily regulated for public interest reasons. A mortgage agreement must be executed before the Title Deed Registry Office. The lender can require the title deed officer to annotate the mortgage agreement confirming that the mortgage has been properly executed. It is possible to establish a pledge over future receivables and moveables. However, it is not allowed to set up a pledge over the future immovable property, since the mortgage agreement must be registered in the Title Deed Registry Office which requires the borrower to have title to the property at the time of registration. The secured lenders are deemed as preferential creditors after the completion of the payment to the government and of the debts arising from the employee claims. The first security holder ranks before the second (on so on) according to time priority or the establishment degrees. All actions for the foreclosure of a pledge or mortgage are carried out by the Execution Offices which sell both the immovable and moveable properties through public auction. However moveable properties which have some market value (such as bonds, commodities and stocks) can be sold through a private sale without an auction. This exception does not apply to immovable properties, which can solely be sold by public auction.
- 4_ **Clawback** Under Turkish law, transactions concluded two years (fixed suspect period) prior to the commencement of insolvency proceedings of the originator may be challenged by the insolvency administrator. The administrator is entitled to claw-back transactions such as which are deemed to be fraudulent, undervalued or executed between affiliates, etc.
- 5_ **Merger Control** According to the communiqué on the Mergers and Acquisitions numbered 1997/1, authorisation of the Competition Board is necessary when the total market share of the merging companies exceeds 25% in a part of, or in the whole country in the related product market or the total revenues of the merging companies exceed 25 billion Turkish Liras. Without an authorisation of the Competition Board the mergers and acquisitions of such companies will be not effectual and valid. Pursuant to article 5 of the said communiqué, if application to the Competition Board is not made for mergers and acquisitions where authorisation of the Board is necessary according to the communiqué, pecuniary penalties are applied. Moreover, personal pecuniary penalties are applied for the real persons acting in the administrative bodies of the legal person that is penalised.
- 6_ **Foreign Investment Approval** As of the effective date of the Law on Foreign Direct Investment numbered 4875 dated 17 July 2003, the necessity of granting the consent of the authorised government bodies such as Undersecretariat of Treasury was revoked. Upon the

enforcement of this law, the compulsory consent of the government is solely required in order to inform the government authorities regarding the proposed transaction. It should be borne in mind that the Capital Markets Board's consent is required when the merger involves at least one listed company. Also if a bank, whether listed or not, is involved in a merger or acquisition process, approval of the Banking Regulatory and Supervisory Authority is required under the relevant regulation. The consent of the governmental authorities, such as the Telecommunications Authority, the Energy Market Regulatory Authority or the Undersecretariat of Treasury may also be required in the case of a transaction involving a company performing in a specifically regulated sector.

7_Employee Rights In the event of transfer of employees to the purchaser company, there is no automatic transfer of the employment agreements pursuant to Turkish law. Transfer of employment agreements is a kind of tripartite agreement between the current employer, the new employer and the employee. In this tripartite relationship, the consent of the employee is compulsory for this transfer to be valid and binding. In the course of the take-over transaction, the main issue to consider is the severance payment. Although the seller company is responsible for paying the severance payment in principle, this issue can be settled so that the purchaser will be liable for the severance payment as a part of the purchase price during the asset transfer. Also please note that after this tripartite agreement is duly signed and executed between the parties, this transfer should be notified to the Social Security Institution to have this change registered in the employer's file.

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Turkmenistan

- 1_ **Withholding Tax** There is a double taxation treaty with the UK and, depending on the type of activities the loan is intended to finance, the withholding tax may be lowered or even eliminated.
- 2_ **Financial Assistance** The target company may secure the loan, although any security must be notarised – see the comments for Item 3.
- 3_ **Security Interests** The target company can secure a loan, although under common practice, it may do so only with tangible property located in Turkmenistan. Although Turkmen law on pledges does recognise other forms of securitisation, like pledging rights, it is nevertheless almost impossible to pledge rights. Security in a form of pledge or mortgage in Turkmenistan must be notarised and registered, which takes time and effort, since notary publics are very conservative. Security in the form of a guarantee requires no notarisation.
- It is not easy to register security and there are no centralised registries.
- Under Turkmen law, the enforcement of a pledge, which is the most common form of collateral, cannot be done in the form of a transfer of title – the creditor must get the proceeds from the sale of such pledged property, instead of stepping into the shoes of the owner. In addition, enforcement is usually carried out through the court.
- Some preferential creditors would rank ahead of the secured creditors in an insolvency event. There would also be a freeze on enforcement upon insolvency of the security provider.
- 4_ **Clawback** Security can be set aside only in accordance with the conditions of the pledge or any other security agreement. There are statutory rights to cancel the security, although these are very limited and relate only to the cases of fraudulent entry into the security agreement.
- 5_ **Merger Control** There is no merger control authority in Turkmenistan.
- 6_ **Foreign Investment Approval** Opening a foreign owned entity or purchasing shares in a local entity will have to be approved by a special committee consisting of representatives of twelve Ministries. Such approval takes time and effort and, in some cases, approval can be denied without an explanation being provided.
- 7_ **Employee Rights** The consent of the employees or their counsel is not required during the acquisition. The acquisition will not impact on the employment contracts of the employees of the target company. Also note that in Turkmenistan employees are protected by data protection and anti-discrimination laws.

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UAE

- 1_ **Withholding Tax** There are no withholding taxes within the UAE.
- 2_ **Financial Assistance** The UAE does not have any specific provisions prohibiting financial assistance.
- 3_ **Security Interests** The UAE does allow for security to be taken, but the system is relatively unsophisticated from an international perspective.
- 4_ **Clawback** The UAE does provide for security to be set aside on an insolvency. If a UAE company is declared insolvent by a Court, the Court will determine the date on which the company became unable to pay its debts (the **Effective Date**). The Effective Date cannot be more than two years prior to the date on which the Court makes the insolvency ruling. The following are void if carried out after the Effective Date: (a) any donation (other than small customary gifts); (b) paying any term debt by whatever means prior to the due date; (c) paying immediate debts other than in the form agreed; and (d) entering into any mortgage or other charge secured on the debtor's assets to guarantee a prior debt. In addition, any transaction entered into by the insolvent company following the Effective Date may be found by the Court to be unenforceable if (i) the counterparty to the transaction was aware of the company's insolvency at the time of the transaction; or (ii) the transaction was detrimental to the company's creditors.
- 5_ **Merger Control** The UAE does not have any specific provisions in relation to merger control.
- 6_ **Foreign Investment Approval** The UAE has foreign ownership limitations. Generally, foreign ownership is limited to 49%, but a number of companies and sectors have lower levels of permissible foreign ownership.
- 7_ **Employee Rights** On an acquisition of a company, the employees will remain employed by the target.

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Uganda

1_ **Merger Control** The obligation to file exists in the communications sector. There is no general competition authority.

2_ **Foreign Investment Approval** Registration with Uganda Investment Authority. This is a formality and does not entail any approvals. For a company to hold freehold tenure, it must be majority Ugandan owned.

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Ukraine

- 1_ **Withholding Tax** The general withholding tax is 15%; under the double tax treaty between Ukraine and the UK the withholding tax on interest is reduced to 0%, provided that the UK bank does not have a permanent establishment in Ukraine.
- 2_ **Financial Assistance** Joint stock companies may not secure or guarantee a bank loan to a third party for the purchase of their shares; there are no financial assistance issues in relation to other corporate forms, such as a limited liability company.
- 3_ **Security Interests** Some future assets, eg future shares, cannot be covered by security; any registered security has priority over unregistered security; in certain cases subordination applies; private sale is possible, however in many cases enforcement can be made only through court procedures.
- 5_ **Merger Control** Approval of the competition authority is required prior to closing any concentration exceeding specified thresholds. Hold separate (carve-out) is almost impossible to achieve.
- 6_ **Foreign Investment Approval** No restrictions apply in most cases; only some spheres of business have restrictions regarding the participation of foreign capital.
- 7_ **Employee Rights** No specific regulations and restrictions exist. Labour law is generally very protective for the employees.

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Uruguay

1_ **Security Interests** Depends on the type of security and privileged credits that may exist.

2_ **Merger Control** Notification is mandatory when either a turnover or a market share threshold is triggered. However, that notification does not suspend the transaction, so no clearance is needed. It is a mere communication to authorities. Only when a “de facto” monopoly is created by the transaction, is an authorisation to close needed.

3_ **Foreign Investment Approval** Radio broadcasting companies must be exclusively owned by Uruguayan citizens and residents; long-distance bus line companies must be majority owned by Uruguayan nationals and residents; aviation companies must have a majority of Uruguayan capital; aircraft registered in Uruguay must be majority owned by Uruguayan residents.

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US

- 1_ **Withholding Tax** Withholding tax can be avoided.
- 2_ **Financial Assistance** There is no financial assistance prohibition in the US but fraudulent transfer issues must be considered in the case of upstream and cross-stream guarantees.
- 3_ **Security Interests** It is easy, efficient and straightforward to take security. Security interests need not to be registered but public notice filing may be required for perfection, and security can generally be enforced outside court.
- 4_ **Clawback** The suspect period in relation to fraudulent transfers is up to 4/6 years depending on the state involved. The suspect period relating to preferences starts from 90 days (and from one year for insiders) before the filing of the petition.
- 5_ **Merger Control** Merger control provisions are very strict in the US.
- 6_ **Foreign Investment Approval** There are only some limited foreign investment restrictions in areas affecting national security.

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Uzbekistan

- 1_ **Withholding Tax** Uzbekistan and the UK have a double taxation treaty. Subject to the provisions of this treaty, there are grounds that grant an exemption from the payment of withholding tax and lower it up to 5%.
- 2_ **Financial Assistance** There are no financial assistance issues. The target company is not restricted in securing or guaranteeing a bank loan. Any security or guarantee must be provided in the form of a written agreement. The notarisation and registration of a pledge agreement (or equivalent) may be required.
- 3_ **Security Interests** The target company can secure the loan, although under common practice, it may do so only with tangible property located in Uzbekistan. Security in the form of a pledge or mortgage in Uzbekistan must be notarised and registered. Registries are not centralised, except in relation to pledges of immovable properties. If no registration is required, notary certification of the security agreement is common practice. Security in the form of a guarantee requires no notarisation, although it must be done in the form of a written contract.

Under Uzbek law, the enforcement of a pledge, which is the most common form of collateral, is not usually done in the form of a transfer of title to the pledged property. Although there are legal grounds to transfer the pledged property to the creditor, established legal and business practice suggests that the pledged property is sold through public auctions and the creditors receive the sale proceeds. Enforcement of security is usually carried out through the courts.

Upon insolvency, there are some preferential creditors (taxes and equivalent).

Depending on the type of insolvency procedure applied, a moratorium (for a period of up to 36 months) on enforcing the secured creditors' claim may apply.
- 4_ **Clawback** Security can be set aside only in accordance with the conditions of the pledge or any other security agreement. There are statutory rights to cancel the security, although these are very limited and relate only to the cases of fraudulent entry into the security agreement. Uzbek law does not provide for any suspect periods.
- 5_ **Merger Control** The major gap in Uzbek antitrust regulation is that it does not actually regulate transactions on the consolidation and merger of legal entities. This is due to the fact that antitrust regulation is in a stage of development and the Law 'On Competition and Restriction of Monopolistic Activities', which was enacted in 1996, regulates transactions related to the consolidation and merger only in relation to non-commercial legal entities (associations of legal entities, unions etc.) There is a specific regulation on consolidation and merger transactions of natural monopolies (utilities). Uzbek antitrust law regulates only the acquisition of more than 35% shares in Uzbek legal entities, where the prior approval to the acquisition of more than 35% of shares is required from the Anti-Monopoly Committee.
- 6_ **Foreign Investment Approval** There are no foreign approval restrictions in Uzbekistan.
- 7_ **Employee Rights** The consent of the employees or their counsel (Trade Union or any other employee representative body) is not required, unless the collective bargaining agreement potentially provides for the prior consent of, or consultation with, the Trade Union or any other employee representative body in the case of an acquisition, which in our practice has never been placed in the collective bargaining agreements. Employees are protected by anti-discrimination and data protection regulations.

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Venezuela

- 1_ **Withholding Tax** Interest on loans granted by non-domiciled banks to entities in Venezuela is subject to a 4.95% withholding tax in Venezuela, to be deducted by the debtor-payer, who will credit it before the tax authorities. In the event the loan is guaranteed by the United Kingdom Export Credits Guarantee Department, interest is exempt from withholding tax. In general, the withholding tax is unavoidable, but in the case of loans granted by the United Kingdom Export Credits Guarantee Department, such withholding tax does not apply.
- 2_ **Financial Assistance** There are no specific prohibitions, so it should be possible.
- 3_ **Security Interests** A general (universal) security cannot comprehensively cover present and future assets. Securities must be constituted over specific assets. The security regime in Venezuela contemplates a small number of securities over specific goods or assets, eg mortgages, pledges over moveable goods etc. There are several privileges stated under law (wages and other labour costs, taxes etc.) and some warranties that could affect specific assets if covered by a special agreement between the debtor and creditor. In the specific case of mortgages, the creditor is protected up to the maximum amount fixed for such warranty, and the privileges stated by law do not prevail over the mortgage. However, for the terms of mortgages to be effective, they need to be registered with the local land registry. If there is no such registry, the mortgages do not legally exist. In addition, for cases of insolvency, (bankruptcy, or a “sort of Chapter 11”, named *Atraso*), the assets of the company are frozen, and are managed by the “*sindico*” (judicial administrator of the company).
- 4_ **Clawback** In Venezuela, the suspect period starts when a clear date for “stopping payments” is established by the judge; this never exceeds two years.
- 5_ **Merger Control** According to Venezuelan antitrust regulations, there is no obligation to previously obtain clearance from Procompetencia (ie the antitrust agency of the Venezuelan Government) before the merger takes place. However, Procompetencia has the authority to investigate in order to determine any potential negative effects of the merger in respect of competition matters. Voluntary clearance is recommended when this is possible (unless there is a specific reason not to), because once Procompetencia has decided that the transaction does not have a negative effect on competition, it will not be able later to decide to the contrary. It is usually advisable to obtain clearance from Procompetencia to avoid pecuniary sanctions if there is a possibility that the transaction could be determined as having a negative effect on competition.
- 6_ **Foreign Investment Approval** In general, there are no limitations. However, there are some exceptions regarding foreign investments in the following sectors, which are reserved for national investors: television, broadcasting, newspapers in the Spanish language, professional services regulated by special laws and the hydrocarbons sector (in this case, the Venezuelan State has to be owner of at least 60% of the shares of the company that explores and exploits the hydrocarbons in Venezuela (mixed companies)).
- 7_ **Employee Rights** No employee committee can block a merger. However, in certain circumstances, the seller could, with the buyer, jointly remain obliged for the labour obligations for a period of one year following the merger or acquisition. After that period, the obligations of the seller cease. That period starts after the notification of the merger to the worker or after the final decision given by a judge, when the previous obligation was subject to a judicial process. In any case of changes in the ownership of the labour enterprise (eg following a merger and acquisition), notification to the workers is required, to the union

if applicable, and to the labour authority. For a period of 30 days after notification to the worker, he has the right to resign and, in such an event, he would receive the same indemnity due as would apply for unlawful dismissal. When the sale is by a transfer of shares, the salient question is whether there actually is a new employer.

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Vietnam

- 1_ **Withholding Tax** Application of withholding tax will be determined according to the provisions of treaties for the avoidance of double taxation as applicable. The standard withholding tax rate of 15% is reduced to 10% in this scenario where a UK bank is involved.
- 2_ **Security Interests** The security can generally cover all present and future assets, we note however that security over land (ie land use rights) is strictly limited to Vietnamese lenders, perfecting the security is usually cheap and straightforward, there is no subordination of the security to preferential creditors. Enforcement (especially if foreign secured parties are involved) remains mostly untested.
- 3_ **Clawback** Pursuant to the Law on Bankruptcy, the mortgage or pledge of assets (and other transactions for the purpose of disposing of assets of the enterprise or co-operative) is deemed invalid if it was conducted by an enterprise which has become insolvent within a period of three months prior to the date on which the court accepted jurisdiction over the petition to commence bankruptcy procedures.
- 4_ **Merger Control** There are strict filing obligations if the entities involved in the economic concentration reach between 30% and 50% market shares of the relevant market (below this threshold, no notification is necessary). Over 50% market share, the economic concentration is generally prohibited and limited exemptions are to be sought (ie small and medium enterprise, economic distress of an economic entity involved in the economic concentration, socio-economic benefits resulting from the economic concentration notably). The transaction cannot be completed prior to clearance by the relevant competition authorities.
- 5_ **Foreign Investment Approval** All foreign invested projects are subject to an investment certificate, acquisition of shares in a Vietnamese entity by a foreign investor may be subject to sectoral limitations; furthermore, foreign shareholding in public (listed or unlisted) companies is currently capped at 49%.

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Zambia

1_ **Employee Rights** Employees may transfer to the purchaser with their approval, failing which redundancy provisions (two months for every year served) will apply.

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Zimbabwe

1_Withholding Tax In Zimbabwe withholding tax is only levied on income. A direct loan from a bank abroad to a subsidiary in Zimbabwe is not income for purposes of levying withholding tax in terms of the Income Tax Act (Chapter 23:06). Furthermore in Zimbabwe income tax is not levied on profits as is the case in some other countries. Taxable income is defined in the Income Tax Act (Chapter 23:06) as the amount remaining after deductions from the income of any person by the amounts allowed to be deducted from income in terms of the Act. This is provided for in section 8(1) of that Act. It follows from that that income tax cannot be levied on a loan but would be levied on the interest that accrues from a loan.

The United Kingdom and Zimbabwe are parties to a double taxation agreement which in effect means that if income tax is levied on income from the United Kingdom then a tax exemption will apply in respect of that income in Zimbabwe.

2_Financial Assistance The legislation that affects this transaction is (a) the Competition Act (Chapter 14:28) and (b) the Exchange Control Act (Chapter 22:05) as read with the Exchange Control Regulations S.I. 109 of 1996. This legislation contains provisions that may affect the transaction contemplated.

Exchange Control Restrictions:

The Exchange Control Regulations S.I. 109 of 1996 Part IV Control of Payments apply to restrict payments in Zimbabwe to a foreign resident (section 10 (1)) and payments outside Zimbabwe by a Zimbabwean resident, section 11 (1).

Pursuant to section 10(1), unless otherwise authorised by an exchange control authority, no person shall, in Zimbabwe:

- (a) make any payment to or for the credit of foreign resident; or
- (b) make any payment to or for the credit of a Zimbabwean resident by order or on behalf of a foreign resident; or
- (c) accept any payment from any person in respect of services that are to be provided outside Zimbabwe
- (d) by another person.

Pursuant to subsection (2) of section 11(1), unless otherwise authorised by an exchange control authority, no Zimbabwean resident shall:

- (e) make any payment outside Zimbabwe; or
- (f) incur any obligation to make a payment outside Zimbabwe.

A Zimbabwean resident is defined in the interpretation part of the Regulations as provided in section 3(1)(c) which states that “a company or other body corporate shall be regarded as a Zimbabwean resident if (i) it is incorporated in Zimbabwe or (ii) it has its head office or principal place of business in Zimbabwe”.

Accordingly, under these exchange control regulations, if the bidding company is a foreign owned company, then there may be need for Exchange Control approval for such a transaction where a Zimbabwean company seeks to secure a loan or guarantee payment by the foreign company.

Competition Restrictions:

The Competition Act (Chapter 14:28) refers and provides in relevant parts that the Competition Commission has power to investigate transactions that may permit restrictive practices or what amount to mergers or monopoly situations.

Paragraph (1) of section 28 (Power of Commission to investigate restrictive practices, mergers and monopoly situations) provides as follows: “Subject to this Act, the Commission may make such investigations as it considers necessary

- (a) into any restrictive practice which the Commission has reason to believe exists or may come into existence –
- (b) in order to ascertain:
- (c) whether any merger has been, is being or is proposed to be made;
- (d) the nature and extent of any controlling interest that is held or may be acquired in any merger or proposed merger;
- (e) into any type of business agreement, arrangement, understanding or method of trading which, in the opinion of the Commission, is being or may be adopted for the purpose of or in connection with the creation or maintenance of a restrictive practice;
- (f) into any monopoly situation which the Commission has reason to believe exists or may come into existence.

It therefore follows from the provisions of the outlined legislation that for the target company to guarantee or secure a loan for the bidding company, if the bidding company is foreign owned, exchange control approval may be required and possibly Competition Commission notification.

3_Security Interests The ideal security available in Zimbabwe is a mortgage bond over immovable property. Such a security creates a real right upon registration in the relevant Deeds Office because the title deed is endorsed and the mortgage bond is lodged in the file with the title deeds. Effectively it means that that property cannot be transferred until the mortgage bond has been discharged at the instance of the creditor. Other securities which are used are notarial mortgage bonds over moveable property but this is no protection against the debtor disposing of the property notwithstanding the registration of the notarial mortgage bond as the creditor is then left with an action against the debtor but no claim against the person to whom the moveable property has either been sold or disposed of in some other manner. Mortgage Bonds provide a security in the form of a preference over other creditors in the event of insolvency but in the case of a Notarial Mortgage Bond the preference would have no value if the movables have been disposed of unless the disposition can be set aside when it has been entered into (provisions of Insolvency Act to be quoted). In practice it is often very difficult to set a transaction aside and/or remove the movables from bona fide purchasers.

At the present time there is in existence the Securities Act (Chapter 24:23) in terms of which it is intended to put in place a Central Securities Depository but this has not as yet been done.

4_Clawback Unless security was fraudulently obtained, it can only be set aside in one of the following scenarios:

- (a) government acquisition such as through the Land Acquisition Act (Chapter 20:10);
- (b) consent of the holder of security; or
- (c) a judgment of a competent Court.

Security that is defective in title such as that obtained fraudulently may be set aside at any time.

5 **Merger Control** In Zimbabwe we have legislation in the form of the Competition Act (Chapter 14:28) mentioned above which requires that notifiable mergers require the consent of the Competition Commission and if that is not obtained the merger can be set aside by the Competition Commission. Effectively reportable transactions are those where there is a change in control which will lead to a lessening of competition or where there is a restrictive trade practice arising from the merger.

6 **Foreign Investment Approval** In the event of an investment being made into the Zimbabwean economy by a non resident of Zimbabwe Exchange Control approval is required from the Reserve Bank in terms of the Exchange Control Act (Chapter 22:05). In addition the Indigenisation and Economic Empowerment Act as read with the Economic Empowerment Regulations S.I. 21/2010 require that:

- (a) no merger or restructuring of the shareholding of two or more related or associated businesses; or
- (b) no acquisition by a person of a controlling interest in a business; or
- (c) no relinquishment by a person of a controlling interest in a business if the value of the business is at or above a prescribed threshold; or
- (d) no unbundling of a business or demerger of two or more businesses which if the value of any business resulting from the unbundling or demerger is at or above the prescribed threshold,

can be effected unless at the end of the transaction 51% of the shares or a controlling interest in a business is held by indigenous Zimbabweans.

The definition of an indigenous Zimbabwean in the Act is any person who before the 18th April 1980 was disadvantaged by unfair discrimination on the grounds of his or her race and any descendant of such person and includes any company, association, syndicate or partnership of which indigenous Zimbabweans form the majority of the members or hold the controlling interest.

7 **Employee Rights** The Labour Act (Chapter 28:01) provides in section 16 that in the event of a transfer of an undertaking such as through a merger the employees of that undertaking are deemed to have been transferred to the new owner of the business. Section 16(1) provides in the relevant part as follows:

Rights of employees on transfer of undertaking:

(1) Subject to this section, whenever any undertaking in which any persons are employed is alienated or transferred in any way whatsoever, the employment of such persons shall, unless otherwise lawfully terminated, be deemed to be transferred to the transferee of the undertaking on terms and conditions which are not less favourable than those which applied immediately before the transfer, and the continuity of employment of such employees shall be deemed not to have been interrupted.

“Employees” however will not include the directors of the company who may be replaced in the board of directors.

The English City Code on Takeovers and Mergers also provides important provisions on the implications of takeovers on employees. In particular Rule 30.2 which requires that the board must in addition to its opinion, append a separate opinion from the representatives of the employees on the effects of the offer of employment of the workers of the target company.

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6 Allen & Overy Global Law Intelligence Unit

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