Croatia

1 Relevant Authorities and Legislation

1.1 What regulates M&A?
M&A activities in Croatia are governed by various pieces of legislation. These include:
- the Company Act (Official Gazette 111/93, 34/99, 52/00, 118/03);
- the Securities Market Act (Official Gazette 84/02);
- the Joint Stock Companies Takeover Act (Official Gazette 84/02, 87/02, 120/02) (hereinafter The Takeover Act);
- the Labor Act (Official Gazette 38/95, 54/95, 64/95, 17/01, 82/01, 114/03, 30/04, 142/03, 137/04);
- the Competition Act (Official Gazette 84/02, 87/02, 120/02) (hereinafter The Takeover Act);
- the Civil Code (Official Gazette 35/05); and
- the Investment Promotion Act (official Gazette 73/00).

1.2 Are there different rules for different types of public company?
Different rules (more onerous and with public disclosure rules) apply for public joint stock company, than for other types of company.

1.3 Are there special rules for foreign buyers?
Croatian law does not discriminate towards foreign investors, whether legal or natural persons, and, as a principle, offers them equal treatment as Croatian investors have. The principle of equal treatment of domestic and foreign investment is prescribed by the Constitution of the Republic of Croatia, which provides that “…rights acquired by investment of capital shall not be restricted by law or any other legal act” and “…foreign investors shall be guaranteed free transfer and repatriation of profit and the capital invested.”

1.4 Are there any special sector-related rules?
The Takeover Act regulates takeover procedure where the target company is a public joint stock company. The Competition Act will be applicable if the takeover raises competition issues. In such case, the Croatian Competition Agency (hereinafter: “the CCA”) has jurisdiction to issue clearance for the intended transaction or to refuse it.

1.5 What are the principal sources of liability?
The Takeover Act envisages a misdemeanor liability for violation of its provisions, for which it prescribes fines for the bidder and its responsible person. Thus, the bidder (whether a natural person or a legal entity) will be fined with the amount ranging from HRK 20,000.00 to HRK 1,000,000.00, depending on the type of violation, while the responsible person of the legal entity will be fined with the amount ranging from HRK 50,000.00 to HRK 300,000.00.

However, foreign investments have to be reported to the Croatian National Bank for purposes of gathering data for preparing statistical overviews of foreign investments portfolio.
regulated public market where the issuer’s shares have been listed. In such case, each issuer’s shareholder may, through a competent commercial court, require a mandatory conclusion of an agreement on sale of shares, subject to the conditions according to which the takeover bid had to be published.

2 Mechanics of Acquisition

2.1 What alternative means of acquisition are there?

In case of a public joint stock company, the way of carrying out a takeover is to make a public bid pursuant to the provisions of The Takeover Act. If the target company is not a public joint stock company, the acquirer can purchase the target’s shares either at the stock exchange or off-exchange, in private transactions with the shareholders.

2.2 What advisers do the parties need?

Due to the complexity of the contemplated transaction and the impact of rather precise formal legal procedures, “usual suspects” being domestic financial advisors and legal advisors are compulsory for completion of the transaction.

2.3 How long does it take?

In a public bid process timelines are as follows:

Within 30 days after the obligation has arisen to publish a takeover bid, the offeror must submit a request to CFSSA for the approval to publish a takeover bid, the bid and other prescribed documents. The CFSSA must issue a formal decision on the offeror’s request to publish the takeover bid within 14 days after the receipt of a duly submitted request.

If the CFSSA does not issue a formal decision on the request to publish a takeover bid within the prescribed deadline, or if it does not notify the offeror of initiating special investigation proceedings which cannot last more than 30 days, the request is deemed approved.

The offeror may file a request for the approval to publish a modification of the takeover bid to the CFSSA not later than 7 days prior to the expiration of the bid validity period. The CFSSA must issue a formal decision on the offeror’s request for the approval to publish such modification within 3 days after the receipt of a duly submitted request.

If the CFSSA does not issue a formal decision on the request to publish a takeover bid within the prescribed deadline, the request is deemed approved.

The bid is valid for 30 days after its publication. However, in the case when competing takeover bids are published, the offeror may extend this deadline until the expiration of the deadline of such competing bids.

The payment term is determined in days from the day of the expiration of the bid validity period and cannot exceed 14 days after the last bid date.

2.4 What are the main hurdles?

The issue of control over the management board’s actions taken during hostile takeovers is present in practice.

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

The Takeover Act prescribes that issuer’s shareholders must have an equal position in the takeover procedure, which means that the offered price must be equal for all shareholders.

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

Only cash consideration can be offered.

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

As explained below, principle of equity applies.

2.8 Are there any limits on agreeing terms with employees?

There is no special treatment for employees, but the issuer’s management board should notify the issuer’s employees of the takeover bid.

2.9 What documentation is needed?

The offeror must deliver to the CFSSA the original or a certified copy of the following documents:

- documents on the legal transaction on the basis of which the issuer’s shares have been acquired in a period of one year prior to the publication of the takeover bid;
- a bank guarantee or loan agreement or separate account agreement entered into with a Deposit Bank and evidence that funds for shares have been paid;
- an agreement concluded with the Central Depository Agency (Clearing house);
- a prior approval of the Croatian National Bank if the subject of the takeover are shares of banks or savings banks;
- a prior approval of a competent institution in other cases when this is prescribed; and
- a decision of the Agency for the Protection of Market Competition on the reported intention to implement concentration of entrepreneurs pursuant to the provisions of the Act on the Protection of Market Competition.

If the offeror is a foreign legal entity, it additionally has to submit:

- a statement authorising a proxy (name, registered office and business address or name, family name and address) to receive documents in the Republic of Croatia, provided that the proxy can be a lawyer, public notary, bank or company dealing in securities; and
- a court register excerpt or other relevant register excerpt showing the form of legal personality, registered office, business address and a list of authorised proxies and its translations. Such excerpt, translated into the Croatian language by a certified court interpreter, must be dated not later than 30 days prior to the date of the submission to the CFSSA.

2.10 Are there any special accounting procedures?

No, there are no special accounting procedures.
2.11 What are the key costs?

The key cost is the cost of the security payment for shares to which the bid refers (e.g. bank guarantee). Furthermore, an additional significant cost has been recently introduced - an administrative fee in the amount of 0.2% of the price of the shares to which the offer applies, but the fee may be no more than 5 million HRK (approximately 675,000.00 EUR), for the approval of the mandatory offer by CFSSA.

2.12 What consents are needed?

Merger control clearance (if required) should be obtained prior to initiation of the procedure - during the procedure in front of the merger control regulator, the offeror is banned from going ahead with the acquisition. Depending of the industry, further approvals of competent regulators as indicated under question 1.4 above are required.

2.13 What levels of approval or acceptance are needed?

The offeror may only state in a bid that it will not purchase encumbered shares or the shares that will be deposited for the acceptance of the takeover bid if the total number of votes accorded by such deposited shares, together with the total number of votes that the offeror already has, does not exceed 50% of voting rights accorded by all the issued shares carrying voting rights. In such a case, if an insufficient number of shares is being deposited, the offeror is not obliged to purchase and take over the deposited shares.

2.14 When is the consideration settled?

The consideration is settled within 14 days from the closure of the bid.

3 Friendly or Hostile

3.1 Is there a choice?

The Takeover Act does not distinguish between the hostile and voluntary takeover bids. The Act prescribes obligation of the target’s management board and supervisory board to act neutral in relation to the takeover bid, regardless whether the bid is hostile or voluntary.

3.2 How relevant is the target board?

After the bidder has notified the issuer of the acquisition of shares due to which it is obliged to publish a takeover bid, or of the intention to publish a takeover bid, and until the finalisation of the takeover bid, the issuer’s management board:

■ cannot exercise its statutory authorisation to increase the issuer’s initial capital by issuing new shares until the expiration of the takeover bid validity period and the payment term, or until the expiration of the publication deadline for the takeover bid if the latter has not been published. If, by then, the bidder or any other shareholder, pursuant to the Company Act, requires that the general assembly be convened in order to recall the supervisory board members or to make amendments to the articles of association, the management board cannot increase the initial capital until the conclusion of the general assembly convened in such manner;
■ must not make a decision on extraordinary business operations that could significantly impact company’s assets or liabilities;
■ must not, without a prior approval of the general assembly, make a decision on the company’s acquisition or alienation of treasury shares; and
■ must notify the issuer’s employees of the takeover bid.

3.3 Does the choice affect process?

Within strictly formal, legal terms, the choice does not affect the process. However, since the compulsory disclosure rules for publicly listed companies are rather modest, the choice has certain influence, on a case by case basis, on the success of the bid.

4 Information

4.1 What information is available to a buyer?

All publicly traded companies are obliged to make available its financial statements to the public as well as all other essential/sensitive info (material facts) that might have an impact on the price of the shares.

4.2 Is negotiation confidential?

The mere fact of negotiations taking place ought to be disclosed by the target at the moment when said negotiations achieve the status when they become, in terms of the Securities Act, a material fact.

4.3 What will become public?

According to the Securities Act, the issuer of securities listed on an exchange or regulated public market must promptly inform the public of all information pertaining to circumstances or decisions that constitute material facts. Material facts shall mean all the information and facts that can influence the price of securities.

4.4 What if the information is wrong or changes?

The offeror could not “walk away” from the offer in the case of the material adverse change. The target and its officers are liable for accuracy of all material information that was surrendered to the public.

5 Stakebuilding

5.1 Can shares be bought outside the offer process?

No, share cannot be bought outside the offer process.

5.2 What are the disclosure triggers?

When a natural or legal person directly or indirectly acquires or releases shares of a public joint stock company, and as a consequence of that acquisition, the proportion of votes in the
assembly which that person or entity possesses exceeds or falls below the following thresholds: 10%; 25%; 50%; or 75%, that person or entity must notify in writing the Commission, or the issuer, of that acquisition or release within 15 days.

5.3 What are the limitations?

The person that acquires the issuer’s shares which, together with the shares that he already possesses, exceed a threshold of 25% of the total number of votes accorded by the issuer’s shares carrying voting rights, must notify the issuer, the CFSSA and the public of such acquisition without any delay and publish a takeover bid in accordance with the terms and conditions defined by this Act.

The person that, based on a takeover bid, has acquired less than 75% of shares carrying voting rights must publish a takeover bid in the case of further acquisition of shares of the same issuer.

The person that, based on takeover bids, has acquired 75% or more of shares carrying voting rights must publish a takeover bid in the case of further acquisition of shares of the same issuer carrying voting rights when:

- such a person acquires an additional 5% of shares carrying voting rights following a takeover bid; and/or
- there is a lapse of 18 months following the day of the actual acquisition of shares after a previous takeover bid.

6 Deal Protection

6.1 Are break fees available?

Contractual penalties are not prohibited in the Croatian legal environment. Thus, if contracted, break fees are available.

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

The management of the target company must be neutral in the takeover procedure. On the other hand, the shareholders could agree not to shop.

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

In the order to keep its position neutral, the target company is not allowed to agree to issue shares or sell significant assets, as described under questions 3.2 above. The shareholders of the target are not able to decide differently.

6.4 What commitments are available to tie up a deal?

All commitments from the shareholders that would not induce the target to undertake any prohibited action (please see question 3.2 above) are permitted.

7 Bidder Protection

7.1 What deal conditions are permitted?

Please see question 6.4 above.

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

Until the offeror has carried out the takeover procedure pursuant to the provisions of The Takeover Act, its shares and the shares of the persons acting in concert with the offeror shall not be carrying voting rights.

7.3 When does control pass to the bidder?

The hypothetical, abstract control passes with the transfer of shares subsequent to the offer process - on the day when the bid has become successful and shares have been transferred to its account with the Central Depository Agency.

The actual control passes when the offeror appoints the new Supervisory and Management Board (only available if it acquires more than 75% of the shares of the target).

7.4 How can the bidder get 100% control?

If the bidder got 95% of the shares, the Company Act permits the process of squeeze-out in order to obtain the rest of the shares.

8 Target Defences

8.1 Does the board of the target have to tell its shareholders if it gets an offer?

Only in case of the publicly listed companies, does such explicit legal obligation exist.

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

Very little, since the target’s board is not allowed to exercise its statutory authorisation to increase the issuer’s initial capital by issuing new shares until the expiration of the takeover bid validity period and the payment term, or until the expiration of the publication deadline for the takeover bid if the latter has not been published.

8.3 Is it a fair fight?

It yet remains to be seen since there have been very few hostile takeovers in Croatia.

9 Other Useful Facts

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

In practice the success depends mainly on the offered price.

9.2 What happens if it fails?

In case an insufficient number of shares is being deposited (less than 50%), the offeror shall not be obliged to purchase and take over the deposited shares. In principle, the offeror is not entitled to claim any cost back (e.g. fees of the CFFSA, Central Depository Agency, Deposit Bank etc.).
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