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MOLDOVA

Trends and Developments

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Hindsight View

The early days of Moldovan independence have seen mostly state-property privatisation transactions, the execution mechanics of which had little in common with proper M&A deals. Slowly, but irreversibly, reputable foreign investors have stepped into the Moldovan market, setting the rules of the game and the Western standards for structuring and executing M&A transactions.

However, even more recently, equity interest transfers were carried on under plain vanilla contractual arrangements and with an unquantified risk of further break-ups. Naturally, this has resulted in interminable disputes and parties remaining high and dry in the case of adverse events or acts.

The early birds of modern style acquisitions, with ex ante target due diligence, careful deal structuring and regulatory compliance, have been the banking M&A deals. It is worth pointing out that, in terms of investment return, the Moldovan banking system has always been exemplary, with investments securing two-digit returns on equity (ROEs) against the background of a stable national currency (MDL). It is not surprising, therefore, that, after the first wave of institutional or private equity investors, strategic investors followed and landed on Moldovan banking soil, in the mid-2000s. In parallel, strategic or other reputable investors have started to populate other areas, pioneering in the telecommunication, energy and food-processing industries.

An indigenous twist in the acquisition mechanics has come from the same banking system, determined by a large-scale banking fraud, known as the “billion theft”. Back in November 2014, the fraudsters, who have yet to be named by the prosecutors, stripped three banks of about USD1 billion, funnelling the funds out of the country under apparently lawful schemes and bringing those banks to immediate bankruptcy, with further devoting of public funds to bail out the largest of such banks. Worse than that, the banking regulator suddenly realised that the controlling shareholders in the other three banks, the largest ones, were not exactly fit and proper, which poses a much higher-magnitude systemic risk.

The public response was energetic and thunderous: uncompliant shareholders were ostracised and a special law was passed in December 2017 to provide a legal shield to the good-faith bank acquirers against the potential revenge of the expellees. In a three-stage legal process, shares of the uncompliant shareholders were to be annulled, new shares were to be issued, and the state was to purchase them and resell them to ultimate acquirors.

Naturally, sound investors fell in love with the scheme and the two largest banks found new owners shortly thereafter: first, in 2018, when the the European Bank for Reconstruction and Development (EBRD)-led consortium acquired a controlling stake in the largest, the Moldova-Agroindbank, and the second, in 2019, when the Bulgarian Doverie Holding acquired a majority stake in the second largest, the Moldindconbank. This firm's office assisted the buyers in both transactions.

Another category of M&A transactions which kept lawyers snowed under in the recent decade were the multi-jurisdictional deals with Moldovan elements, where Moldovan subsidiaries were acquired indirectly as part of global deals. Requiring a different set of skills and homogeneity in client service, this sort of transaction not only resulted in technology spill-over for the Moldovan targets, but also forged relations with big names on the international legal market.

Finally, a newer trend, still increasing in magnitude, has been the international expansion of the Moldovan companies. The year 2018 witnessed the first Eurobonds issuances by the predominantly Moldovan-based businesses (Purcari Wineries and Aragvi Holding), which secured financing for the Moldovan operations and business development at a higher pace.

Overview of 2020

In 2020, M&A activity in Moldova was affected not only by the effects of the COVID-19 pandemic, but also by political uncertainties. The real GDP fell by 4.5%, and the IMF is forecasting a growth of real GDP in Moldova of 4.1% during 2021 and 2022. During the second half of 2020, the presidential elections and the Government's resignation led to political uncertainty, slowing down investors' appetites.

The COVID-19 pandemic outbreak has not upset the applecart for the foreign investors who had M&A deals in the pipeline. Amidst the state of emergency enacted on 17 March 2020, the firm Irish CG Cell Technologies, assisted by this firm's lawyers, closed the acquisition of the second largest mobile telephony operator Moldcell from the Telia Sonera Group, in a combination of an equity and a debt acquisition.

Shortly thereafter, a deal even higher in numbers was announced and subsequently completed. This was the acquisition of the country's largest glasswork manufacturer by the Swiss Vetropack group. It was an extremely complex transaction, with several selling shareholders driven by the Western NIS Fund team of seasoned professionals, including cross-border components and competition clearance. Literally, these two M&A transactions were completed with masks on faces, amidst disruption in public agencies' activity and an uncertain market outlook. The first post-acquisition months have, however, proven that the acquirors made the correct decision, and the extra effort was worth making.

Finally, 2020 saw the largest investor to Moldova, the EBRD, assisted by this firm's lawyers, announce the acquisition of 25% of Vestmoldtransgaz, the gas transmission company operating the new Ungheni-Chisinau gas pipeline. The EBRD funds would secure the completion of the inter-connection of the gas systems of Romania and Moldova and would enhance Moldova's energy security by diversifying its gas supply sources.

In terms of the sectoral breakdown of M&A deals in 2020, the telecom, manufacturing, infrastructure and retail were the highest grossing sectors. Although there is no official data, it is reasonable to admit that the aggregated volume of the deals in these sectors amounted to more than half of the total deal volume in 2020, which was mainly a consequence of the very largest transactions falling within these sectors.

The Moldovan market was strongly driven by private M&A transactions in 2020. Privatisations played a rather minor, if not insignificant, role. According to the information provided by the Public Property Agency, last year only three state enterprises were privatised, with an economic impact that can be disregarded, and there were no other acquisitions of publicly held shares or other equity interests.

Expectations for 2021

Looking ahead, 2021 foreshadows more challenging times for deal-makers as the pandemic dust settles. The year got off to a strong start, but clients nevertheless coped with increased volatility in equity markets and local economic and political uncertainty. Moldova continued to attract and to rely on foreign investment throughout 2020, despite political and economic adversities.

A 2021 trend which is in the air is the Moldovan authorities making strenuous efforts to enforce merger control and anti-competitive agreement regulations, given the record levels of fines of up to EUR4 million already imposed. Facing increased political pressure to deploy the regulatory and supervisory capacities more effectively, both the antitrust and the other regulators are drifting between the desire to please the policy-makers (given the forthcoming early general elections and expected changes of political elites) and the imperative to ensure sound investment protection and protection of the investment climate.

A fresh phenomenon which is being closely watched by foreign investors, both existing and potential, refers to the frenetic desire of the lawmakers to impose investment control (both ex post and ex ante), with the potential unwinding of the completed transactions. The purpose is noble, to clear up the dubious previous investments made in strategic areas (primarily, the Chisinau airport), but the potential effect has yet to be carefully assessed, most foreign investors being up in arms and the professional business associations (AmCham, EBA, etc) having voiced their members' concerns. It is fair to mention, however, that the sound voice of business, expressed via such professional associations, has always been listened to in modern Moldovan history, which offers an element of confidence to the investors that the authorities will not throw the baby out with the bath water.

The long-term legal consequences of the COVID-19 pandemic can be hard to predict at this stage, as the state of affairs is dynamic and depends on too many factors. What can be predicted, however, is that businesses planning to expand or restructure through M&A in 2021 or beyond will do so against a background of changing political, trading, and social conditions. Despite the challenges, however, since Moldova is also rich in companies in the small- and medium-sized enterprise (SME) sector, where there is rarely a natural succession plan, these companies will need either a trade exit or a management buy-out. The outlook for M&A therefore remains quite promising.

Legislation and Policy Perspective Ahead

On the legal side, since Moldovan law allows parties to shop in both jurisdiction and forum, one may assume that the overwhelming majority of Moldovan cross-border M&A transactions will continue to be English law or other law-governed, with the London Court of International Arbitration (LCIA) or other reliable arbitral tribunals set as dispute resolution fora.

With 50 double taxation treaties in place, the country has actually invited investors to shop the tax jurisdiction as well. No wonder investors, including reputable ones, have preferred structuring investments via tax-friendly jurisdictions, such as the Netherlands or Cyprus, and that banking regulations have been shaped to accept special-purpose vehicles (SPVs) from transparent jurisdictions.

Sale-purchase framework agreements (backed by local law transfer instruments, both in the case of equity and asset deals) are quite often followed by shareholders, and, less often, by share put-and-call agreements. Drag-along, tag-along, or first refusal-right provisions are widespread but untested in Moldovan courts, which are set aside.

Warranty and indemnity insurance is rarely considered by the parties and is typically not agreed on. Moldovan insurance companies, although allowed by the regulator to offer such services, have often hesitated in the past to contract such risks.

Earn-outs are, as a rule, used by private equity funds rather than by strategic investors, while agreements on escrow mechanics are more common in Moldovan M&A. Depending on the object of such escrow agreements, these can ordinarily be executed by public notaries.

Although not specifically regulated and captured in Moldovan legislation, following the amendment and modernisation of the Civil Code in 2019, the aforementioned and other internationally recognised and M&A-applicable instruments should be more closely embraced in Moldovan deals.

Gladei & Partners is Moldova's leading business law firm, with its 11 lawyers offering legal services to its clients in the areas of both advisory and litigation. The strong team at Gladei and Partners is equipped with various Moldovan and foreign educational and professional backgrounds. It handles cases that require a full grasp of Moldovan law and an understanding of cross-border jurisdictions, as well as different cultures and languages. The firm's clients include the largest banks in Moldova and multinational corporates, industrial manufacturers and public sector authorities. The firm's expertise covers the full spectrum of industry sectors.

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