

Ergun Publication Series: Global Legal Guides

---

---

# **GLOBAL MERGERS & ACQUISITIONS GUIDE**

---

**2023**

---



Ergun Publication Series: Global Legal Guides

---

# **GLOBAL MERGERS & ACQUISITIONS GUIDE 2023**

---

*Edited by*

Lara Sezerler  
Irmak Yensel Nergiz  
Melis Kaim  
Serra Nur Çelik  
Begüm Şen



Ergun Books (UK) Limited

Editors

Lara Sezerler

Irmak Yensel Nergiz

Melis Kaim

Serra Nur Çelik

Begüm Şen

Published by Ergun Books (UK) Limited

284 Chase Road, A Block 2nd Floor, London

United Kingdom, N14 6HF

ISBN: 978-1-7394015-2-8 (Hardback)

ISBN: 978-1-7394015-3-5 (e-book)

Ergun Publication Series: Global Legal Guides

© Ergun Books (UK) limited

All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means, mechanical, photocopying, recording or otherwise, without the prior written permission of the publisher. Due to the general nature of its contents, this publication should not be regarded as legal advice. The Publisher, Editors and Authors makes no representation or warranty as to, and assume no responsibility for, the accuracy or completeness of the information contained herein.

## Contents

FOREWORD .....	5
1. ARGENTINA .....	7
<b>MARVAL, O'FARRELL &amp; MAIRAL</b>	
2. BAHRAIN.....	29
<b>TROWERS &amp; HAMLINS</b>	
3. BANGLADESH.....	35
<b>DOULAH &amp; DOULAH</b>	
4. BOSNIA AND HERZEGOVINA.....	55
<b>MARIĆ &amp; CO</b>	
5. BRASIL .....	61
<b>CESCON BARRIEU</b>	
6. CROATIA.....	77
<b>WOLF THEISS</b>	
7. DENMARK.....	85
<b>GORRISEN FEDERSPIEL</b>	
8. FRANCE.....	101
<b>WILLKIE FARR &amp; GALLAGHER LLP</b>	
9. GIBRALTAR .....	117
<b>HASSANS</b>	
10. HUNGARY.....	129
<b>WOLF THEISS</b>	
11. INDIA.....	147
<b>JSA ADVOCATES &amp; SOLICITORS</b>	
12. ITALY.....	161
<b>STUDIO LEGALE PADOVAN</b>	
13. IVORY COAST .....	169
<b>GENI &amp; KEBE</b>	
14. KAZAKHSTAN.....	185
<b>GRATA</b>	
15. KYRGYZSTAN.....	191
<b>GRATA</b>	

16. LIBYA .....	201
<b>TUMI LAW FIRM</b>	
17. LUXEMBOURG .....	207
<b>BRUCHER THIELTGEN &amp; PARTNERS</b>	
18. NETHERLANDS .....	215
<b>ORANGE CLOVER</b>	
19. NIGERIA .....	221
<b>BLOOMFIELD LAW</b>	
20. POLAND .....	231
<b>LINKLATERS</b>	
21. QATAR .....	239
<b>SULTAN AL-ABDULLA &amp; PARTNERS</b>	
22. ROMANIA .....	245
<b>ȚUCA ZBÂRCEA &amp; ASOCIAȚII</b>	
23. SENEGAL .....	259
<b>GENI &amp; KEBE</b>	
24. SOUTH KOREA .....	269
<b>BAE, KIM &amp; LEE</b>	
25. TAJIKISTAN .....	277
<b>GRATA</b>	
26. TÜRKİYE .....	283
<b>ERGÜN AVUKATLIK BÜROSU</b>	
27. UKRAINE .....	297
<b>INTEGRITES</b>	
28. UNITED ARAB EMIRATES .....	309
<b>GREENBERG TRAURIG, LLP</b>	
29. UNITED KINGDOM .....	325
<b>LINKLATERS</b>	
30. UZBEKISTAN .....	333
<b>CENTIL LAW</b>	

## Foreword

**W**e are delighted to present the first edition of the Global M&A Guide, a publication that unites experts from various countries to offer comprehensive insights into mergers and acquisitions from a global perspective. This edition features authors from different jurisdictions, each presenting their perspectives and analysis based on their countries' laws and regulations.

Mergers and acquisitions are complex transactions that require a deep understanding of the legal and regulatory frameworks in different jurisdictions. Given today's global business environment, it is imperative for professionals involved in M&A transactions to have access to up-to-date and comparative information, enabling them to navigate the intricacies of M&A deals successfully.

In this guideline, we have gathered an exceptional team of authors who are renowned experts in their respective jurisdictions. They have shared their expertise, knowledge, and practical insights to provide you with a comprehensive understanding of the legal and regulatory aspects of M&A transactions in their countries. By examining the similarities and differences across jurisdictions, this publication aims to facilitate a deeper understanding of the nuances and challenges associated with conducting M&A deals on an international scale.

The authors have covered a wide array of topics, including general information, foreign investment, corporate governance, shareholder rights, enforceability, trends and projections. Each chapter offers a detailed analysis of the relevant legal provisions and practices in their jurisdiction, ensuring that readers gain valuable insights into the specific requirements and considerations when conducting M&A transactions in different countries.

We would like to express our sincere gratitude to the authors for dedicating their time and expertise to contribute to this guideline. Their invaluable contributions have made this publication a truly comprehensive and insightful resource for professionals involved in M&A.

As we embark on this journey with the first edition of this guideline, we hope that this edition of the Global M&A Guide will become an indispensable tool in your international endeavours.

Lara Sezerler  
*Istanbul, 2023*

# KAZAKHSTAN

## GRATA



**Igor Lukin**  
*Partner*  
ilukin@gratanet.com

### A. General

#### 1. What is the main legal framework applicable to companies in your jurisdiction?

The main legal framework applicable to companies in Kazakhstan includes the following legal acts:

- Civil Code;
- Law on Limited and Additional Liability Partnerships; and
- Law on Joint Stock Companies.

#### 2. What are the most common types of corporate entities (e.g., joint stock companies, limited liability companies, etc.) used in your jurisdiction? What are the main differences between them (including but not limited to with regard to the shareholders' liability)?

Under Kazakhstan law, the most common forms of corporate entities are the joint-stock company ("JSC") and the limited liability partnership ("LLP"). In both

cases, the basic legal features are similar. In particular, each corporate form has a separate legal personality and shareholders enjoy limited liability.

The main difference between the JSC and LLP is that the JSC is a complex and strictly regulated corporate form. For example, the minimum authorized capital of the JSC must be approx. USD 400,000. Also, there are rigorous legal requirements to incorporation, governance, accounting, audit and public disclosure in the JSC. On the contrary, the LLP is a fairly simple and flexible corporate form. In general, the LLP is the most popular corporate form of doing business in Kazakhstan. Noteworthy that certain business can only be organised as JSCs (e.g., banks, insurance, and regular passenger air travel).

### B. Foreign Investment

#### 3. Are there any restrictions on foreign investors incorporating or acquiring the shares of a company in your jurisdiction?

In general, there are no restrictions on foreign investors incorporating or acquiring the shares of a company in Kazakhstan. However, there are a few exceptions. For instance, a foreign person cannot own, directly or indirectly, more than 20% of shares in a local company that owns mass media.

**4. Are there any foreign exchange restrictions or conditions applicable to companies such as restrictions to foreign currency shareholder loans?**

In general, any transaction between a foreign shareholder and a local company in excess of USD 500,000 (an equivalent in any other currency) is subject to a currency control regime which implies a prior registration with the National Bank of Kazakhstan. Noteworthy that the dividend distribution is exempted from the currency control requirements.

**5. Are there any specific considerations for employment of foreign employees in companies incorporated in your jurisdiction?**

Normally, a foreign employee would need a work permit in order to be employed by a local company. In addition, the visa and local content requirements shall apply. Certain categories of employees are exempted from the obligation to obtain a work permit (e.g., General Directors of companies wholly owned by foreign shareholders).

## **C. Corporate Governance**

**6. What are the standard management structures (e.g., general assembly, board of directors, etc.) in a corporate entity governed in your jurisdiction and the key liability issues relating to these (e.g., liability of the board members and managers)?**

The standard management structure in LLPs is the General Assembly (or the Sole

Shareholder) and the General Director. Instead of the General Director, the Management Board can be appointed. In addition, the shareholders may decide to create a Supervisory Board and/or Audit Committee.

The standard management structure in JSCs is the General Assembly (or the Sole Shareholder), the Board of Directors, and the General Director. Instead of the General Director, the Management Board can be appointed (in some cases, e.g., banks, the Management Board is a must). In addition, the shareholders may decide to create an Audit Committee.

As a general rule, board members and managers shall be liable for the company's losses that occurred as a result of their improper actions/omissions and can be obliged to compensate such losses. Board members and managers of JSCs enjoy the business judgment rule (which is not available for board members and managers of LLPs).

**7. What are the audit requirements in corporate entities?**

In general, the LLPs are not required to obtain an external auditor's report in relation to their financial statements. Only certain types of LLPs (subsoil users, airlines, developers, etc.) are obliged to conduct an external audit of their annual financial statements.

All JSCs must conduct an external audit of their annual financial statements.

## **D. Shareholder Rights**

**8. What are the privileges that can be granted to shareholders? In particular, is it possible to grant voting privileges to shareholders for appointment of board members?**

In general, no specific privileges can be granted to shareholders. However, a



shareholder of the LLP may be granted an increased number of votes in relation to certain matters discussed at the General Assembly resulting in the ability of such shareholder to cause the General Assembly to take a decision on such matter even if other shareholders vote against it. Also, a shareholder of the JSC can be granted a "golden share" that gives the right to veto decisions of the General Assembly, Board of Directors, or General Director (Management Board).

**9. Are there any specific statutory rights available to minority shareholders available in your jurisdiction?**

Yes, there are specific statutory rights available to minority shareholders in Kazakhstan. For instance, a shareholder that owns (or shareholders that in aggregate own) at least 5% of the votes are entitled to include items to the agenda of the General Assembly. In addition, any shareholder of the LLP, notwithstanding the votes owned, or a shareholder of the JSC that owns at least 10% of votes, may appoint (at their own expense) an external audit of the company. Also, any shareholder has the right to challenge the decisions of the governing bodies in court.

**10. Is it possible to impose restrictions on share transfers under the corporate documents (e.g., articles of association or its equivalent in your jurisdiction) of a company incorporated in your jurisdiction?**

It is possible to impose restrictions on share transfers under the corporate documents of the LLP. The restrictions on share transfers in JSCs are controversial as such concept is not expressly recognized by the law.

**11. Are there any specific concerns or other considerations regarding the composition, technical bankruptcy and other insolvency cases in your jurisdiction?**

There are no specific concerns or other considerations regarding the composition, technical bankruptcy and other insolvency cases in Kazakhstan.

## **E. Acquisition**

**12. Which methods are commonly used to acquire a company, e.g., share transfer, asset transfer, etc.?**

In Kazakhstan, share transfer and asset transfer are commonly used to acquire a company.

**13. What are the advantages and disadvantages of a share purchase as opposed to other methods?**

The main advantage of a share purchase is that the company is acquired as a whole (including the team, contracts, assets, reputation and licenses). The key potential disadvantage is that certain historical legal risks may be attached to the company.

**14. What are the approvals and consents typically required (e.g., corporate, regulatory, sector based and third-party approvals) for private acquisitions in your jurisdiction?**

Corporate approvals of the parties to the transaction are typically required. If the certain thresholds are exceeded a merger clearance requirement may be triggered. Also, there are a few sector-based approvals for example permits for acquisition of shares in subsoil users or banks.

**15. What are the regulatory competition law requirements applicable to private acquisitions in your jurisdiction?**

If more than 50% of voting shares are being acquired, the prior merger clearance is required if any of the following exceeds approx. USD 80,000,000:

- global assets of the acquirer's group and the target;

- global turnover (for the previous year) of the acquirer's group and the target.

**16. Are there any specific rules applicable for acquisition of public companies in your jurisdiction?**

There are no specific rules applicable for acquisition of public companies in Kazakhstan.

**17. Is there a requirement to disclose a deal, for instance to regulatory authorities? Is it possible to keep a deal confidential?**

There is no requirement to disclose deals in relation to shares of LLPs, save for the disclosure for the purposes of obtaining regulatory permits, if applicable.

As for JSCs, details of any "major" transactions must be disclosed on the website of the Financial Reporting Depository.

**18. Can sellers be restricted from shopping around during a negotiation process? Is it possible to include break fee or other penalty clauses in acquisition documents to procure deal exclusivity?**

In general, it is not prohibited to restrict a seller from shopping around during a negotiation process and include break fee or other penalty clauses in acquisition documents to procure deal exclusivity. However, such concept is not expressly recognized by the law and its enforcement may be problematic.

**19. What are the conditions precedent in a typical acquisition document? Is it common to have conditions to closing such as no material adverse change?**

The most common condition precedent is obtaining all applicable approvals, consents and waivers. No material adverse change

is also quite common condition precedent. Another widely met condition precedent is the completion of the due diligence exercise to the satisfaction of the acquirer.

**20. What are the typical warranties and limitations in acquisition documents? Is it common to obtain warranty insurance?**

In Kazakhstan, warranties and limitations used in acquisition documents are quite standard (i.e., those normally used in English law governed acquisitions). It is not common to obtain warranty insurance.

**21. Is there a requirement to set a minimum pricing for shares of a target company in an acquisition?**

There is no such requirement.

**22. What types of acquisition financing are available for potential buyers in your jurisdiction? Can a company provide financial assistance to a potential buyer of shares in the target company?**

This matter is not regulated by the law. As a result, a wide range of acquisition financing are available for potential buyers in Kazakhstan. In particular, a company can provide financial assistance to a potential buyer of the shares.

**23. What are the formalities and procedures for share transfers and how is a share transfer perfected?**

The transfer of shares in an LLP is subject to registration with the State Corporation "Government for Citizens" NJSC or with Central Securities Depository if the registers of shares of the LLP are maintained by Central Securities Depository.

The transfer of shares in a JSC is subject to registration with Central Securities Depository.

**24. Are there any incentives (such as tax exemptions) available for acquisitions in your jurisdiction?**

There are no incentives available for acquisitions *per se*. However, certain taxes, customs and other incentives apply to investment projects related to the creation of new or renovation of existing production facilities as well as the implementation of projects in special economic zones.

**F. Enforceability**

**25. Can acquisition documents be executed in a foreign language?**

Yes, acquisition documents can be executed in a foreign language.

**26. Can acquisition documents be governed by a foreign law?**

The acquisition documents must be governed by Kazakhstan law.

**27. Are arbitration clauses legally permissible or generally included in acquisition documents?**

Yes, arbitration clauses are legally permissible and are often included in acquisition documents.

**28. Are there any specific formalities for the execution of acquisition documents? Is it possible to remotely/digitally sign documents?**

Yes, it is possible to remotely/digitally sign acquisition documents.

**G. Trends and Projections**

**29. What are the main current trends in M&A in your jurisdiction?**

The main current trend in M&A in Kazakhstan is the acquisition of local startups by major local and foreign market players.

**30. Are any significant development or change expected in the near future in relation to M&A in your jurisdiction?**

To the best of our knowledge, no significant developments or changes are expected in the near future in relation to M&A in Kazakhstan.

# KYRGYZSTAN

## GRATA



**Tamirlan Muktarov**  
*Senior Associate*  
tmuktarov@  
gratanet.com



**Oleg Kim**  
*Junior Associate*  
okim@  
gratanet.com

### A. General

#### 1. What is the main legal framework applicable to companies in your jurisdiction?

The legal framework applicable to companies in the Kyrgyz Republic is based on the Constitution of the Kyrgyz Republic that enables and consists of the following normative legal acts:

- Civil Code of the Kyrgyz Republic (Part 1) dated 8 May 1996, No. 15;
- Civil Code of the Kyrgyz Republic (Part 2) dated 5 January 1998, No. 1;
- Tax Code of the Kyrgyz Republic dated 18 January 2022, No. 3;
- The Law of the Kyrgyz Republic “On business partnerships and companies” dated 15 November 1996, No. 60;
- The Law of the Kyrgyz Republic “On Joint Stock Companies” dated 27 March 2003, No. 64;

- Regulation on the procedure for state registration of legal entities, branches (representative offices) (approved by the Resolution of the Cabinet of Ministers of the Kyrgyz Republic dated 31 March 2023 No. 178);
- The Law of the Kyrgyz Republic “On Licensing and Permit System in the Kyrgyz Republic” dated 19 October 2013, No. 195.

Aside from the above, there are many other legal acts that differ in scope and their application depending on the specific types of activity a company carries out in the Kyrgyz Republic.

#### 2. What are the most common types of corporate entities (e.g., joint stock companies, limited liability companies, etc.) used in your jurisdiction? What are the main differences between them (including but not limited to with regard to the shareholders’ liability)?

The current legislation of the Kyrgyz Republic provides for different legal forms of legal entities. The most common types of legal entities in the Kyrgyz Republic include a limited liability company and a joint stock

company (open or closed types). While not considered a legal entity, some foreign companies tend to carry out their business activities via branch or representative offices.

	<b>Limited liability company ("LLC")</b>	<b>Joint Stock Company ("JSC")</b>	<b>Branch Office</b>
<b>Definition</b>	LLC is a legal entity founded by one or more individuals or legal entities, the authorized capital of which is divided into shares of the sizes determined by the constituent documents.	JSC is a legal entity that carries out its activities for the purpose of making a profit and raising funds by issuing and placing shares. JSCs are divided into two types: Open JSC (OJSC) and Closed JSC (CJSC).	Branch Office is a separate subdivision of a foreign or local legal entity, performing all or part of its functions, including the function of a representative office.
<b>Liability of shareholders</b>	Participants in a limited liability company are not liable for its obligations and bear the risk of losses associated with the activities of the company to the extent of the value of their contributions.	Shareholders are not liable for the obligations of the company and bear the risk of losses associated with its activities, within the value of their shares.	Branches are not considered legal entities. The founding legal entity bears responsibility for the activities of the branch office.
<b>Main features</b>	The number of participants in the LLC should not be more than thirty. Otherwise, such an LLC is subject to transformation into a joint-stock company within a year, and after the expiration of this period of liquidation in a judicial proceeding, if the number of its participants does not decrease to the established limit. The general rule applicable to all LLCs is that a company cannot have as its sole participant another legal entity consisting of one person.	OJSC has the right to conduct a public offering of shares issued by OJSC, to carry out their free sale, taking into account the requirements of the law. The charter cannot provide for provisions restricting the free sale of shares. The number of shareholders is not limited. CJSC is not entitled to conduct a public offering of issued shares, otherwise offer them for purchase to an unlimited number of persons. The number of shareholders must not exceed 50.	Branches are endowed with property by the legal entity that created them and act on the basis of approved regulations, while directors of a branch are appointed by a legal entity and act on the basis of its power of attorney.

## B. Foreign Investment

### 3. Are there any restrictions on foreign investors incorporating or acquiring the shares of a company in your jurisdiction?

As a general rule, foreign investors enjoy the same national treatment applied to individuals and legal entities of the Kyrgyz Republic. That said, there might be certain restrictions applied to foreign investors in terms of the types of activity they plan to carry out in the Kyrgyz Republic. For instance, banking legislation requires obtaining a permit for the acquisition of shares in microfinance organizations and commercial banks of the Kyrgyz Republic. While not exclusive to foreign investors, a foreign or local investor has to obtain consent from the merger authorities in order to proceed with the merger or accession of a legal entity. Other restrictions might be applied but in order to determine specific restrictions, each case should be reviewed separately.

### 4. Are there any foreign exchange restrictions or conditions applicable to companies such as restrictions to foreign currency shareholder loans?

There are presently no significant foreign exchange restrictions. If a company borrows a loan in a foreign currency and such loan agreement is governed by foreign law, no restrictions shall apply as there is no requirement to register the loan agreement and/or notify the authorities. That said, if the loan agreement is made in accordance with and governed by Kyrgyz laws, it shall be notarized in case the principal amount exceeds KGS 50,000 (fifty thousand soms) (approximately USD 580).

As a general rule, Kyrgyz laws provide that a monetary obligation must be expressed and paid in the national currency – Kyrgyz soms (“KGS”). Normally, however, parties may provide that payment is made in

national currency in an amount equivalent to the amount in foreign currency. The amount of payment of a monetary obligation in KGS is determined at the official exchange rate of the relevant currency on the payment date unless a different rate or another date of its determination is established by law or by the agreement of the parties.

### 5. Are there any specific considerations for the employment of foreign employees in companies incorporated in your jurisdiction?

Foreign citizens have the right to carry out labor activities in the territory of the Kyrgyz Republic only on the basis of a work permit. Accordingly, employers in the Kyrgyz Republic have the right to employ foreign citizens on the basis of the received quota for attracting foreign labor. In addition, there are separate requirements for the work visa, registration at the place of residence, etc.

The Kyrgyz Republic is a full member of the Eurasian Economic Union (“EAEU”) which consists of the following states: Kyrgyzstan, Kazakhstan, Russia, Belarus, and Armenia. By virtue of the Treaty on Accession to the EAEU ratified by the Kyrgyz Republic, citizens of the EAEU member states are exempted from obtaining a permit to work in the Kyrgyz Republic, while employers can employ foreign citizens of the EAEU member states without obtaining a quota for attracting foreign labor.

## C. Corporate Governance

### 6. What are the standard management structures (e.g., general assembly, board of directors, etc.) in a corporate entity governed in your jurisdiction and the key liability issues relating to these (e.g., liability of the board members and managers)?

LLCs normally have the following governing bodies: general meeting of shareholders,

and collective (management board) or sole (director) executive body. The supreme governing body of an LLC is the general meeting of shareholders.

The executive body (collective or sole) is created to carry out the current management of its activities and is accountable to the general meeting of its shareholders. Their liability is regulated by the internal by-laws or charter of a company.

The establishment of the board of directors is optional in LLCs and may be established upon a decision of the general meeting of shareholders. Only an individual may be a member of the board of directors. A member of the board of directors cannot simultaneously be a member of the executive body (collective or sole).

Shareholders bear a limited liability proportional to their shares in the authorized capital and a general meeting of shareholders has exclusive competence over certain matters (e.g., reorganization or liquidation of a legal entity, increase or decrease of charter capital, etc.). While there is normally no special liability of other governing bodies (as it is often determined in line with the internal by-laws, charter, or other internal documents), the board of directors and executive body do have their own competence over certain matters and they bear liability according to the general provisions of the law and internal documents of a legal entity.

As the position of a director on the board of directors or executive body entails employment, individuals representing the governing bodies bear material and disciplinary liability in accordance with the concluded employment contract.

#### **7. What are the audit requirements in corporate entities?**

The procedure for conducting an audit of the activities and reporting of the

company is determined by the charter of the company.

At the request of any shareholder, an audit of the company's annual financial statements may be carried out with the involvement of a professional auditor who is not related to the company or its participants (external audit).

The general meeting of shareholders has the right to form an audit committee in order to control the activities of the executive body of the company. Audits of the financial and economic activities of the executive body are carried out in the manner prescribed by the general meeting of shareholders.

As stated previously, there are separate requirements for audits in certain types of companies. For instance, in the banking sector, banks and microfinance organizations are required to undergo audits periodically and there are official positions within such companies that are in charge of compliance with the audit requirements of the National Bank of the Kyrgyz Republic.

### **D. Shareholder Rights**

#### **8. What are the privileges that can be granted to shareholders? In particular, is it possible to grant voting privileges to shareholders for appointment of board members?**

The general meeting of shareholders is the supreme governing body of a LLC. The appointment of the board of directors falls under the exclusive competence of the general meeting of shareholders. In addition to the statutory rights of the general meeting of shareholders, their competence might be extended over other matters in accordance with the internal documents (charter, by-laws, foundation agreement, etc.).



**9. Are there any specific statutory rights available to minority shareholders available in your jurisdiction?**

While the majority of foreign states have provided special statutory rights to minority shareholders, there are currently no special statutory rights available to minorities in the Kyrgyz Republic.

**10. Is it possible to impose restrictions on share transfers under the corporate documents (e.g., articles of association or its equivalent in your jurisdiction) of a company incorporated in your jurisdiction?**

According to the general rule, the shareholder of the LLC has the statutory right to withdraw from the company at any time, regardless of the consent of other shareholders. The withdrawal must be declared by the participant at least one month before the actual withdrawal from the LLC unless other terms are provided by the constituent documents.

In the event of the alienation of their shares by one of the shareholders, the remaining shareholders have the pre-emptive right to purchase the share of the participant in full or in part in proportion to the size of their shares in the authorized capital of the LLC, unless the charter of the LLC or agreement of its participants provides for a different procedure for exercising this right. Other restrictions in relation to the share transfer are generally prohibited.

**11. Are there any specific concerns or other considerations regarding the composition, technical bankruptcy, and other insolvency cases in your jurisdiction?**

The current legal framework does not define technical bankruptcy as normally it happens in cases where either the general meeting of creditors' claims the formal bankruptcy of the debtor or the bankruptcy (insolvency) is made in the courts. Aside

from that, there are no significant concerns or other considerations on the above, however, each case should be considered separately due to various factors and conditions pertaining thereto.

## **E. Acquisition**

**12. Which methods are commonly used to acquire a company, e.g., share transfer, asset transfer, etc.?**

The most common method of acquiring a company in the Kyrgyz Republic is the acquisition through the share purchase agreement in the authorized capital of a company ("SPA"). By acquiring a share in the authorized capital of an LLC, buyers (individuals or legal entities) become the new shareholders of the company.

The acquisition is also possible via the reorganization of a legal entity (merger, accession, division). Under this procedure, one of the legal entities in this process ceases to exist and transfers all the rights and obligations to another (surviving) legal entity.

While not common, it is possible to foreclose on the pledged shares of a legal entity thus becoming a shareholder.

Asset transfer is not considered "acquisition" under the current Kyrgyz laws as it does not entail subsequent registration of changes to the shareholding structure of a company. Therefore, it is not a common method to acquire a company but can be a good method to obtain an acting business.

**13. What are the advantages and disadvantages of a share purchase as opposed to other methods?**

The main advantage of a share purchase is to gain control over the company and benefit from participation, namely from the potential for dividends, ease of share transfer, and statutory ownership rights. Other methods involve the acquisition of assets that do not grant direct control



over the company, thus limiting potential options and benefits from being a shareholder.

The disadvantage of a share purchase includes certain restrictions and/or mandatory requirements. For instance, a change in shareholding structure requires the company to undergo the so-called “re-registration” procedure that might take up to one month and requires communication with the state authorities. As mentioned before, in specific sectors, like the banking sector, a share purchase entails obtaining consent from authorized state bodies (e.g., the National Bank, State Antimonopoly Service, etc.).

**14. What are the approvals and consents typically required (e.g., corporate, regulatory, sector based and third-party approvals) for private acquisitions in your jurisdiction?**

Normally external approvals and/or consents are not required in typical corporate acquisitions unless the acquisition is made in relation to the specific sector. Internal corporate authorizations are often required and made (in accordance with internal documents) to proceed with the execution of share purchase.

As mentioned before, the acquisition of shares in credit and financial institutions requires consent from the National Bank. Reorganization of legal entities requires consent from the State Antimonopoly Service. Changes in the shareholding structures of mining companies might require notifications to the relevant authorized state body.

**15. What are the regulatory competition law requirements applicable to private acquisitions in your jurisdiction?**

The legislation of the Kyrgyz Republic

on competition in relation to private acquisitions indicates that the purchase by any legal entity or citizen of a controlling stake (shares in the authorized capital) of an economic entity occupying a dominant position is carried out with the prior consent of the antimonopoly body.

The dominant position is the position of one or several legal entities in the market of a certain product, which provides them with the opportunity to exert a decisive influence on the general conditions for the circulation of goods in the relevant market and (or) eliminate other legal entities from this market, and (or) impede access to this market for other legal entities.

**16. Are there any specific rules applicable for acquisition of public companies in your jurisdiction?**

Public companies (if open joint stock companies that are listed) have specific rules applicable to them in terms of listing shares and their subsequent sale and/or purchase via the stock exchange. Public companies are typically listed at the Kyrgyz Stock Exchange and this stock exchange has its own rules and regulations pertaining to how it operates and how the listed companies proceed with the trading of shares.

As commercial banks can only be joint stock companies (either open or closed ones), any individual or legal entity intending to acquire shares in the authorized capital of a bank (including the acquisition of the threshold participation in the authorized capital of the bank, including significant participation and control; inheritance or restoration of ownership of them; additional acquisition of shares) must obtain written permission from the National Bank.

In general, joint stock companies are also obliged to register their emissions, be it a founding emission or a new emission of shares, with the State Financial Service.

There are separate regulations on the securities market and open joint stock companies have to comply therewith especially since most of the financial services require a relevant license.

**17. Is there a requirement to disclose a deal, for instance to regulatory authorities? Is it possible to keep a deal confidential?**

Traditional acquisition via share transfer that results in a change of the shareholding structure requires the previously mentioned re-registration procedure (registration of changes on the shareholding). One of the required documents that has to be submitted to the authorities is a SPA. This constitutes a general requirement to disclose a deal.

For example, if a share transfer concerns the banking sector, the deal has to be disclosed to the National Bank. If the acquisition concerns the competition market, the deal has to be accordingly disclosed to the competition authorities. There are some other specific cases where the deal has to be disclosed, however, unless there are direct sanctions for the failure to disclose the deal, some companies tend to not disclose the deal in order to keep it confidential.

**18. Can sellers be restricted from shopping around during a negotiation process? Is it possible to include break fee or other penalty clauses in acquisition documents to procure deal exclusivity?**

Unless there is an agreement in place between the parties, sellers cannot be restricted from offering their shares to third parties. That said, the current laws allow for a mechanism of preliminary agreement whereby the subject matter is that the parties will execute the primary agreement sometime in the future. During that

period, certain terms and conditions of the preliminary agreement can be established that would allow controlling the parties in one way or another. It is important to note that complete restriction is not possible as it would constitute a breach of constitutional and other statutory rights granted by the Kyrgyz laws.

Notwithstanding the above, Kyrgyz laws do provide the concept of “contractual freedom” that implies that parties are free to enter into any agreement allowed by the laws and agree upon any conditions of the agreement that are explicitly allowed or otherwise not restricted by the relevant regulations. Under this concept, parties are generally allowed to express their intentions, including the imposition of sanctions on the party in default.

**19. What are the conditions precedent in a typical acquisition document? Is it common to have conditions to closing such as no material adverse change?**

Due to various factors and conditions, it is not entirely possible to come up with an exhaustive list of conditions precedent (“CP”) used in a typical acquisition document. Normally, it depends on the sector, on the scope of activities of the target company, its assets, and other circumstances. A company willing to proceed with the acquisition of a target company is most likely to include the CPs concerning the following:

- (1) Regulatory approvals (where necessary);
- (2) Third-party consents (e.g., current creditors of the target company);
- (3) Due diligence of the target company (including legal, financial, and/or tax DD);
- (4) Representation, warranties, and covenants (common negative

covenants might not be enforceable in the Kyrgyz Republic due to contradiction with the statutory provisions of the law);

- (5) Other miscellaneous CPs at the discretion of a potential purchaser.

It is common to have conditions to closing such as above and others, including no material adverse change. However, such CPs are commonly used in transactions with local parties governed by foreign law, and local transactions do not always have the majority of the above CPs as not all of them can be enforced under the Kyrgyz laws.

**20. What are the typical warranties and limitations in acquisition documents? Is it common to obtain warranty insurance?**

It is common to include warranties and limitations pertaining to the change of control, the absence of any encumbrances over the target company's assets, and the absence of ongoing or potential disputes and/or litigations. There can be other warranties and limitations, but not all of them can be used and enforced under the Kyrgyz laws. Common negative covenants that would restrict shareholders from making decisions on alienating shares to third parties, cannot be enforced as some of the shareholders' rights are statutory in nature and cannot be overthrown by any contractual limitations.

The insurance market has been steadily developing in recent decades, however, not many insurance instruments are available in the Kyrgyz Republic due to the size of the market and market practices. With that in mind, warranty insurances are not common and only a handful of insurance agencies can consider rendering such services.

**21. Is there a requirement to set a minimum pricing for shares of a target company in an acquisition?**

There are no requirements to set minimum pricing for shares of a target company in acquisition as this is decided by parties to an acquisition at their own discretion. It is common to set the minimum price as the nominal value of shares that are purchased in the charter capital of a target company.

**22. What types of acquisition financing are available for potential buyers in your jurisdiction? Can a company provide financial assistance to a potential buyer of shares in the target company?**

There are no specific acquisition financing instruments in the Kyrgyz Republic aside from general financing instruments, such as loan facilities. There are no restrictions pertaining to the designation of loan facilities and those can be used to finance the acquisition. That said, please refer to the above answers on the notarization of loan agreements and the general currency restrictions.

**23. What are the formalities and procedures for share transfers and how is a share transfer perfected?**

To proceed with the acquisition of a company through SPA, it is necessary to conclude a share purchase agreement in writing between the withdrawing participant and the buyer of the shares. The signature of the individual alienating the share must be certified by a notary. The representative of the legal entity alienating the share must seal the agreement or certify their signature in a notarial form.

Representatives acting on the basis of power of attorney (from alienating and/or receiving party) can carry out the perfection of SPA and sign it on behalf of parties in the Kyrgyz Republic. This is commonly used to abstain from notarization and legalization (apostille) procedures outside of Kyrgyzstan.

After the deal's closure, the new shareholder is required to adopt a corporate decision to re-register the acquired company. For the purpose of re-registration, the following documents must be submitted to the authorized state body:

- (1) registration application;
- (2) the original decision on the state re-registration of a legal entity;
- (3) original certificate of state registration; (no longer issued after March 2023)
- (4) for shareholders – legal entities: legalized extract from the state register or other document confirming that the legal entity is valid and acting under the laws of its state of incorporation (the term for an extract should not exceed 6 months from the date of its issuance);
- (5) power of attorney for representatives;
- (6) original counterparts of a share transfer agreement.
- (7) permission of an owner of premises that serve as a legal address (if changed);
- (8) confirmation on the payment of state fees.

**24. Are there any incentives (such as tax exemptions) available for acquisitions in your jurisdiction?**

There are no specific incentives provided by the current legislation of the Kyrgyz Republic pertaining to acquisitions.

## **F. Enforceability**

**25. Can acquisition documents be executed in a foreign language?**

Yes, acquisition documents can be executed in a foreign language. If the target company is a Kyrgyz legal entity, acquisition documents have to be translated with subsequent notarization as the language of submitted documents must be either state (Kyrgyz) or official (Russian) languages.

**26. Can acquisition documents be governed by a foreign law?**

Yes, acquisition documents can be made in accordance with and governed by foreign laws. It should be noted, however, that court judgments of most other foreign jurisdictions are not directly enforceable in the Kyrgyz Republic. A judgment of a foreign court obtained against a Kyrgyz company may be enforced in the Kyrgyz Republic only if there is a treaty between the Kyrgyz Republic and the relevant foreign jurisdiction on the mutual recognition and enforcement of court judgments or, in the absence of such treaty, on the basis of reciprocity.

**27. Are arbitration clauses legally permissible or generally included in acquisition documents?**

The Kyrgyz Republic is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) and an arbitration award rendered in accordance with the procedure specified in acquisition documents would be recognized and enforced by Kyrgyz courts without re-examination or re-litigation of the matters thereby adjudicated.

**28. Are there any specific formalities for the execution of acquisition documents? Is it possible to remotely/digitally sign documents?**

Signatories of the parties should be duly authorized to execute acquisition documents, for that purpose, relevant decisions of the governing bodies should be provided along with the proper power of attorney. It is not common to execute documents in the presence of witnesses, but there are no explicit restrictions too. This suggests that witnessing can be done at the discretion of the parties.

If the SPA is governed by the Kyrgyz laws and executed in the Kyrgyz Republic, the signatures of individuals should be notarized. Other than that, there are no other specific formalities for the execution of acquisition documents.

Remote/digital signing is possible in theory and under the SPA governed by foreign laws. Kyrgyz laws require local SPAs to be executed in writing and in the number of counterparts for each of the parties. There have been some developments in remote execution of documents, but it has not become common yet.

## **G. Trends and Projections**

### **29. What are the main current trends in M&A in your jurisdiction?**

Ever since the fall of the Soviet Union, the government has made significant progress in the privatization of state-owned assets. This trend is still relevant as the Kyrgyz Republic seeks to sell some of its assets in order to gain investments and foreign expertise. As a result of this trend, the government is trying to sell one of the major telecommunication operators in the Kyrgyz Republic.

There has been significant progress in the field of mining with many of the mining companies being purchased by foreign investors due to the abundance of certain natural resources in the Kyrgyz Republic. That said, mining legislation is constantly changing and not always for the better as the current government is trying to

gain more control over the mining sector undermining investors' rights over their mining assets.

Having been mentioned a number of times throughout this questionnaire, the banking sector of the Kyrgyz Republic has seen some significant developments in recent years under the control of the National Bank of the Kyrgyz Republic. So far, there have been a number of M&A transactions in this sector and seemingly, the banking sector is moving towards consolidation with many foreign investors investing capital into the Kyrgyz Republic.

### **30. Are any significant development or change expected in the near future in relation to M&A in your jurisdiction?**

It is not presently possible to predict any significant developments or changes in relation to M&A in Kyrgyzstan. There are already a number of reforms that are aiming at improving the legal framework in Kyrgyzstan, however, not many of these reforms will be completed due to many factors, one of those being political instability. There have been many undertakings so far but with the change of regime, some of these undertakings are compromised and cannot be completed. Hopefully, the current regime will be able to finalize some of the legal and regulatory reforms that would result in facilitation of M&A activities and attraction of foreign investments in the Kyrgyz Republic.

# TAJIKISTAN

## GRATA



**Bahodur Nurov**  
Senior Associate  
bnurov@gratanet.com

### A. General

#### 1. What is the main legal framework applicable to companies in your jurisdiction?

The most relevant legal acts are: (i) Civil Code (Part 1, 2 and 3), (ii) Tax Code, (iii) Registration of Legal Entities and Individual Entrepreneurs Act, (iv) Competition Protection Act, (v) Limited Liability Companies Act, (vi) Joint Stock Companies Act.

In addition to the ones mentioned above, there are numerous other laws whose reach and application depend on the particular kinds of business activity a company engages in in Tajikistan.

#### 2. What are the most common types of corporate entities (e.g., joint stock companies, limited liability companies, etc.) used in your jurisdiction? What are the main differences between them (including but not limited to with regard to the shareholders' liability)?

A branch office or limited liability company is the most popular and widely used type

of corporate entity form. Mostly, foreign parties choose to register a branch or a limited liability company if it aligns with their intended activity. The only distinction relates to the taxation of profits.

### B. Foreign Investment

#### 3. Are there any restrictions on foreign investors incorporating or acquiring the shares of a company in your jurisdiction?

There are no legal limitations on foreign investors forming a company or purchasing shares of a company. Although that hasn't happened in our practice, it is possible that there are some unwritten restrictions that weren't made known to the public, and only made known when relevant party approaches the authorities.

#### 4. Are there any foreign exchange restrictions or conditions applicable to companies such as restrictions to foreign currency shareholder loans?

Restrictions only apply to domestic loans; such loans must be in national currency. There are no restrictions on foreign loans.

**5. Are there any specific considerations for employment of foreign employees in companies incorporated in your jurisdiction?**

Yes. The companies are required to obtain a license (which entails having in-house lawyer), and comply with specified quota, which is determined annually at the start of second quarter while the employees are required to obtain work permits.

## **C. Corporate Governance**

**6. What are the standard management structures (e.g., general assembly, board of directors, etc.) in a corporate entity governed in your jurisdiction and the key liability issues relating to these (e.g., liability of the board members and managers)?**

While joint stock firms with more than fifty shareholders must have a board of directors, limited liability companies and joint stock companies with less than fifty owners are free to pick their management structures. Therefore, a CEO-only organization is the most common type of management structure.

**7. What are the audit requirements in corporate entities?**

The audit is not mandatory. An audit can be carried out at the request of participants for the limited liability company or shareholders for the joint stock companies.

## **D. Shareholder Rights**

**8. What are the privileges that can be granted to shareholders? In particular, is it possible to grant voting privileges to shareholders for appointment of board members?**

A limited liability company's highest governing body is the general meeting of participants. The general meeting of participants has sole authority over the

appointment of the board of directors. In addition to their statutory rights, the general meeting of participants' competence may also be expanded in accordance with internal documents in other areas (charter, by-laws, foundation agreement, etc.).

**9. Are there any specific statutory rights available to minority shareholders available in your jurisdiction?**

There are currently no special statutory rights available to minorities in Tajikistan, in contrast to the majority of international states that have given minority shareholders special legal protections.

**10. Is it possible to impose restrictions on share transfers under the corporate documents (e.g., articles of association or its equivalent in your jurisdiction) of a company incorporated in your jurisdiction?**

In general, a participant of a limited liability company has the legal right to withdraw at any moment, without the approval of other participants. The withdrawal term declaration may be determined by the constituent documents since it is not explicitly stated by law.

If a participant decides to withdraw, the share will be transferred to the company as soon as a withdrawal application is submitted. In addition, the company is required to pay the participant the actual value of the share, as determined by accounting data for the year in which the application was submitted, or, with the participant's consent, to provide property in kind of the same value. In the event that the contribution to the company's authorized capital is not fully paid, the actual value of the part of the participant's share, proportionate to the paid part of the authorized capital, is also due.



**11. Are there any specific concerns or other considerations regarding the composition, technical bankruptcy and other insolvency cases in your jurisdiction?**

Technical bankruptcy is not defined under the current laws. The debtor's formal bankruptcy (insolvency) is announced at the general meeting of creditors, or it is resolved in court. Apart from this, there are no other significant issues or matters to be thought about in relation to the aforementioned; nonetheless, each situation should be considered separately due to the various factors and elements involved.

## **E. Acquisition**

**12. Which methods are commonly used to acquire a company, e.g., share transfer, asset transfer, etc.?**

The most commonly used method to acquire a company is through share purchase.

**13. What are the advantages and disadvantages of a share purchase as opposed to other methods?**

Gaining ownership of the business and reaping the rewards of participation, including the possibility of dividends, simplicity of share transfer, and statutory ownership rights, is the main benefit of buying shares. Other strategies entail buying assets that don't give you direct control over the business, which restricts your options and the advantages of being a shareholder.

A share purchase has some limits and/or conditions that must be met as a drawback. A change in the shareholding structure, for instance, necessitates the company to go through the so-called "re-registration" process, which could take several months and necessitates communicating with the state authorities. If thresholds are met,

obtaining an approval from governmental agencies is necessary for a share purchase.

**14. What are the approvals and consents typically required (e.g., corporate, regulatory, sector based and third-party approvals) for private acquisitions in your jurisdiction?**

For general sector, corporate (approval of appropriate body (if required by company bylaws)) and competitive (if triggered), and for finance in addition to competitive (if triggered) approval of the National Bank of Tajikistan is required.

**15. What are the regulatory competition law requirements applicable to private acquisitions in your jurisdiction?**

There are two triggers:

1. If the total book value of the acquirer is \$666,666 in 2023, the acquirer is required to notify the Antitrust Service within 15 days following the transaction; and
2. If the total book value of the acquirer is \$1,333,333 in 2023, the acquirer is required to apply for preliminary consent from the Antitrust Service.

While reviewing the documents if the notification requirement is triggered, there is a possibility that the Antitrust Service may deem that the transaction requires its preliminary consent rather than just notification. Likewise, in some cases, Antitrust Service may require the provision of additional documents and information.

**16. Are there any specific rules applicable for acquisition of public companies in your jurisdiction?**

There are certain regulations that apply to public firms (if they are open joint stock companies that are listed) regarding the listing of shares and the subsequent sale



and/or purchase of those shares via the stock market. The stock exchange market, however, is still in its infancy, therefore there is still considerable room for development and problems that need to be resolved. The Central Asian Stock Exchange (local stock exchange), where public firms are normally listed, has its own set of rules and regulations governing how it runs and how listed companies handle share trading.

**17. Is there a requirement to disclose a deal, for instance to regulatory authorities? Is it possible to keep a deal confidential?**

If competition law requirements are triggered, the deal must be disclosed to the antitrust services, other than that, there are no requirements to disclose the deal to third parties.

**18. Can sellers be restricted from shopping around during a negotiation process? Is it possible to include break fee or other penalty clauses in acquisition documents to procure deal exclusivity?**

The parties are free to choose the terms of the agreement if it complies with the provisions of the country whose law was the law was chosen as the governing law.

**19. What are the conditions precedent in a typical acquisition document? Is it common to have conditions to closing such as no material adverse change?**

A full list of the conditions precedent (“CP”) used in a typical acquisition document cannot be created due to a number of elements and circumstances. Typically, it relies on the industry, the target company’s activity range, its assets, and other factors. CPs regarding the following are most likely to be included by a firm ready to move forward with the purchase of a target company:

- (i) Regulatory approvals (if required);
- (ii) Third-party consents (such as those of the target company’s current creditors);
- (iii) Target company due diligence (including legal, financial, and/or tax);
- (iv) Representations, warranties, and covenants (common negative covenants might not be enforceable in Tajikistan due to conflict with the statutory provisions of the law);
- and (v) Other CPs as determined by a prospective buyer.

Conditions for closing, including the absence of any major adverse change, are frequently included. The majority of the CPs listed above are not usually included in local transactions because not all of them can be enforced under Tajik law. Nonetheless, such CPs are frequently utilized in transactions involving local parties that are controlled by foreign law.

**20. What are the typical warranties and limitations in acquisition documents? Is it common to obtain warranty insurance?**

It is typical to contain warranties and restrictions relating to the change in control, the lack of any liens or other claims secured by the assets, and the absence of any current or pending litigation. Other guarantees and limits may exist, but not all of them may be used or enforced in accordance with Tajik laws. Due to the fact that some of the shareholders’ rights are statutory in nature and cannot be negated by any contractual restrictions, common negative covenants that would prevent shareholders from choosing whether to alienate shares to other parties cannot be implemented.

We have not encountered the use of insurance; the more common alternative is to have a guarantor.

**21. Is there a requirement to set a minimum pricing for shares of a target company in an acquisition?**

By law, no. However, if the price is too low, this may draw unwanted attention from the tax authorities, therefore, the price must not be lower than the market price for similar companies.

**22. What types of acquisition financing are available for potential buyers in your jurisdiction? Can a company provide financial assistance to a potential buyer of shares in the target company?**

These types of financing are not practiced in Tajikistan. Acquisition transpires through direct purchase of the shares via share purchase agreement.

**23. What are the formalities and procedures for share transfers and how is a share transfer perfected?**

A share purchase agreement must be finalized in writing and signed with wet ink. A power of attorney (from the alienated and/or receiving party) may be used to appoint representatives.

The new shareholder is required to submit a filing with the regulatory body following the completion of the transaction in order to introduce the necessary changes to the register to reflect the change in shareholder.

**24. Are there any incentives (such as tax exemptions) available for acquisitions in your jurisdiction?**

No. There are no incentives.

## **F. Enforceability**

**25. Can acquisition documents be executed in a foreign language?**

Yes. But recommended practice is to have documents bilingual (foreign language and Tajik language), as the documents have to be translated into Tajik language and translation notary certified for them to be considered by the state authorities.

**26. Can acquisition documents be governed by a foreign law?**

Yes. Acquisition documents can be governed by a foreign law.

**27. Are arbitration clauses legally permissible or generally included in acquisition documents?**

Arbitration clauses are legally permissible, binding and generally included in agreements with foreign parties.

**28. Are there any specific formalities for the execution of acquisition documents? Is it possible to remotely/digitally sign documents?**

There are no specific formalities other than those mentioned above. The documents can be signed remotely, but it has to be signed in wet ink and not e-signature (e.g., docusign), since currently, e-signature is not as widely recognized by the state bodies.

## **G. Trends and Projections**

**29. What are the main current trends in M&A in your jurisdiction?**

The government has made significant strides in the privatization of state-owned assets and inviting foreign investors to become joint owners with the government ever since the dissolution of the Soviet Union.

Due to the richness of various natural resources in Tajikistan, there has been substantial advancement in the mining industry, with several mining businesses being invested into by foreign investors and co-owned with the government.

**30. Are any significant development or change expected in the near future in relation to M&A in your jurisdiction?**

Unfortunately, the lawmaking processes are not transparent, therefore, we cannot tell whether there are any changes are expected in the near future.