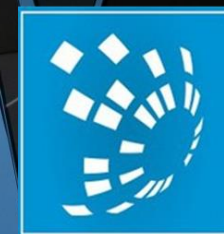


Comparative guide to the latest M&A trends in the Baltics 2023

COBALT



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This comparative analysis guides the reader through the latest M&A trends and provides valuable insights and practical know-how about what occurs during an M&A transaction.

The guide is based on statistics collected between 2020 and 2022 and is issued with the status as of March 2023; it provides only a general description of the issues covered; each practical situation has its own nuances and should be carefully evaluated on a case-by-case bases.

If you require a more detailed description of the issues described in this guide or have any comments in relation to issues not dealt with in this guide, or need legal assistance in practical situations, please do not hesitate to get in touch and we will be happy to assist.

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Getting the Deal terms fixed – Share Purchase Agreement (SPA)

	ESTONIA	LATVIA	LITHUANIA
Language of the SPA	Typically, English (no mandatory language requirements)	Typically, English (no mandatory language requirements)	Typically, English (mandatory local language requirements: imposed mainly when the SPA is notarised)
Form of SPA	<p>Electronically registered shares: no form requirement</p> <p>Shares not electronically registered: notarised SPA</p> <p>Shares not electronically registered, but share capital above EUR 10,000 and Articles permit: at least in a format which can be reproduced in writing (e.g., e-mails etc.)</p>	<p>No form requirements. However, written form is used almost in all cases; rarely notarised SPA</p>	<p>Shareholding of 25% or more: notarised SPA, unless the target has an agreement with an external securities accounts manager (a financial broker or a bank)</p> <p>In other cases: written form SPA</p>
Liability	<p>De minimis: 0.5% ≤ of the Price</p> <p>Basket: 2% ≤ of the Price</p> <p>Cap: 10-60% or 100% of the Price</p> <p>Use of R&W Insurance: not standard</p> <p>Effect of disclosure: exempt from liability</p>	<p>De minimis: 0.5% ≤ of the Price</p> <p>Basket: 0.5-2% of the Price</p> <p>Cap: 10-40% of the Price</p> <p>Use of R&W Insurance: not standard</p> <p>Effect of disclosure: most likely exempt from liability</p>	<p>De minimis: 0.5% ≤ of the Price</p> <p>Basket: 0.5-2% of the Price</p> <p>Cap: 20-40% of the Price</p> <p>Use of R&W Insurance: not standard but rapidly increasing in use (for deals valued at EUR 10,000,000 +)</p> <p>Effect of disclosure: most likely exempt from liability</p>

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Preparing the Deal

	ESTONIA	LATVIA	LITHUANIA
Signing NDAs (non-disclosure and confidentiality agreements) and Term Sheets (Letters of Intent/Comfort)	NDAs: very standard Term Sheets: 50:50	NDAs: very standard Term Sheets: 60:40.	NDAs: very standard Term Sheets: 50:50
Exclusivity in Term Sheets	Exclusivity: fairly standard	Exclusivity: fairly standard	Exclusivity: fairly standard
Break fee	Break fees: less common	Break fees: less common	Break fees: less common
Due Diligence (DD)	DD: very standard Timing: takes around 3-4 weeks	DD: very standard Timing: takes around 3-4 weeks	DD: very standard Timing: takes around 3-4 weeks
Acquisition Structure and establishing an SPV	Establishing SPV: roughly EUR 5,000 and takes 2-3 weeks	Establishing SPV: roughly up to EUR 5,000 and takes 2-3 weeks (depending on complexity of UBO matters)	Establishing SPV: roughly up to EUR 3,000 and takes up to 2-3 weeks
Timing	From signing an NDA until DD finalization: ~ 4-6 weeks	From signing an NDA until DD finalization: ~ 4-6 weeks	From signing an NDA until DD finalization: ~ 4-6 weeks

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	ESTONIA	LATVIA	LITHUANIA
Purchase Price Mechanism	Locked Box: ca 40% of deals Completion Accounts: ca 65% of deals	Locked Box: ca 40% of deals Completion Accounts: ca 65% of deals	Locked Box: ca 60% of deals Completion Accounts: ca 50% of deals
Governing law	Typically, local law	Typically, local law	Typically, local law
Non-Compete and Non-	Fairly standard	Fairly standard	Fairly standard
Signing	Electronically registered shares: digital, electronic or wet signature Shares not electronically registered: signing before a notary Shares not electronically registered but share capital above EUR 10,000 and Articles permit: digital, electronic or wet signature	Qualified digital, electronic or wet signature	Qualified digital, electronic or wet signature (for notarised SPA – wet signature and notarisation)
Timing	Typically, 2-4 weeks from providing first draft of SPA	Typically, 4-6 weeks from providing first draft of SPA	Typically, 2-4 weeks from providing first draft of SPA

Closing the Deal and Post-Closing Undertakings

ESTONIA

LATVIA

LITHUANIA

Merger Clearance as a CP

Turnover thresholds: (i) the combined annual turnover of the acquirer(s) and the target(s) exceeds EUR 6,000,000 EUR in Estonia; and (ii) each of at least two of the parties has an annual turnover over EUR 2,000,000 in Estonia

Costs: state filing fee EUR 1,920

Timing: 30 days (Phase I) and 4 months for Phase II

Turnover thresholds: (i) the combined annual turnover of the acquirer(s) and the target(s) exceeds EUR 30,000,000 in Latvia; and (ii) each of at least two of the parties has an annual turnover over EUR 1,500,000 in Latvia

Costs: state filing fee EUR 2,000 - 8,000

Timing: up to 1 month after filing acceptance (Phase I) and up to 4 1/2 months after filing acceptance (Phase II)

Turnover thresholds: (i) the combined annual turnover of the acquirer(s)' group and the target(s) exceeds EUR 20,000,000 in Lithuania; and (ii) each of at least two of the parties has an annual turnover over EUR 2,000,000 in Lithuania

Costs: state filing fee – EUR 18,000

Timing: up to 1 month after filing acceptance (Phase I) and additionally up to 3 months after filing acceptance if preliminary competition concerns are identified (Phase II). Filing acceptance might take from 2 weeks up to several months (depending on merger filing complexity, NCA's workload, etc.)

MAC (Material Adverse Change) as CP

MAC – fairly standard

MAC – fairly standard

MAC – fairly standard

Foreign direct investment clearance

Applicable in specific areas (as of 01.09.2023) (e.g., 1. air, railway, sea transport; 2. energy, utilities; 3. electronic components, TV, radio, hosting, communications; 4. medicine; 5. financial; 6. military)

Applicable in specific areas (e.g., critical state infrastructure)

Applicable in specific areas: (e.g., 1. air, railway, sea transport; 2. energy, utilities; 3. electronic components, software, hosting, data centres, communications, TV, radio; 4. financial; 5. military)

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	ESTONIA	LATVIA	LITHUANIA
Opening bank and securities account	Necessary in case of electronically held shares. Process may be time- and cost-consuming.	N/A	N/A
Share transfer and payment of Purchase Price	Electronically registered shares: "Delivery vs payment" or "free of payment" Shares not electronically registered: Parties are free to choose the payment terms	Parties are free to choose the payment terms	Parties are free to choose the payment terms
Corporate changes	Typically, in management bodies and articles of association at or post-Closing	Typically, in management bodies and articles of association at or post-Closing	Typically, in management bodies and articles of association at or post-Closing
UBO submission	UBO submission – mandatory	UBO submission – mandatory	UBO submission – mandatory
Transfer tax; notary costs and stamp duties	Transfer tax: N/A Notary costs: Depending on the sale share value, the final fee is based on the formula provided by law. For example: with a sale share value of EUR 1,000,000 or EUR 6,000,000: notary fee approximately EUR 2,930 and EUR 10,350, respectively. Stamp duties: N/A	Transfer tax: N/A Notary costs: N/A Stamp duties: N/A	Transfer tax: N/A Notary costs: The notary's fee amounts to 0.33-0.41% of the shares' purchase price (but the minimum fee is EUR 17 and the maximum fee is EUR 5,000). Stamp duties: N/A
Timing (period between signing and closing)	Typically, 2-5 weeks after signing (subject to regulatory approvals)	Typically, 2-5 weeks after signing (subject to regulatory approvals)	Typically, 2-5 weeks after signing (subject to regulatory approvals)





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It's a big deal