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Practical cross-border insights into mergers and acquisitions

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Expert Analysis Chapters

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1 Relevant Authorities and Legislation

1.1 What regulates M&A?

M&A in the Czech Republic are generally governed by the following acts:

- the Civil Code (Act No. 89/2012);
- the Business Corporations Act (Act No. 90/2012 Coll.);
- the Act on Transformations of Companies and Cooperatives (Act No. 125/2008 Coll.);
- the Act on Protection of Competition (Act No. 143/2001 Coll.); and
- the Act on Capital Market Undertakings (Act No. 256/2004 Coll.).

The Act on Screening of Foreign Investments (Act No. 34/2021 Coll.) regulates M&A transactions with non-EU investors investing in strategic industries in the Czech Republic.

Aside from the above, takeover bids are specifically regulated by the Act on Takeover Bids (Act No. 104/2008 Coll.).

In addition, M&A transactions in regulated industries may be further regulated by sector-specific acts, e.g. banking, insurance, or telecommunications regulations.

1.2 Are there different rules for different types of company?

The Act on Takeover Bids applies in its entirety to target joint-stock companies (in Czech: *akciové společnosti*) that have their registered seat in the Czech Republic and whose participating securities (e.g. shares) have been admitted for trading on a Czech regulated market. The Act on Takeover Bids also applies to: (i) joint-stock companies that have their registered seat in the Czech Republic and whose participating securities have been admitted for trading on another European regulated market; and (ii) target companies that have their registered seat in another country within the European Economic Area and whose participating securities have been admitted for trading on a Czech regulated market (including where the participating securities have also been admitted for trading on (an)other European regulated market(s), unless one of those European regulated markets is in the country of the incorporation of the target company); however, in these cases, the application of the Act on Takeover Bids is limited only to certain areas.

1.3 Are there special rules for foreign buyers?

The Act on Screening of Foreign Investments impacts M&A transactions for non-EU investors in certain limited strategic industries. Investments into some of the most strategic industries (e.g. manufacturing of military equipment, manufacturing of dual-use goods or operation of critical infrastructure) require prior approval from the Czech Ministry of Industry and Trade, and investments into any other industries could be screened by the Czech Ministry of Industry and Trade if such investments could compromise the security of the Czech Republic, and/or its internal or public order, and could potentially be banned.

The relevant rules apply to direct non-EU foreign investors, as well as any investors that are directly or indirectly controlled by non-EU entities or individuals.

1.4 Are there any special sector-related rules?

Regulatory control provisions may be required in connection with M&A transactions in certain sectors (e.g. banking, insurance, or telecommunications industries). In certain cases, the prior approval of the respective regulatory authority might be required (e.g. the prior consent of the Czech National Bank (CNB) in the acquisition of a Czech bank). In other cases, disclosure and notification requirements may apply.

1.5 What are the principal sources of liability?

The principal sources of liability in connection with public M&A transactions are: (i) market manipulation; (ii) insider trading; and (iii) non-compliance with the Act on Takeover Bids.

2 Mechanics of Acquisition

2.1 What alternative means of acquisition are there?

The Act on Takeover Bids regulates both voluntary public takeover bids and mandatory public takeover bids.

A voluntary takeover bid falls under the regulation of the Act on Takeover Bids provided that the intention of the bidder is to acquire participating securities in the target company to an extent allowing control of the target company (i.e. regardless of whether the control is effectively acquired as a result of the takeover bid).

A mandatory takeover bid is generally required to be made where a person has acquired a decisive share in the voting stock in the target company (i.e. at least 30% of all votes) and, at the same time, exercises control in the target company (alone or jointly with other persons acting in concert). In addition, if a person has acquired participating securities corresponding to at least 90% of all votes and of registered capital of the target company based on a previous unconditional and unlimited takeover bid (voluntary or mandatory), this will trigger an obligation to submit an additional mandatory bid to the remaining shareholders (right of sell-out).

Alternative means to a public takeover bid procedure are as follows:

- stakebuilding (see section 5 for more details and related obligations);
- acquisition of assets (depending on the scope of the assets, the approval of the general meeting of the target company might be required); and
- mergers or spin-offs (the approval of the general meeting of the target company is required).

2.2 What advisers do the parties need?

In general, the following advisers are required in connection with public takeover bids:

- legal advisers to prepare the required legal documentation;
- tax advisers to assess the structure of the transaction from a tax perspective; and
- financial advisers to evaluate the offer and funding.

Depending on the nature of the transaction, additional advisers and consultants may be necessary, such as accounting advisers or independent experts.

2.3 How long does it take?

Numerous obligations need to be fulfilled and various timelines need to be observed, such as the following:

- the draft bid document must be submitted to the CNB within 15 working days of the obligation to publicly announce the takeover bid having arisen;
- the bid documents must then be published within 30 working days (but not earlier than 15 working days) of having been filed with the CNB; and
- the acceptance period must be at least four weeks from the publication of the bid document.

Therefore, the takeover process – from the preparation of the bid document until the lapse of the acceptance period – will require an absolute minimum of seven weeks. However, in practice, a significantly longer process should be expected depending on the circumstances of the case, especially in the case of hostile takeovers or where regulatory approval or merger control clearance is required.

2.4 What are the main hurdles?

Takeover bids can present various hurdles and challenges, such as:

- preparing the bid document and the terms of the takeover bid, including the consideration offered to shareholders;
- securing funding for the takeover bid (as the takeover bid cannot be conditional upon the bidder obtaining sufficient financing);
- obtaining antitrust or any other required regulatory approvals or authorisations;
- securing support from the target board (also regarding any confidentiality agreements regarding potential limited due diligence while complying with insider trading regulations) and ensuring that the transaction is recommended to the shareholders; and
- approaching major shareholders of the target company and possibly acquiring their shares prior to making a takeover bid.

Following a takeover bid, the right of sell-out of the other shareholders or squeeze-out by the bidder may present challenges.

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

In case of voluntary takeover bids, the bidder has flexibility over the price terms. However, general principles under the Act on Takeover Bids apply, including equal treatment of all shareholders by the bidder. The consideration may be offered either in cash or securities (or a combination of both).

On the other hand, in case of mandatory takeover bids, the offer price is regulated in order to protect the interests of minority shareholders. For mandatory takeover bids, the offer price must correspond at least to the highest price for which the bidder has acquired shares in the target company during the 12 months preceding the mandatory takeover bid being triggered (premium price), taking into account all related economic consideration and benefits given between the parties. If it is not possible to determine the premium price, the offer price must correspond at least to the weighted average of all purchase prices for which shares in the target company have been acquired during the six months preceding the mandatory takeover bid being triggered (average price).

If the CNB considers the offer price to be inadequate (e.g. due to extraordinary circumstances on the market, such as market manipulation or other market failures, extremely low liquidity of the shares or substantial change in the economic situation of the target company), it may amend the offer price. For this purpose, the CNB may request that the bidder provides an expert opinion on the adequacy of the offered price; alternatively, it may appoint an expert itself.

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

In the case of a voluntary takeover bid, the bidder may offer cash or securities as consideration (or a combination of both) at its own discretion.

Likewise, the bidder may generally offer cash or securities (or a combination of both) in the case of a mandatory takeover bid. However, in this case, the bidder is significantly limited in the possibility of offering securities. The bidder must always offer cash as an alternative to securities if: (i) the securities offered are not considered liquid securities traded on a regulated market; or (ii) during the period beginning 12 months prior to the mandatory takeover bid being triggered and ending with the lapse of the mandatory takeover bid, the bidder (or other persons acting in concert) has acquired shares in the target company corresponding to at least 5% of voting rights.

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

The equal treatment of all shareholders is one of the main underlying principles stipulated in the Act on Takeover Bids and all shareholders within the same class must be offered the same consideration. This principle is further reflected in a rule stipulating that if there is a change in the bid document that is beneficial to the shareholders (e.g. an increase in the offer price), then these improved terms must also automatically apply to other shareholders who have already agreed to the takeover bid under the original terms.

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

A voluntary takeover bid may be limited to cover only certain classes of participating securities in the target company (e.g. a voluntary takeover bid might cover only voting shares, excluding priority shares). However, it should be noted such a limited voluntary takeover bid may trigger a mandatory takeover bid obligation (see below).

A mandatory takeover bid cannot be conditional or limited and the bidder must offer to acquire all classes of participating securities in the target company (i.e. all securities representing a share in the registered capital or voting rights in the target company and any securities that entitle their holders to acquire such securities).

2.9 Are there any limits on agreeing terms with employees?

There are no limits on agreeing terms with employees of the target company, provided that such terms comply with the general principle of equal treatment under the Act on Takeover Bids. Generally, the mandatory provisions of Czech employment law must also be observed.

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

Both the bidder and the target board have an obligation to inform the trade unions, works councils or other employee representatives of the announced intention to make a takeover bid and of the publication of the bid document. If there are no employee representatives, the employees must be informed directly.

Furthermore, the target board must provide the trade unions, works councils or other employee representative (or employees directly) with copies of all documentation received in connection with the takeover bid and inform them of their right to submit a statement voicing their opinion on the takeover bid. If such a statement is received, it is then published along with the statements of the respective bodies. The opinions of employees may have an effect on how the takeover bid is received by the public. However, it is not legally binding on the target company.

2.11 What documentation is needed?

Various documentation is required in connection with takeover bids.

First, a public announcement must be made of the intention to make a takeover bid (in case of a suspected leak of insider information, the bidder may have to announce its intention of making a takeover bid even before the decision of the respective bodies of the bidder).

Subsequently, the bidder must prepare a bid document. This is the primary legal document stipulating, among other things, the terms and conditions of the takeover bid (including the consideration offered and the reasoning for it), the bidder's intentions over the business and employees of the target company, information on how the takeover bid is being financed, conditions for any revocation of the takeover bid and the time period and method for accepting the takeover bid. The bid document is subsequently submitted to the CNB (which may forbid its publication or request proof that the bidder has sufficient funding) and the target company and is then published (see question 4.3).

After the bid document is delivered to the target company, its corporate bodies must issue and publish a written statement in response to the takeover bid within five working days. The statement must include an opinion on whether the takeover bid is in the interests of the target company, its shareholders, its employees and its creditors and must also consider the type and amount of the consideration offered. A statement of the employees, if provided (see question 2.10), should be published along with the statement of the corporate bodies.

Additional follow-up documents are also required, such as any modifications to the bid document and a statement on the outcome of the takeover bid.

2.12 Are there any special disclosure requirements?

The bidder must disclose its intention to make a takeover bid, the bid document containing all legal prerequisites (including any changes to the bid document) and the outcome of the takeover bid (see questions 2.11 and 4.3).

2.13 What are the key costs?

Key costs in connection with takeover bids include the fees of advisers and consultants, as well as any fees charged by the regulatory authorities. In addition, if an expert opinion on the adequacy of the consideration offered is produced (either at the discretion of the bidder or upon request from the CNB), the fees of the independent expert need to be taken into account.

2.14 What consents are needed?

An internal decision by the corporate bodies of the bidder may be required. As regards consents of public authorities, the tacit consent of the CNB to the bid document is effectively required (although the CNB does not need to issue a formal consent, it may forbid the bid document from being published). In addition, the following consents of public authorities may be required depending on the circumstances:

- merger control clearance;
- approval by regulatory authorities; and
- approval by the Ministry of Industry and Trade in case of non-EU investors intending to invest in the most strategically sensitive industries.

2.15 What levels of approval or acceptance are needed?

No minimum acceptance threshold is required under the Act on Takeover Bids. However, in voluntary takeover bids, the bidder may set a certain acceptance threshold as a condition in the bid document in order to achieve the desired outcome.

The acceptance threshold required for the bidder to gain control of the target company will also depend on the articles of association of the target company (which may require higher voting majorities for certain decisions) and the overall shareholding structure of the target company. Generally, a 50% majority of present shareholders (with a 30% quorum) is required for most ordinary decisions of the general meeting. However, certain decisions may require higher majorities (e.g. ⅔ of all votes). A 90% majority is required to squeeze out the remaining shareholders.

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

Cash consideration needs to be committed and available prior to the publication of the bid document. If there are doubts as to whether the bidder has sufficient funds, the CNB may require the bidder to prove that it has sufficient funds to finance the takeover bid and also prove the origin of those funds.

3 Friendly or Hostile

3.1 Is there a choice?

The Act on Takeover Bids does not regulate hostile takeover bids. Hostile takeover bids are generally not prohibited, as the approval of the target board is not required.

3.2 Are there rules about an approach to the target?

There are no specific rules applicable to an approach to the target company by the bidder, and the bidder is generally allowed to approach the target company prior to the takeover bid becoming public. However, the bidder should exercise caution in approaching the target company and consider the robustness of confidentiality obligations, as any potential leak could result in the creation of a false market and an abuse of insider information, as a result of which, the bidder might have to publicly announce its intention to make a bid. The bidder, which is itself a publicly traded company, should also consider any disclosure obligations under the applicable laws in the jurisdiction where it is listed.

3.3 How relevant is the target board?

The target board must act in the best interests of the target company as a whole. From the moment the takeover bid is announced (or even before then if the bidder approaches the target company prior to making a public announcement), the members of the target board have an obligation to act neutrally – i.e. they cannot take any measures that would prevent the shareholders from deciding freely over the takeover bid (in full knowledge of all circumstances) or act in a way that might frustrate the takeover bid (unless such an act has been specifically approved by the general meeting of the target company, taken in the ordinary course of business or the target company complies with a legal regulation). However, the obligation to act neutrally does not mean that the target board should recommend (or not recommend) a takeover bid in their written statement (see question 2.11), e.g. based on the anticipated effect of the takeover bid on employment, business, structure and long-term goals of the target company.

3.4 Does the choice affect process?

The statutory timeline is not influenced by whether the takeover is friendly or hostile. However, the whole process can be assumed to go more smoothly in case of a friendly takeover bid.

In the case of a hostile takeover, the bidder will inevitably encounter a number of difficulties that might make the whole process more complicated and lengthy, such as:

- it might be more difficult to persuade the shareholders of the target company to sell their shares without the support of the target board;
- the target board might take certain defence measures (e.g. search for a competing takeover bid);
- the bidder will likely have to rely solely on publicly available documents when assessing the target company; and
- the communication with the CNB might be more challenging.

4 Information

4.1 What information is available to a buyer?

A potential bidder may generally find information on the target company from publicly available sources, such as public registries, the target's website, press releases and analysts' reports.

Extended disclosure obligations apply to public companies, including as regards the preparation of their annual reports. Their annual reports must include, among other things, certain information relevant for takeover bids, such as change-of-control provisions in material agreements or the consideration to be provided to management or employees in case of termination of their office or employment, respectively.

In case of a friendly takeover bid, the target board may negotiate with the bidder and might permit a due diligence procedure if it considers this to be in the best interests of the target company. Such due diligence is likely to be limited and confidentiality obligations need to be observed.

4.2 Is negotiation confidential and is access restricted?

The bidder may approach and inform the target company of its intention to make a takeover bid prior to the information becoming public and confidential negotiations are possible. In such case, the target company (and any other persons that have learned this information) must ensure that information on the takeover bid is not prematurely or selectively shared to prevent the creation of a false market or abuse of insider information.

Both the bidder and the target company must instruct all persons involved to maintain their confidentiality obligations and inform them of the prohibition on using insider information and undertake measures preventing the use of insider information.

However, in such case the bidder must be prepared to publicly announce its intention promptly in case there is a leak of information in connection with the takeover bid.

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

The bidder must always announce without undue delay that (i) the management (or other responsible bodies) of the bidder has decided to make a voluntary takeover bid, or (ii) circumstances resulting in an obligation to make a mandatory takeover bid have arisen. The CNB may (by request of the bidder) defer this announcement obligation if a delay could prevent harm being caused to the bidder (or persons acting in concert) and if the bidder ensures that other persons do not gain access to relevant information.

However, even before these situations arise, the bidder must also announce its intention to make a voluntary takeover bid or act in a way that would give rise to a mandatory takeover bid obligation in the event of significant movement in the share price, or market rumours or speculation, where the cause of such share price movement or rumours or speculation can reasonably be attributed to the preparation of the takeover bid or the acquisition of shares in the target company (i.e. if there is potentially a leak of insider information relating to the takeover bid). At the same time, the bidder must notify the CNB.

At this stage, only the intention to make a takeover bid needs to be announced and it is not necessary to announce any further details.

Subsequently, within 15 working days of announcing its decision to make a takeover bid (or of announcing an obligation to make a mandatory takeover bid), the bidder must submit a bid document to the CNB. The bid document must include varied mandatory information under the Act on Takeover Bids, including essential requirements of the purchase agreement for the participating securities in the target company (namely, it must specify the consideration).

Unless the CNB prohibits the publication of the bid document (or requires the bid document to be further amended or other additional information to be made public), the bidder must make the bid document public no earlier than 15 working days and no later than 30 working days after its submission to the CNB, provided that any required consents from public authorities are obtained (the above 30-day time period for publication is suspended for as long as those consent proceedings take). Also, the bid document must be submitted to the target company at least 10 working days before its publication. The bid document is generally published on the website of the bidder and the target company and in at least one nationally distributed newspaper.

4.4 What if the information is wrong or changes?

The Act on Takeover Bids does not specifically regulate the possibility of changing the information in the bid document that does not modify the terms of the takeover bid. However, it can be argued that any such changes to the bid document need to be notified to the CNB, the target company and published in the same manner as the original bid document.

Regarding any changes to the bid document that modify the terms of the takeover bid, the bidder may generally only amend the consideration in the bid document to be more favourable to shareholders.

The bidder is significantly limited in making any other changes to the takeover bid or in revoking the takeover bid altogether. The takeover bid can be changed or revoked only if all of the following conditions are met: (i) the bid document explicitly stipulates the possibility of doing so; (ii) this approach does not violate the general principles of the Act on Public Takeovers; and (iii) the changes or revocations are objectively justified and do not depend entirely on the bidder's discretion.

Any change to the bid document that brings about more favourable terms to shareholders will automatically also apply to shareholders who have already agreed to the takeover bid prior to such change.

The intention of the bidder to change or revoke the takeover bid must first be notified to the CNB at least five working days before it can be made public. It is then published in the same manner as the original bid document.

5 Stakebuilding

5.1 Can shares be bought outside the offer process?

If the purchase does not fall under the Act on Takeover Bids, shares can be bought outside the offer process, provided that the obligations and limitations regarding insider trading, obligatory disclosure requirements (see question 5.3) and mandatory bid triggers are observed.

However, once a takeover bid has been made, the bidder may not acquire shares during the offer period (nor take any actions with the purpose to acquire shares) in the target company under different conditions that are stipulated in the bid document (certain exceptions to this rule apply). Once the offer period has lapsed, the bidder cannot acquire shares in the target company for a consideration higher than stipulated in the bid document for a period of six months.

5.2 Can derivatives be bought outside the offer process?

If the purchase does not fall under the Act on Takeover Bids, derivatives can be bought outside the offer process, provided that the obligations and limitations regarding insider trading and mandatory bid triggers are observed. It should be noted that derivatives enabling the bidder to acquire shares (or other securities with voting rights) in the target company count towards the overall shareholding for the purposes of disclosure obligation (see question 5.3).

Once a takeover bid has been made, the bidder is forbidden from taking any actions with the purpose of acquiring shares in the target company under conditions different from those stipulated in the bid document. Therefore, in case of any derivatives enabling the bidder to ultimately acquire shares in the target company, the same limitations apply.

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

Under the Act on Capital Market Undertakings, a shareholder must inform the target company and the CNB if it acquires shares (including with persons acting in concert) that increase its overall shareholding so that it corresponds to over 1% (where the registered capital of the target company exceeds CZK 500 million), 3% (where the registered capital of the target company exceeds CZK 100 million), 5%, 10%, 15%, 20%, 25%, 30%, 40%, 50% and 75% of voting rights. The disclosure obligation similarly applies to when a shareholding falls below the above thresholds.

5.4 What are the limitations and consequences?

Once a shareholder reaches a shareholding corresponding to 30% of all votes in the target company and also (alone or with other persons acting in concert) controls the target company, an obligation to make a mandatory takeover bid to all other shareholders of the target company is triggered.

If the shareholder fails to fulfil the disclosure obligations under question 5.3, it cannot exercise the respective voting rights until the disclosure obligation is fulfilled.

6 Deal Protection

6.1 Are break fees available?

There is no established case law relating to deal protection measures. Although break fees are not specifically prohibited under the Act on Takeover Bids, it is questionable whether they would be considered compliant with some of the key principles applicable to the takeover bids, such as the obligation of the target board to act in the best interests of the target company and not to frustrate the possibility for free interplay of competing takeover bids.

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

Before a takeover bid is made, the potential bidder and the target company may generally enter into an agreement, under which the target undertakes not to shop assets of the company. However, the members of the target board must always observe their general obligation to act in the best interests of the target company as a whole when entering into any such agreement.

Once a takeover bid is made (including any potential counter offer), the target board must review the takeover bid (and their written statement) and has a general obligation to allow shareholders to decide freely over the takeover bid and not to take any actions to frustrate it (unless such actions are specifically approved by the general meeting).

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

The issuance of new shares by the target company falls within the powers of its general meeting.

The sale of company assets falls within the powers of the target board, which must act with due managerial care in the best interests of the target company. However, any asset dispositions that may result in a material change to the business of the target company require the approval of the general meeting.

In a takeover bid, the members of the target board have an obligation to act neutrally (see question 3.3). This obligation is reflected, among other things, in a prohibition on taking actions that could frustrate the takeover bid, unless that action is specifically approved by the general meeting. Therefore, unless the target board has the specific approval of the general meeting, it cannot sell its assets with the purpose of frustrating a takeover bid (even if the sale would not generally require the approval of the general meeting as per the previous paragraph).

6.4 What commitments are available to tie up a deal?

Under the Act on Takeover Bids, the bidder cannot tie up a deal with the target company as the obligation of the target board is to act in the best interests of the target company as a whole.

The target board may state its recommendations in connection with a takeover bid in its written response statement (see question 2.11).

7 Bidder Protection

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

In voluntary takeover bids, only conditions that do not depend on the discretion of the bidder (or persons acting in concert) are allowed, such as minimum acceptance thresholds or merger control clearance. A mandatory takeover bid cannot be conditional.

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

The bidder does not have legal control over the target company and its board during the takeover process. The members of the target board have an obligation to act neutrally (see question 3.3).

7.3 When does control pass to the bidder?

The legal term "control" is defined in the Business Corporations Act as the possibility to exercise (directly or indirectly) decisive influence in the target. The Business Corporations Act further stipulates (rebuttable) legal presumptions of control, such as the ability to appoint or recall a majority of the board members or certain shareholding thresholds.

However, whether control of the target company is gained will depend on the specific circumstances of each case, including how fragmented the shareholding structure of the target company is.

7.4 How can the bidder get 100% control?

The bidder can gain 100% control in the target company if it succeeds in acquiring all of its shares. If the bidder owns shares representing at least 90% of the registered capital and 90% of votes in the target company, the bidder can squeeze out the minority shareholders from the target company.

8 Target Defences

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

As a general principle, the members of the target board have an obligation to act neutrally and cannot act in a way that might frustrate the takeover bid (unless such an act is specifically approved by the general meeting of the target company) (see question 3.3).

Therefore, the deployment of any commonly known defence strategies of the target board in hostile takeovers will generally require the specific approval of the general meeting. One exception from this rule is the taking of all necessary measures to search for a competing takeover bid (white knight), which the target board is allowed to do even without the approval of the general meeting, or else the members of the target board may themselves make a competing takeover bid. Also, the target board may not recommend accepting the takeover bid to the shareholders in their written response statement.

8.2 Is it a fair fight?

Under the Act on Takeover Bids, there are certain rules indirectly aiming to create a level playing field between multiple bidders.

As a general principle, the members of the target board have an obligation to act neutrally and cannot act in a way that might frustrate the takeover bid (unless such an act is specifically approved by the general meeting of the target company) (see question 3.3). Also, the target company should treat all competing bidders equally, e.g. grant all competing bidders the same disclosure rights.

The bidder may generally improve the consideration offered in the takeover bid to increase its chances if a competing takeover bid is made (any other modification to the takeover bid would need to be reserved in the bid document and other conditions fulfilled; see question 4.4). If a competing takeover bid is made or if the bidder has amended the consideration offered, the bidder may prolong the acceptance period (unless such prolongation unreasonably affects the business of the target company). Also, a shareholder is generally allowed to revoke its acceptance of the takeover bid within the acceptance period, e.g. where a competing takeover bid is made within the acceptance period.

9 Other Useful Facts

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

The key terms of the takeover bid (including the consideration offered to shareholders) and the position of other shareholders and the target board (including the statutory written response of the target board or any press releases) can be considered major influences on the success of a public takeover bid.

9.2 What happens if it fails?

If a voluntary takeover bid is conditional upon a given acceptance threshold and this threshold is not reached, it will not become effective. The bidder must notify the shareholders whether or not the conditions have been satisfied.

Once the acceptance period in a takeover bid lapses, the bidder (or persons acting in concert) cannot make an additional takeover bid for the target company for one year. This rule similarly applies if the bidder has (i) publicly announced its intention to make a takeover bid, but in the end failed to make it, (ii) acted in a way that caused reasonable assumptions among investors that it would make a takeover bid and has not denied such assumptions publicly, or (iii) publicly announced that it will not make a takeover bid ("put up or shut up" rules).

10 Updates

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

On 1 May 2021, the Act on Screening of Foreign Investments came into force in the Czech Republic, which has had an impact on M&A transactions for non-EU investors in certain limited strategic industries. For further details, see question 1.3.

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