



# ICLG

The International Comparative Legal Guide to:

## Mergers & Acquisitions 2016

**10th Edition**

A practical cross-border insight into mergers and acquisitions

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**Published by**

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59 Tanner Street  
London SE1 3PL, UK  
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Email: info@glgroup.co.uk  
URL: www.glgroup.co.uk

**GLG Cover Design**

F&F Studio Design

**GLG Cover Image Source**

iStockphoto

**Printed by**

Ashford Colour Press Ltd.  
February 2016

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ISBN 978-1-910083-83-3

ISSN 1752-3362

**Strategic Partners**



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EDITORIAL

Welcome to the tenth edition of *The International Comparative Legal Guide to: Mergers & Acquisitions*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of mergers and acquisitions.

It is divided into two main sections:

Five general chapters. These chapters are designed to provide readers with an overview of key issues affecting mergers and acquisitions, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in mergers and acquisitions in 54 jurisdictions.

All chapters are written by leading mergers and acquisitions lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editor Michael Hatchard of Skadden, Arps, Slate, Meagher & Flom (UK) LLP for his invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at [www.iclg.co.uk](http://www.iclg.co.uk).

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# Uzbekistan

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## 1 Relevant Authorities and Legislation

### 1.1 What regulates M&A?

Joint stock companies, limited and additional liability companies, general and limited partnerships are covered by M&A legislation. M&A transactions are regulated by the following laws and legislative acts:

- Civil Code of the Republic of Uzbekistan dated 27 December 1994 and 1 July 1999 respectively (as amended).
- Law No.223-I On Joint Stock Companies and Protection of Shareholders' Rights dated 26 April 1996 (in the new edition as amended).
- Law No.308-II On Commercial Partnerships dated 6 December 2001.
- Law No.310-II On Companies with Limited and Additional Liability dated 6 December 2001 (as amended).
- Law No.163 On the Securities Market dated 22 July 2008 (in the new edition as amended).
- Law No.ZRU-319 On Competition dated 6 January 2012 (as amended).
- Regulation on the Procedure for Issuance of the Preliminary Approval for Establishment of Associations of Legal Entities, Consolidation and Merger of Legal Entities (approved by the Resolution of the Cabinet of Ministers of Uzbekistan No.344 dated 27 December 2013).
- Regulation on the Procedure for Issuance of the Preliminary Approval for Acquisition of Shares of Legal Entities (approved by the Resolution of the Cabinet of Ministers of Uzbekistan No.230 dated 20 August 2013).
- Other by-laws, including sector-specific rules.

### 1.2 Are there different rules for different types of company?

M&A legislation applies to companies that are incorporated and traded in Uzbekistan, whether these companies act as purchasers or targets in a transaction. If a foreign company wishes to purchase an Uzbek joint stock company (JSC), such a transaction will also be regulated by Uzbek M&A laws. M&A rules are generally the same for JSC and private companies, though some procedural differences in executing transactions take place. Foreign target companies are not affected by the M&A legislation.

It should be noted that Uzbek JSCs may not trade over 25% of their shares in a foreign jurisdiction. Moreover, where a company having

state shares is considered to have strategic interest for the economy of Uzbekistan, the placing of its shares is subject to preliminary review by the Commission on Monitoring over Effective Use of State Shares in Publicly Listed Companies.

### 1.3 Are there special rules for foreign buyers?

It is generally determined by the relevant laws that there is no special regime for foreign buyers. With that, however, some sector-specific rules, for example those regulating mass media, limit participation of foreign companies.

### 1.4 Are there any special sector-related rules?

There are some specific rules that apply to particular industries, including banking, insurance, mass media, natural monopolies, non-banking credit organisations and professional participants of the securities market.

### 1.5 What are the principal sources of liability?

Besides contractual liability, there are procedural requirements set by company, competition and security market laws (administrative liability). In particular, it should be noted that, in accordance with security market laws, participants of the securities market might be found liable for market manipulation, deliberate dissemination of false information, insider dealing, or any efforts resulting in misleading on the price of securities. Liability of the persons involved in these illegal actions is determined by the court.

## 2 Mechanics of Acquisition

### 2.1 What alternative means of acquisition are there?

There are several ways on how acquisition of shares of JSCs may be done. The main and the most straightforward way is the purchase of newly-issued stock that can be done by conclusion of an agreement between the target and the bidder. In such cases, the issue prospectus defines potential buyers in advance (the so-called 'private subscription').

The purchase of shares from the existing shareholders is done through the Republican stock exchange if the relevant company is listed there or through an independent organiser of trades. Formally, this process is done through public trades, where any party may participate in

the bids. In practice, however, placement of shares in public trades is preceded by direct negotiations between the parties. Once the parties reach an agreement, the target company places its shares in the stock exchange or organised public trades by making a public offer to sell the shares, while the potential bidder makes an offer to acquire the shares. The transaction is closed and registered by the stock exchange or the independent organiser of trades without the direct participation of the parties. The parties shall pay the service fees of the stockbroker or the independent organiser of trades.

The third option is acquisition through either merger or consolidation. The merger entails creation of a new company having rights and obligations of the companies that are liquidated as a result of the merger. The consolidation is a takeover of a target company by the purchase as a result of which the target company is liquidated and its rights and obligations are transferred to the purchaser, which in its turn becomes the legal successor of the target company. In both cases, shareholders of participating companies must approve the transaction and the relevant agreement is to be signed. This procedure may be time-consuming, as it requires the initiation of liquidation and re-registration procedures.

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## 2.2 What advisers do the parties need?

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There are no specific legal requirements prescribing the appointment of particular consultants. It may only be mentioned that if the shares are traded at the stock exchange, professional participants (brokers, investment intermediaries or others as defined by law) are to be involved. As a matter of practice, parties to M&A transactions seek the advice of accountants, lawyers, financial, and investments consultants.

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## 2.3 How long does it take?

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The law does not set time limits within which the M&A transaction must be completed. Therefore, the timeframes are determined by many factors, such as the time required for the receipt of prior consent of the governmental authorities, complexity of the relevant transaction, terms of legal and financial audit, if carried out, and so forth.

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## 2.4 What are the main hurdles?

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There are many specific hurdles that may be encountered in the course of particular transactions. The principal hurdles relate to receipt of consent (clearance) of the relevant governmental authorities and the inflexibility of statutory provisions of a procedural nature covering the rights and obligations of shareholders, as well as sale-purchase of securities and legislative gaps complicating implementation of complex deals.

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

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If the shares are listed at the stock exchange and are bought from target's shareholders, quotes are to be applied. However, if the shares of the target were not traded at the stock exchange for over three months, then the parties are free to set their own prices. Additionally, if the shares are traded at the foreign exchange trading floor and the bidder wishes to purchase over 5% of the target's shares, then the parties are free to set their own prices.

In all other cases, Uzbek law does not put forward rigid requirements as to deal terms and price that are to be agreed between the parties.

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

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It is presumed by Uzbek law that non-cash consideration may only be offered when new shares are issued. Conditions of accepting the non-cash consideration are supposed to be specified in the shareholders' decision on issuance of shares.

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

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There is no legal requirement as to the equality of terms.

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

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Uzbek law does not set any obligations to purchase other classes of target securities.

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## 2.9 Are there any limits on agreeing terms with employees?

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Rules applicable to M&A transactions do not limit agreements with employees. Employees that hold shares in the target are not subject to any specific regulations and are treated as other shareholders. The bidder is thus free to negotiate benefits and future employment terms with the target.

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

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There is no requirement to obtain approval of M&A deals from employees, their representatives, pension trustees or any other stakeholders.

It should only be noted that, pursuant to Uzbek labour legislation, in the case of a change of ownership, the collective bargaining agreement as concluded between the company and its employees shall remain in force for a period of six months. Within this period, the parties are supposed to renegotiate it.

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## 2.11 What documentation is needed?

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A particular set of documents is determined by the terms of the transaction in question and its type as described in question 2.1 above.

In the case of an acquisition of newly-issued shares, the decision on issuance of shares is required, as well as the agreement between the target and the buyer.

In the case of an acquisition of shares from the target's shareholders, being the most widespread type of acquisition transactions, the deal is concluded through the electronic trading system. The principal documents in this case will include the application for sale and the application for purchase, both setting main conditions of the sale-purchase and submitted to a licensed organiser of trades or appointed brokers (if traded at the stock exchange), the relevant agreement with the organiser of trades or brokers, the written waiver of pre-emptive rights if applicable, corporate resolutions, and some documents of a technical nature (re-registration certifications, etc.).

In the case of a merger or a consolidation, the necessary documentation includes the decisions of shareholders of participating companies

on approval of the transaction, the relevant agreement between the companies, the act confirming transfer of rights and obligations from one company to another, a series of documents on liquidation and re-registration of a company/companies.

### 2.12 Are there any special disclosure requirements?

In the case of a merger or a consolidation, the information is to be published in the state newspaper 'Birja' and on the official website of the stock exchange.

In the case of an acquisition of newly-issued shares (private subscription), the issuance prospectus is published in the state newspaper 'Birja' and on the official website of the stock exchange.

Further, in the case of an acquisition, a buyer (one company or several affiliated companies) acquiring 20% or more of shares of a JSC as a result of one or a series of transactions is obliged to disclose the relevant information in the state newspaper 'Birja' and on the official website of the stock exchange. Likewise, there is a disclosure requirement for a person taking over more than 35% of shares of a JSC.

The information about the transaction must also be published on the websites of the buyer (if a JSC) and the target.

With that, no financial disclosure or valuation is required

### 2.13 What are the key costs?

The principle costs include fees payable to professional advisers, and stock exchange commission fees or commission fees of an independent organiser of trades (if applicable), as well as fees of professional advisers (accountants, tax consultants, lawyers, valuers).

### 2.14 What consents are needed?

It may be required to acquire the preliminary consent of antitrust authorities.

Whether it be an acquisition, a consolidation or a merger, the consent is necessary when the companies participating in the transaction and operating in a commodity market have an aggregated book value of assets or net sales for the last calendar year of more than a 100,000-fold minimum wage or one of the companies takes a dominant position. The consent is to be sought by the companies operating in financial markets when an aggregated book value of their assets exceeds the threshold set by law (450,000 USD for banks, 25,000 USD for insurance companies, 3,000,000 USD for financial lease companies, and 400,000 USD for non-banking credit organisations) or one of the companies takes a dominant position.

In the case of an acquisition, one additional threshold is applied – the consent is necessary if a bidder takes control of more than 35% of shares, but previously owned none or less than 35% (or 50%/50% or 66%/66% respectively).

Specific consents may also be necessary in particular sectors. Thus, in the banking sector, the consent of the Central Bank is required if more than 20% of shares of a bank are bought by a company or affiliated companies.

### 2.15 What levels of approval or acceptance are needed?

In the case of private subscription, the approval of 50% of the target shareholders participating in the general meeting is required. In the case of a merger and a consolidation, the approval of 75% of

shareholders participating in the general meeting is required. The quorum for general meetings in all cases is 50% of voting shares.

In the case of an acquisition from target shareholders, no approval is required.

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

In the case of an acquisition of newly-issued shares, a consolidation or a merger, payment conditions are to be agreed between the parties in the relevant agreement.

In the case of an acquisition of shares of current target shareholders, money consideration is to be transferred to a special clearance account before the public trades. An independent organiser of trades or the stock exchange ensures immediate transfer of payment for the shares to a seller's account as soon as the trades are over.

## 3 Friendly or Hostile

### 3.1 Is there a choice?

Uzbek law does not define the concepts of hostile and friendly acquisition and does not regulate the issue.

### 3.2 Are there rules about an approach to the target?

As a rule, target shareholders are approached by a potential bidder. There are no specific rules as to the approach to the target itself.

### 3.3 How relevant is the target board?

The target board is not able to intervene into the transaction. It only has some organisational responsibilities, e.g. the holding of a shareholders meeting.

### 3.4 Does the choice affect process?

This question is not applicable.

## 4 Information

### 4.1 What information is available to a buyer?

A buyer has access to publicly-available information, including foundation documents, financial statements and material information on a buyer's activities. In the case of an acquisition of newly-issued shares (private subscription), a consolidation or a merger, additional information may be requested based on the relevant agreement between the parties.

### 4.2 Is negotiation confidential and is access restricted?

Confidentiality may be maintained in the case of private subscription, a consolidation and a merger.

In the case of an acquisition of shares from current target shareholders, open trades are to be organised. With that, preliminary informal confidential negotiations may be conducted with potential investors.

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

Information about a consolidation or a merger is to be published in the state newspaper 'Birja' or on the official website of the stock exchange within two days after their registration with the relevant authorities. General information about details of the transaction should be provided.

Information about an issuance of new shares is to be published on the website of the stock exchange two weeks before the issuance.

Information about any acquisition satisfying thresholds described in question 2.12 is to be published within five days after the registration of the transaction.

#### 4.4 What if the information is wrong or changes?

Although there is no legal requirement to update information published in connection with the transaction, there is a liability for providing wrong information. Therefore, changes are to be made as soon as possible.

### 5 Stakebuilding

#### 5.1 Can shares be bought outside the offer process?

Uzbek law provides only for those means of stakebuilding that have been described above.

#### 5.2 Can derivatives be bought outside the offer process?

The same publication and registration requirements are applicable to derivatives. With that, derivatives may be traded based on direct sale-purchase agreements without the necessity to organise public trades. It should be noted, however, that Uzbek law significantly limits derivative transactions in equity shares and their usage may not be considered as an effective way of acquisition.

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

Generally, aforementioned disclosure requirements apply (see question 2.12).

#### 5.4 What are the limitations and consequences?

It is generally presumed that all trades in shares in the secondary market are public (with the exception of derivative transactions as described above). As soon as all these and other legal requirements are satisfied, there are no further limitations on stakebuilding in general. With that, certain sector-specific rules may apply. For example, it is not possible for a single shareholder to own more than 25% of shares in a bank.

### 6 Deal Protection

#### 6.1 Are break fees available?

Break fees are not available according to Uzbek law. In the case of private subscription, a merger or a consolidation, the relevant clauses may be included in the agreement between the parties.

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

Since the target is not directly involved in negotiations between its shareholders and the buyer, such an agreement is likely to be irrelevant.

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

Such an agreement may be reached between the buyer and the target as soon as the governing bodies of the target (including, if applicable, the general meeting) have approved the agreement.

#### 6.4 What commitments are available to tie up a deal?

In the case of private subscription, a merger or a consolidation, some contractual commitments may be set in the agreement.

In the case of an acquisition of shares from current target shareholders, it is possible to conclude a contract obliging the parties to participate in the public trade, though actual enforceability of such an agreement is subject to discussion.

### 7 Bidder Protection

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

In the case of a merger or a consolidation, deal conditions are subject to negotiations between the parties.

In the case of an acquisition of newly-issued shares (private subscription), conditions may be incorporated in the relevant agreement with the buyer.

In the case of an acquisition of shares from current target shareholders, an offer of the bidder is submitted to an independent organiser of trades or brokers at the stock exchange and includes only the following information:

- name of the target;
- number and type of shares the bidder wishes to acquire; and
- minimum and maximum price payable for each share.

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

Uzbek law does not provide for special instruments of control. In cases where the agreement is concluded as described in question 7.1 above, the bidder and target shareholders may negotiate such instruments.

## 7.3 When does control pass to the bidder?

Control is deemed to pass when the deal is registered with the relevant state authority.

## 7.4 How can the bidder get 100% control?

Getting 100% control is a matter of negotiation with target shareholders. No alternative ways are available.

## 8 Target Defences

### 8.1 Does the board of the target have to publicise discussions?

No publication of discussions is required by law.

### 8.2 What can the target do to resist change of control?

The board cannot resist change of control.

### 8.3 Is it a fair fight?

In the case of private subscription, a merger or a consolidation, no such rules are designed.

In the case of an acquisition of shares from current target shareholders, open trades are the principal tool for ensuring fairness.

## 9 Other Useful Facts

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

The primary factors that influence the success of an acquisition is the consent of the target's shareholders. Another crucial factor is to choose the correct scheme of making a M&A transaction, since the main hurdle is getting all the necessary regulatory consents and ensuring the proper execution of all the necessary documentation.

### 9.2 What happens if it fails?

There are no particular legal restrictions applicable in such cases, but if the bidder still wants to make an acquisition, it may be necessary to start the entire procedure all over again.

## 10 Updates

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

In accordance with the Presidential Decree No.PP-2454 dated 21 December 2015, all JSCs shall have foreign shareholding, which shall be no less than 15% by 1 July 2016. If JSCs fail to meet these requirements, they need to be re-organised to other legal forms. JSCs and their shareholders shall take all necessary steps to attract foreign investors in order to ensure compliance with this requirement of the Decree. It is, therefore, expected that amendments will be made to some laws and regulations applicable to M&A transactions in order to facilitate their conclusion.





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Mr. Nail Hassanov is a senior partner at Kosta Legal. His key areas of expertise and special interest are cross-border financing, project financing, syndicated loans and secured transaction in the oil and gas, energy, infrastructure development and construction sectors.

Nail represents both lenders and borrowers as a local counsel in international finance transactions, including project finance, syndicated loans, and sales on credit. He regularly advises foreign investors in M&A transactions, joint ventures, complex property acquisitions, etc.

He also enjoys advising clients in setting up businesses and making greenfield investments by developing various structures and schemes of operation that consider both the business needs of the clients and the regulatory requirements of Uzbek laws.

Nail's expertise has been recognised by the leading legal directories *Chambers & Partners* and *Legal 500*.



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Mr. Maxim Dogonkin is a senior associate at Kosta Legal. Maxim specialises in corporate and competition law matters, with a particular emphasis on mergers & acquisitions, securities, corporate governance and compliance matters.

Maxim has extensive experience representing foreign investors in large M&A projects, transfer of assets and joint venture deals in oil and gas, energy, retail, banking, construction, pharmaceutical and other industries.

In the competition law sphere, Maxim focuses on obtaining regulatory approvals and advises on business restructuring and market strategies for their compliance with competition law requirements. Maxim regularly participates in antitrust investigation hearings in cases concerning abuse of dominance, deceptive practices, unfair competition and others.

## KOSTA LEGAL

Kosta Legal is a results-oriented law firm offering a wide range of legal services to both new entrants and well-established businesses in Uzbekistan, with particular expertise to offer legal advice and services to foreign investors.

We help our clients navigate through the constantly-evolving Uzbek legal environment that is characterised by frequent changes and fairly common ambiguity in actual application of legal norms, which may lead to serious challenges, particularly for foreign investors. At Kosta Legal, we are eminently qualified to address these challenges of operating a business in Uzbekistan.

Our law firm has the necessary legal expertise, resources and flexibility to come on top of a matter of any complexity. Our particular interests are in oil and gas, energy, banking and finance, corporate law and compliance, real estate and construction.

Based in Tashkent, Uzbekistan, we work with multi-national and Fortune 500 companies, financial institutions, including regional development banks, and governments of different states, as well as small and medium-sized businesses and start-ups.

## Current titles in the ICLG series include:

- Alternative Investment Funds
- Aviation Law
- Business Crime
- Cartels & Leniency
- Class & Group Actions
- Competition Litigation
- Construction & Engineering Law
- Copyright
- Corporate Governance
- Corporate Immigration
- Corporate Recovery & Insolvency
- Corporate Tax
- Data Protection
- Employment & Labour Law
- Enforcement of Foreign Judgments
- Environment & Climate Change Law
- Franchise
- Gambling
- Insurance & Reinsurance
- International Arbitration
- Lending & Secured Finance
- Litigation & Dispute Resolution
- Merger Control
- Mergers & Acquisitions
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