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Legal Support for M&A Deals in Russia: Practical Aspects

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Despite the activity on the Russian M&A market and experience gathered in this field, legal advisers constantly face issues relating to implementation of merger and acquisition deals. Below, we present some of the most common matters we come across at virtually every stage of M&A deal implementation, which should be borne in mind to make the deal as effective as possible.

At the first stage of negotiations, development and signing of the letter of intent (term sheet, memorandum of understanding, etc.), one vital factor is whether the client's counterparty(-ies) have legal advisers representing their interests. Practice shows that the success of the entire deal depends greatly on availability of a good and professional legal adviser representing the counterparty, able to give the client an appropriate assessment of the risks and opportunities and a timely and competent explanation of any matters that arise. Sometimes, if a financial adviser is engaged in the deal, he can cope with such a task, too, yet it always makes sense to specify whether the counterparty to the deal has appropriate qualified legal support. One more purely practical issue is the language in which the deal and negotiations are conducted: If the counterparties to the deal do not speak a common language, this often quite substantially complicates the negotiations and communications in general and the deal adviser has to act partly as interpreter in order to resolve, as promptly as possible, any issues that arise.

At the due diligence stage (if applicable), much depends on the technical readiness of the audit target and on availability of target personnel able to answer the advisers' questions and provide the necessary information quickly and competently. Unfortunately, Russian targets still make quite infrequent use of data rooms, so either hard or electronic copies

of documents are provided and sometimes the advisers have to check the documents by actually visiting the target. Moreover, the target's managers often disclose the information unwillingly and even conceal some of it intentionally, especially if the deal is being concluded under Russian law and does not stipulate any significant seller liability for providing incomplete or false information regarding the target's status.

The structuring and preparation of deal documents is largely dependent on the relevant experience of the parties involved. If the client and/or its counterparty lacks the necessary experience, the advisers have one more task: to make each of the parties to the deal duly comfortable about and understand the overall structure of the deal, the reasons behind it and the entire scope of the rights, obligations and liability stipulated for each of the parties by the relevant documents (especially if the deal is subject to foreign law). M&A advisers are fully aware how hard it is to explain to the client and to the counterparty, in particular, the need to include specific contractual provisions, irrespective of the law to which the deal is subject.

Unfortunately, the set format does not allow us to dwell in more detail on specific situations encountered by advisers or to note other stages of M&A deals: The features inherent in each stage may well constitute the subject of a separate article that my colleagues and I will undoubtedly write in the future.

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