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# TAKING COUNSEL

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What should one consider when acquiring another business in the Baltics?

Acquisition of a business (enterprise, a commercial activity or assets of a going concern) of a company, must be distinguished from the acquisition of a shareholding in a company. Classic examples of an enterprise are a production unit and an outlet shop of a company. Upon acquisition of an enterprise, the assets that belong to the enterprise, including rights and obligations, are transferred from the company to the buyer. Upon acquisition of a shareholding, however, the assets remain in the ownership of the company, only the shareholder of the company changes.

In the Baltic countries there are some restrictions on and requirements to the transfer of an enterprise that may seem unusual for foreign businesspeople in the region. The most significant of these are provided below.

Transfer of obligations. In comparison to the transfer of a shareholding, the main advantage of the transfer of an enterprise is the possibility to pick-and-choose the assets that will be transferred to the buyer. At the same time, pursuant to Estonian and Latvian laws, all obligations (including tax arrears) relating to the enterprise are also automatically transferred to the buyer. Any agreement between the parties that stipulates that obligations will not be transferred is not valid in respect to third persons, except for the creditors who have agreed to such terms. Furthermore, in Estonia and Latvia the seller will remain liable for the transferred obligations together with the buyer during the period of five years from the transfer of the enterprise.

Legal acts in force in Lithuania do not establish explicitly whether in a similar case the obligations related to the enterprise would be automatically transferred to the buyer. Therefore, in order to be on the safe side, it is recommended to obtain consent from the contractors of the enterprise to the transfer of the existing obligations. In Lithuania, the creditors may initiate claims or objections to the transfer of the enterprise within one year after they become aware of the transfer but not later than three years after the transfer.

Form of contract. In Lithuania, the sales contract of the enterprise must be notarized. In Latvia and Estonia, there are no specific requirements for the form of the sales contract of an enterprise, and the form of the contract is determined by the individual assets and obligations that are transferred. If, for example, the sales object is an immovable in Estonia, the sales contract of the enterprise must be notarized. In order to avoid taking the entire transaction to the notary's office, the transaction may be made in several parts. For example, an immovable is transferred by a contract in a notarized form and the other assets pursuant to an unattested written agreement.

Informing the employees. In Estonia and Latvia it is the obligation of either the seller or the buyer to notify employees of the transaction in advance and to consult with the employees regarding the changes affecting their situation. The aspect is not yet regulated under Lithuanian legal acts, though such situation is expected to change soon in the light of EU legislation.

Concentration control. Upon the transfer of an enterprise, the obligation to notify the local or EU competition authorities and to apply for a concentration permit is often discarded. It should be noted that the local thresholds for each Baltic country's concentration control regime differs to a great extent.

Due diligence obligation of the manager. A member of the management board of a company has the obligation under law to be diligent and to operate in a way that is economically most efficient. Therefore, considering the automatic transfer of obligations related to the enterprise, the managers of the buyer should be very cautious when making such transactions and should conduct due diligence in the enterprise in order to determine all of the potential risks. As the saying goes: "One should not buy a pig on a poke."

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