

BULGARIA: RECENT EMPLOYMENT LAW CHANGES RESTRICT M&A TRANSACTIONS FOR BAD EMPLOYERS

PROTECTION OF EMPLOYEES WHICH WAS GIVEN STRONG SUPPORT BY BULGARIAN PARLIAMENT LED TO DIFFICULTIES IN CLOSING M&A TRANSACTIONS

Employment law changes enacted on 22 December 2017 and entering into force on the same day heavily affected M&A transactions in Bulgaria. According to the amendments, shares in a Bulgarian limited liability company may be transferred to non-shareholders only if the company proves it has no overdue obligations for salaries, compensations and social security payments to its employees. The same restriction was introduced for the sale of a company's enterprise (i.e. the pool of the company's rights, obligations and factual relations). The protection extends to employees whose agreements with the company have been terminated within three years prior to the anticipated transfer date. The three year period was introduced to cover the limitation period for claims under employment agreements. The amendments, however, allow the parties to an enterprise transfer (unlike parties to a share deal) to agree that the buyer will settle the obligations of the seller to employees, thus, assuring timely completion of such transactions.

The aimed benefits of the amendments are:

- employees have to be paid prior to completion
- it is no longer possible for shareholders to sell their companies to shady individuals driving them into insolvency by leaving employees' claims unsettled
- the risk for investors buying a company with unsettled obligations to employees is basically eliminated.

"God save us from people who mean well"

What was initially driven by good intentions caused in reality a lot of issues for investors. The amendments did not vest authority in nor provided an obligation for any of the authorities to issue certificates evidencing the absence of overdue payments of salaries, social security or compensations to employees, thus, putting buyers and sellers in the position of being unable to prove their compliance with the new condition, and thereby preventing them from registering transfers with the Bulgarian Commercial Registry and closing M&A transactions.

It is worth noting, that transfers of shares in joint stock companies are not subject to registration with the Commercial Registry, and although joint stock companies are typically larger employers than limited liability companies, they remain unaffected by

the share transfer restrictions.

After a large number of refused applications, some transfers have been registered successfully based on (i) certificates for the absence of public obligations from the National Revenue Agency (which confirm the absence of obligations for social security contributions); and (ii) either certificates from the National Revenue Agency for the absence of current employment agreements entered into by the company or a declaration by the company confirming the absence of other obligations to its employees. It seems that market practice and case law are trying to resolve the deadlock. However, there is still no binding case law and the final solution is yet to come.

Further employee protection measures

Other employee protection measures affecting other legal fields were also introduced along with the above changes: Companies are restricted from participation in public procurement procedures, if they have not settled their obligations to employees or if they have committed other breaches of their employer obligations. The amendments introduced a new assumption for the insolvency of a company which is not able to perform its employer obligations for payment of salaries to at least one third of the employees for more than two months¹. These restrictions are, however, not limited to limited liability companies, but apply across the board.

¹ The assumption for insolvency will apply as of 31.03.2018.

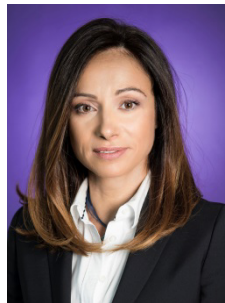
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