# The Legal 500 Country Comparative Guides

## Croatia: Mergers & Acquisitions

This country-specific Q&A provides an overview of mergers & acquisitions laws and regulations applicable in Croatia.

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### Contributing Firm

Krehić & Partners in cooperation with Deloitte Legal

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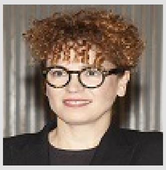

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1. **What are the key rules/laws relevant to M&A and who are the key regulatory authorities?**

### 1.1 Key rules/laws

The acquisition of companies is regulated by a number of laws, depending on the specific type and form of the acquisition:

- The Companies Act (*Zakon o trgovačkim društvima*)
- The Act on Takeovers of Joint Stock Companies (*Zakon o preuzimanju dioničkih društava*)
- The Court Register Act (*Zakon o sudskom registru*)
- The Competition Act (*Zakon o zaštiti tržišnog natjecanja*)
- The Strategic Investment Act (*Zakon o strateškim investicijskim projektima RH*)
- The Civil Obligations Act (*Zakon o obveznim odnosima*)
- The Labor Act (*Zakon o radu*)
- The General Tax Act (*Opći porezni zakon*)
- The Income Tax Act (*Zakon o porezu na dobit*)
- The Act on Real Estate Transfers Tax (*Zakon o porezu na promet nekretnina*)
- The Court Fees Act (*Zakon o sudskim pristojbama*)
- The Act on Capital Markets (*Zakon o tržištu kapitala*)
- The EC Merger Regulation 139/2004 (*Uredba EZ o koncentracijama*)
- EU Directive on cross-border mergers of limited liability companies 2005/56/EC (*Direktiva EU o prekograničnim spajanjima društava kapitala*)
- Industry specific laws and regulations (*g.* the Banking Act (*Zakon o bankama*), the Act on Credit Institutions (*Zakon o kreditnim institucijama*), the Insurance Act (*Zakon o osiguranjima*), the Electronic Communications Act (*Zakon o elektroničkim komunikacijama*), etc.)

The basic legal framework regulating the Croatian M&A market and operations consist of three basic regulations: the Companies Act, the Act on Takeovers of Joint Stock Companies and the Competition Act. All these acts, as well as their subordinate and implementing by-laws and regulations, have been harmonized with the relevant EU regulations even prior to Croatia's accession to the EU in 2013.

- *The Companies Act*

During the long process of Croatian accession to its full EU membership, the Companies Act has been amended more than once, during which term it has been fully harmonized with the EU regulations on M&A, including (i) the 2009/109/EC Directive regarding the reporting and documentation requirements in case of mergers and divisions, as well as (ii) the 2005/56/EC Directive on cross-border mergers of limited liability companies.

As a general rule, the Companies Act differentiates two basic types of mergers: (i) one in which the companies involved in the transaction cease to exist and a new corporate entity is incorporated, being the legal successor of all involved parties (“*spajanje*”): and (ii) one in which only one of the companies involved in a merger continues to exist, being the legal successor of all involved parties (“*pripajanje*”). Also, the Companies Act incorporated the rules for implementing other types of statutory transactions, such as statutory spin-off, as well as the rules on European company *Societas Europea* and the European Economic Interest Group.

- *Act on Takeovers of Joint Stock Companies*

The Act on Takeovers of Joint Stock Companies has duly implemented the 2004/25/EC Directive on takeover bids and regulates takeovers in a comparable manner to other EU member states. Within the last couple years, certain sections of the earlier takeover laws have been amended in an effort to improve shareholders’ protection in the takeover procedure and to provide clear and unambiguous rights and obligations of the acquirers. Public takeover bids for Croatian companies are relatively common. The Croatian legislation on takeovers provides for mandatory takeover offer once a person has acquired 25% shareholding in a public company. Public takeover bids for Croatian companies are relatively common. The program was initiated by the Croatian government in 2000 to privatize state-owned companies, which resulted in widespread public share ownership, with most large privatized companies being listed on the stock exchange in the last 20 years – this specific mandatory bid procedure has resulted in there being a large number of takeover bids relative to the size of the Croatian market. The current Croatian legislation on takeovers provides for a mandatory takeover offer once a person has acquired a 25% stake in a public company. As a general comment, the vast majority of the deals have involved friendly takeovers, with hostile takeovers are not dominant.

### 1.2 Key regulatory authorities

The **Croatian Financial Services Supervisory Agency** (HANFA) is a supervisory body whose scope and competence include supervision of financial markets, financial services and supervised entities providing those services. HANFA exercises supervision of business operations of stock exchanges and regulated public markets, companies authorized to provide investment services and perform investment activities, investment firms and securities issuers, brokers and investment advisors, tied agents, central clearing and depository company, insurance and reinsurance companies, insurance and reinsurance intermediaries, investment and pension fund management companies, pension insurance companies, investment and pension funds, Central Register of Insured Persons, Fund for Croatian Homeland War Veterans and Members of their Families, Retired Persons’ Fund and legal persons carrying out leasing and factoring operations unless they are provided by banks as part of their registered activities.

With respect to the takeover procedures: HANFA decides on the bidder’s request for approval of the publication of the takeover offer and monitors the application of the provisions of the Act on Takeovers of Joint-stock Companies and, in case of irregularities, imposes supervisory actions.

The **Croatian Competition Agency** (AZTN) has the official task of protecting consumers and creating equal conditions for all undertakings on the market. It ensures that undertakings behave in accordance with the applicable competition legislation and compete on the market with quality, price and innovation of their products and services. As a rule, the acquirer of the target company’s shares exceeding 51% is obliged to submit merger filing to AZTN at signing of the share purchase agreement (SPA), if the following criteria are cumulatively met:

- the total turnover (consolidate aggregate turnover) of all the undertakings – parties to the concentration, realized by the sale of goods and / or services in the global market, amounts to at least HRK 1 billion (approximately EUR 133,300,300) in the financial year preceding the concentration and in compliance with financial statements, where at least one of the parties to the concentration has its seat and / or subsidiary in Croatia;
- the total turnover of each of at least two parties to the concentration realized in the Croatian national market amounts to at least HRK 100,000,000 (approximately EUR 13,300,300) in the financial year preceding the concentration and in compliance with financial statements.

**The Zagreb Stock Exchange** (ZSE) enables a transparent, secure, efficient and sustainable trading of securities and maintains the highest level of quality of capital market services to meet the needs of shareholders, investors, members and all interested parties.

**Commercial Courts** register and publish corporate transactions, reorganizations and changes of companies’ corporate status in Commercial Court Registry.

## 2. What is the current state of the market?

Current M&A market in both Croatia and Slovenia is in very active phase. Although there has been less deals reported in 2019 in comparison to 2018, both in value and volume, 2019 has been very interesting year for M&A and it has announced increased M&A activity in 2020. At the beginning of February 2020 this activity is already evident through increased interest in transaction related services.

## 3. Which market sectors have been particularly active recently?

Hospitality and hotels industry has been very active with a landmark transaction in which Gitone Adriatic, subsidiary of a German investor invested in 53,95% of shares of Liburnia Riviera Hoteli, hotel group active in Kvarner region. TMT industry was active as well, with a landmark transaction where United Group become new owner of Tele2 Hrvatska telecom, confirming there seriousness in becoming leading TMT company in the region. Other industries, which were active, were retail, as well as automotive and banking industry, especially in Slovenia.

4. **What do you believe will be the three most significant factors influencing M&A activity over the next 2 years?**

Potential slowdown in economy, although often talked about recently and already present is some significant European markets such as Germany, has not yet significantly influenced the economy in our region. According to the latest Deloitte Central Europe Private Equity Confidence Survey, confidence in private equity funds has been at the 7-year low.

The first sign of economy slowdown will influence the M&A activity and also the valuation multiples paid across the industries. Only owners/shareholders of well-prepared companies will achieve high returns while exiting their businesses.

Other relevant factor which will significantly influence M&A activity is availability of the capital on regional markets. Although some European mid-sized PE groups have been active in the region for quite some time, several new private equity funds exclusively focused on the Adriatics region are to become operational in 2020, which will further boost M&A activity and competiveness among the investors.

Third buy equally important factor influencing M&A activity in the region will be succession issue – owners which founded their companies in early 90s will look to retire and sell their businesses, this will definitely provide more M&A opportunities.

5. **What are the key means of effecting the acquisition of a publicly traded company?**

The Act on Takeovers of Joint Stock Companies provides two options for triggering the takeover procedure a mandatory tender offer and a voluntary tender offer.

The acquisition of control, whether by a privately negotiated share transaction with one or several major shareholders or by purchasing target shares on the stock exchange, triggers obligation of the purchaser to publish the acquisition of control and to launch a mandatory tender offer. Control is defined as holding of at least 25% of the voting rights of the target company.

6. **What information relating to a target company will be publicly available and to what extent is a target company obliged to disclose diligence related information to a potential acquirer?**

A main source of information is the Commercial Court Registry (*sudski registar Trgovačkog suda*) with all relevant historic corporate data, including the company registered name, legal form, personal identification number (PIN), address of the registered seat, branch offices and their registered seats, scope of business activities, share capital and its changes, founders/shareholders, management and supervisory board members, past statutory corporate transactions, annual financial reports and occurrence of liquidation or insolvency proceedings.

Other regular public sources of information are:

- Real Estate Register (*Gruntovnica*), containing basic information on real property
- Intellectual Property Office (*Zavod za intelektualno vlasništvo*), containing information on domestically registered intellectual property rights
- Depository held by the Central Depositary Agency (*Depozitorij Središnjeg klirinškog depozitarnog društva*), containing information on dematerialized securities
- Register of Encumbrances over Movables (*Upisnik založnih prava na pokretninama*), held by the Croatian Financial Agency (FINA), containing information on encumbrances over shares in limited liability companies
- Zagreb Stock Exchange (*Zagrebačka burza*), containing overall business and financial information on listed companies.

Despite regulations requiring public companies to make regular periodic and ad hoc disclosures, the publicly available information on numerous Croatian public companies is quite limited. In a negotiated transaction, therefore, it is common for the majority shareholder of the target to provide extensive information about the target, either directly or by encouraging the target to do so. Provided that the target's management is willing to make the disclosure (note that the majority shareholder cannot force the target to do so), the bidder can obtain very extensive information about the target.

As a rule, the management of a target company is not legally obliged to disclose due diligence related information to a specific purchaser / bidder, but it can decide to do so based on its business decision. The disclosure of business information to a potential acquirer is permissible if and to the extent it does not impair the interest of the target company. When making this business decision, the management must evaluate the company's interest arising from the potential bid, on one hand, and the necessity to secure confidentiality of the company's business affairs, on the other hand. In case of competing takeover bids, the management of the target company must treat each competing bidder equally if information is disclosed.

Note that a bidder must take care not to violate the insider trading provisions contained in the Act on Capital Markets. After receiving unpublished material insider information from the target, the bidder is not allowed to purchase or dispose of any shares of the target on the basis of such insider information.

7. **To what level of detail is due diligence customarily undertaken?**

The acquirer would usually conduct financial, business, technical and legal due diligence of the target company. The scope and level of detail of due diligence may vary substantially depending on a number of factors, such as (i) whether the deal involves a listed or a non-listed company, (ii) the nature of the company's business, (iii) the structure of transaction,

(iv) the nature and size of an acquired business, (v) the specific sector regulations.

The scope of undertaken due diligence usually differs between private acquisitions and public takeovers. If the target is a listed company, the level of due diligence required is generally moderate given extensive mandatory disclosures monitored by the target company. The standard due diligence in private deals is more rigorous since publicly available information concerning the target company will rather be limited.

8. **What are the key decision-making organs of a target company and what approval rights do shareholders have?**

    1. **Croatian joint-stock company**Fundamental corporate decisions are adopted by the general assembly (*glavna skupština*), provided that the shareholders are not entitled to issue binding instructions to the management board (*uprava*), which is obliged to act in the best interest of the company. The supervisory board (*nadzorni odbor*) appoints and revokes management board members, reviews and controls their work and reports to the general assembly. The general assembly's rights mainly concern most significant corporate decisions such as amendments of the articles of association, increase / decrease of the registered share capital, approval of the merger or demerger plan, transformation into another legal form, sale of significant business asset and similar. In private M&A transactions where the target is the joint-stock company, the articles of association may provide that an approval of the target (*i.e.* its management board) for the transfer of shares is required.
    2. **Croatian limited liability company**

The corporate bodies of a limited liability company consist of the management board (*uprava*), the shareholders' meeting (*skupština*) and, depending on a company's voluntary business decision or in cases prescribed by law, the supervisory board (*nadzorni odbor*). The management board represents the company and is subject to mandatory shareholders instructions. The shareholders' meeting is the ultimate decision-making body of the company. The decisions concerning the constitution and existence of the company (the articles of association's amendments, bankruptcy and liquidation of the company) as well as the operation of the company's business (*e.g.* the appointment and/or revocation of managing directors and members of the supervisory board) are within the shareholders' competence. Where existing, the supervisory board appoints management board and usually provides expert know-how, but is not operationally engaged in company's management activities.

As opposed to the joint-stock company, the members of the management board in a limited liability company are bound by the instructions issued by the shareholders' meeting. Generally, the ability of the shareholders to guide, instruct and influence the policy and management is considerably stronger than that of shareholders in joint-stock company.

9. **What are the duties of the directors and controlling shareholders of a target company?**

9.1 As a general principle, in a takeover procedure, the management board and the supervisory board of the target company must act in the best interest of the target company. The managing directors must apply the duty of care of a prudent business man (fiduciary duty). The management and the supervisory board of a joint-stock company are more independent of the shareholders than the management board and the supervisory board in a limited liability company.

9.2 As of the moment the obligation to publish the takeover bid has arisen, and once a takeover bid has been announced, and until it has been concluded:

- The bidder may not acquire or sell target shares, other than through the takeover bid. This prohibition also applies to all persons acting in concert with the bidder;
- Target management or the supervisory board may not, without prior approval of the general assembly, *inter alia*:
- increase or decrease the share capital;
- enter into extraordinary business operations;
- act or enter into operations that could significantly jeopardize future business of the target;
- decide on the target's acquisition or sale of treasury shares; or
- take any actions that would frustrate the bid.

The decision of the target's general assembly approving the above listed decisions of the management board and/or the supervisory board will be effective only if passed by a three quarters majority of the share capital represented at the general assembly. However, the decision of the target company's management board or supervisory board to search for another bidder (that is, a "white knight") would not be prohibited and would not require shareholder approval.

9.3 Within 10 days after publication of the bid, the management board of the target must issue an advisory opinion setting forth the following:

- the management board's view of the type and amount of the offered price for the shares;
- the management board's view of the bidder's future intentions and goals in relation to the target;
- the management board's view of the bidder's strategic plans in relation to the target company and potential consequences arising out of these plans with respect to the target's employment policy, the employees' status, and the potential change of the location in which the target performs its business activities;
- statements of the management board members on their intention to accept or refuse the offer; and

- statements of the management board members on whether there is an agreement between them and the bidder, and if there is, its terms and conditions.

The management board is obliged to submit its opinion on the offer to the Agency, the stock exchange or the regulated public market no later than the day on which the publication of the opinion is ordered.

Other than publishing this opinion, the members of the management and supervisory boards are forbidden from undertaking any activity that could influence the bid.

10. **Do employees/other stakeholders have any specific approval, consultation or other rights?**

10.1 Within 5 days after the publication of the offer and before the opinion is published, the management board of the target is obliged to submit its opinion to the target's workers' representatives or to the employees directly, who can give their opinion on the offer within the next 3 days. If the management board of the target receives the employees' opinion on time, it is obliged to attach it to its opinion on the offer. If the opinion on the offer or the employees' opinion on the offer contains false or misleading information, and if the persons who have prepared the opinion or participated in its issuance knew or should have known that the information was false and/or misleading, they shall be jointly and severally liable to the shareholders for the damage caused.

10.2 As a general rule, the company's supervisory board must contain at least one member of the workers' representative. The workers' representative is appointed and revoked by the employees' council or by employees directly through free and direct elections by secret ballot.

10.3 Moreover, the Croatian Labor Act regulates the rights and obligations of the employees in case of the employer's statutory change. As a rule, in case of company's corporate changes in status, all employment agreements for workers who have worked for the company which changes its status are transferred to the new employer. Workers whose employment contracts are transferred as described, retain all the employment rights they have acquired until the date of the transfer of the employment agreements. The company, whose part(s) of business are transferred to a new employer (new company), is obliged to inform its workers, whose employment agreements are transferred, of their respective rights. If the employer has requested the workers council's consent for employer's decision on the changes in the company's corporate status, the workers council shall respond to the employer's request within eight days from the submission of the employer's request. If the workers council fails to submit its respond to the employer within the deadline, the workers council is deemed to agree with the employer's decision.

11. **To what degree is conditionality an accepted market feature on acquisitions?**

11.1 In private M&A transactions: conditions precedents are very common, in particular if the merger filing is mandatory and the Croatian Competition Agency or other industry-specific regulatory authority must approve the transaction.

11.2 In public M&A transactions: The takeover offer generally cannot be conditioned: there can be no financing condition, since the bidder must provide:

- a bank guarantee;
- a cash deposit covering the full purchase price for the shares that are subject to the bid; or
- deposit shares with the depository exchange.

11.3 The bid cannot be subject to approval by the Croatian competition or other governmental authorities. However, if the thresholds for notifying the merger filing / intender concentration are not met, HANFA has adopted a practice according to which it approves the takeover bid if it is submitted with the bidder’s statement, given before a public notary, stating that the intended concentration does not meet the reporting thresholds prescribed by the Competition Act and thus does not have to be announced to the Competition Agency.

Since the takeover bid submitted to HANFA for approval must contain, *inter alia*, the decision of the Competition Agency on the intended concentration, the implementation and publication of the takeover bid is prohibited until the Competition Agency’s decision has been made.

11.4 All competition or other approvals must be obtained in advance and submitted with the bid documentation submitted to HANFA for approval. HANFA will not approve the publication of a bid before these prior approvals are obtained. The bid must be made for all outstanding voting shares.

11.4 The bid may, however, exclude encumbered shares or stipulate that the bidder will acquire no shares if, as a result of the bid, it does not acquire shares having a certain percentage of the target’s voting rights (although the bidder may not specify a percentage lower than the controlling threshold).

The offer can exceptionally be conditioned in a very limited number of cases:

- the encumbered shares can be excluded from the offer; and
- the voluntary takeover can be conditioned by on reaching a certain success threshold that cannot be lower than 25%.

12. **What steps can an acquirer of a target company take to secure deal exclusivity?**

The bidder and the target company may enter into a business agreement pursuant to which the target company commits to support the offer, under a certain conditions and within a pre-defined timeframe. Such agreement often includes an exclusivity commitment not to negotiate with any other potential acquirer(s), nor to recommend a competing offer to its shareholders.

To strengthen agreement exclusivity, a contractual penalty may be foreseen in case either party breaches the exclusivity obligation. The parties should be careful and within the applicable market thresholds when determining the amount of agreed contractual penalty as it could be challenged in the court proceeding if the court would decide the amount is excessively high.

13. **What other deal protection and costs coverage mechanisms are most frequently used by acquirers?**

13.1 A **break-up fee** may be contracted in an acquisition for a party (either the buyer or the seller) that decides not to pursue the deal. A break-up fee offered in the letter of intent usually shows the buyer’s commitment to completing the acquisition. Such fees are not common in mid-market transactions for privately held businesses.

13.2 The **breakthrough rule** is a deal protection measure which allows a target company to help the bidder in the takeover process. The rule applies only if included in the target company’s articles of association after the takeover bid is published. The breakthrough rule provides that during the bid term, restrictions on the transfer of the target’s shares and restrictions on voting rights of the target’s shares prescribed by either (i) the target’s articles of association, (ii) an agreement between the target and its shareholder(s) or (iii) an agreement between the target’s shareholders – have no effect, can be temporarily suspended for the duration of the bid term provided that the target inserts this suspension in its if included in the target’s articles of association.

The rule also helps shareholders who acquired over 75% of the voting shares in the target company to convoke a general assembly in order to change the target company’s articles of association and/or to appoint or revoke remove the members of target’s supervisory board. In such a case, restrictions on voting rights of target’s shares, set out either in the articles of association, or in the agreement between the shareholder(s) and/or the target – have no effect. Additionally, special rights of shareholder(s) to directly appoint or revoke supervisory board members set out in the articles of association have no effect.

The breakthrough rule requires the management board of the target company to immediately inform HANFA, as well as the supervisory authorities of European Economic Area countries in which the shares of the target company are listed on a regulated market, of the fact that the target company has adopted or deleted a respective provision of its articles of association, thus activating the breakthrough rule.

13.3 If the seller has negotiated or terminated the negotiations contrary to **the principle of good faith**, it may be held liable for the damage it has caused to the acquirer. The same applies if the seller entered into negotiations with the acquirer without the intention of concluding the agreement. However, such situations are rare in practice.

14. **Which forms of consideration are most commonly used?**

According to the Takeover Act, the bidder may offer, as a consideration for the shares that are the subject of the takeover bid, the following:

1. Money (cash compensation);
2. Substitute shares (substitute fees); or
3. A combination of cash and substitute shares in which case the bidder’s proportion of cash and substitute shares can be freely determined (combined compensation).

When a bidder offers a substitute or a combined consideration, it is obliged to offer a monetary compensation as an alternative. Shares offered as payment must be (i) listed on either the same exchange market or another exchange market having at least the same level of transparency; (ii) of the same type; and (iii) without any encumbrances.

HANFA further prescribes the conditions under which the bidder may offer a substitute or a combined compensation in the takeover bid.

In private M&A transactions: The most common form of consideration in share and asset deals is cash payment. Acquirers also seek to have a part of the purchase price deposited on the escrow account as security for potential breaches of the seller’s guaranties, representation and warranties granted to the buyer in the SPA. The funds or assets are usually held by the escrow agent until it receives the appropriate instructions or until predetermined contractual obligations have been fulfilled. Money, securities, funds and other assets can all be held in escrow.

An earn-out clauses have become common means of compensation in M&A transactions – which usually envisage, as a contractual provision in the SPA, that the seller is to obtain additional compensation in the future if the business achieves certain financial goals, which are usually stated as a percentage of gross sales or earnings.

15. **At what ownership levels by an acquirer is public disclosure required (whether acquiring a target company as a whole or a minority stake)?**

<u>Reporting share ownership of 25% or higher</u>: An acquirer shall publish a takeover bid when directly or indirectly, independently or jointly, acquires shares with the voting right of the target company so that, together with the shares it has already acquired, exceeds the threshold of 25% of the voting rights of the target company (*control threshold*).

The acquirer is obliged to submit to HANFA, within 30 days from the date on which the obligation to publish the takeover bid arose, the request for approval of the publication of the takeover bid, the takeover bid and other documentation required by law. HANFA shall issue a decision on the respective request within 14 days from the date of receipt of the request. The bid must be published in the Croatian Official Gazette and the stock exchange within seven days after receipt of HANFA's decision approving the bid. The bid and any amendments thereto must be submitted to the target and to the stock exchange or the regulated public market on which the shares are traded. The bidder must also notify every shareholder of the content of the bid, including any amendments.

Reporting share ownership below 25%: Acquisitions of shares at levels below the 25% threshold triggering a mandatory takeover may need to be reported. Under the Act on Capital Markets, an individual or a legal entity that directly or indirectly acquires shares of a joint stock company, which acquisition results in the shareholder's having voting rights exceeding a threshold of 5%, 10%, 15%, 20%, 25%, 30%, 50% or 75%, must inform HANFA and the issuer in writing within 4 days of the acquisition. A similar notification obligation applies to a shareholder whose shareholding drops below any of such thresholds as a result of a disposal of shares. The share ownership report may trigger buying activity in the target's shares.

16. **At what stage of negotiation is public disclosure required or customary?**

HANFA may require an entity to give an express declaration on the intended takeover if the situation in the capital market indicated a potential takeover, and especially when circumstances indicate the existence of a takeover agreement or there have been significant changes in trading and price of shares in the regulated market, or if that entity has expressed its intent to carry out the takeover in any other way. At the request of HANFA, this declaration must be published without delay.

The obligation to publish the takeover bid arises at the time of the conclusion of the legal transaction of the acquisition of shares of the target company.

HANFA decides on the bidder's request for approval to disclose a takeover offer. After HANFA approves the disclosure, the takeover offer is publicly announced (in Croatian Official Gazette and in at least one daily newspaper sold in Croatia) and lasts 28 calendar days from the date of the last announcement.

For the duration of the takeover offer, the shareholders of the target company intending to sell their shares to the bidder deposit their shares with the depository agency (in Croatia, for the non-materialized shares the depositor is always the Central Depository Clearing Company; and for the materialized shares it is a credit institution by choice of the bidder).

Upon completion of the takeover offer, the bidder pays and takes over all shares deposited with the depositor during the period of the takeover offer, after which the takeover repost is publicly announced.

Negotiated bids: It is common for a bidder to acquire a majority stake in the target from a controlling shareholder (where one exists) in a negotiated transaction prior to launching the mandatory bid for the rest of the shares. A negotiated purchase of a majority stake usually eliminates the risk of a competing bid, since any competing bidder would be precluded from acquiring majority ownership. A negotiated purchase typically allows the acquirer to structure the transaction as a normal private share acquisition, involving due diligence on the target. The acquisition agreement will typically include standard closing conditions, representations and warranties, indemnities, etc.

If it is trying to organize the acquisition of a controlling stake from a number of large, but not controlling, shareholders, the bidder must take care to ensure that confidentiality is maintained and that rumors do not develop that influence the share price of the target. If confidentiality is not maintained and there is unusual share activity, the bidder may be forced to inform HANFA of its intentions and initiate a mandatory takeover bid procedure.

Care must be taken not to inadvertently trip the obligation to launch a takeover bid by entering into a binding and final share purchase agreement. Under the Takeover Act, even if an agreement for the purchase of over 25% of an issuer's shares is subject to standard conditions precedent (that is, the share purchase agreement has been executed but its legal effectiveness is postponed until fulfillment of certain conditions), it can be deemed to constitute a legal transaction that triggers the obligation to publish a takeover bid. In practice, it is possible to avoid a premature triggering of the Takeover Act by signing a so-called "*pre-contract on the purchase of shares*" which, although in form and substance is similar to a share purchase agreement with conditions precedent, does not represent legal basis for acquisition of shares due to its "*pre-contractual*" legal nature and thus does not trigger the application of the Takeover Act. Once all the conditions precedent have been met, the parties enter into a binding share purchase agreement, which triggers application of the Takeover Act. The deadlines for publishing the takeover bid commence only after conclusion of the actual share transfer agreement, rather than upon the conclusion of the "*pre-contract*". This approach, on a case-by-case basis, should always be discussed in advance and pre-approved by the legal advisors and/or the regulator.

17. **Is there any maximum time period for negotiations or due diligence?**

There is no maximum time period for negotiations or due diligence. Typically, the due diligence phase is between six and twelve weeks, which significantly depends on the deal size and complexity of the deal. The negotiation phase is typically two to four weeks.

18. **Are there any circumstances where a minimum price may be set for the shares in a target company?**

For public offer, Croatian law provides for a minimum consideration that the bidder has to offer to the shareholders of the target of a listed company.

The general rule is that the price indicated in the takeover offer may not be lower than the maximum price at which the bidder has acquired the shares with voting rights in the period of one (1) year prior to the date of the obligation to publish the takeover offer.

If the average stock price on stock exchanges and regulated public markets is higher than the minimum price (as described above), the bidder is obliged to offer a higher price, with the average price being calculated for each stock exchange or regulated public market as a weighted average of all prices on the stock exchange or the regulated public market in the last 3 months prior to the occurrence of the obligation to publish the takeover bid.

In case the shares have been illiquid during the last three months, *i.e.* if the shares have been traded for less than 1/3 of a trade day in that period, the price of shares will be determined by method of comparison. The comparison will be made between the price determined by a fair market value report on the shares price, audited by an independent auditor, and the highest price the bidder has paid for the shares in the period of one year prior to the takeover bid. The bidder will be obliged to pay the higher of these two prices.

If the bidder, or a person acting in concert, within one year after the expiration of the offer's term acquire shares of the target company that were the subject of the takeover for a price that is higher than the price set forth in the offer, such bidder would be obliged to pay the difference to all shareholders who have accepted the bid within 7 days from the acquisition of such additional shares. This provision does not apply to the acquisition of shares through statutory changes (for example mergers and demergers), through an increase of the share capital of the target company or an acquisition of target company's shares in lieu of the payment of a dividend.

19. **Is it possible for target companies to provide financial assistance?**

For a Croatian joint stock corporation, it is generally not possible to provide financial assistance because of the strict financial assistance rules under the Croatian Companies Act. However, a few post-closing mechanisms can have a similar effect, including profit-pooling and loss-pooling agreements or debt-push-down mechanisms.

For a Croatian limited liability company less restrictive capital maintenance rules apply. Under certain circumstances, the Croatian limited liability company may provide security and guarantees, in particular if limitation language is in place.

20. **Which governing law is customarily used on acquisitions?**

    1. **Croatian joint-stock company**When the target company is a Croatian joint-stock company, Croatian law is customarily applied.In cases where the target company is a joint-stock company with its registered seat in the EU member state, and the company's

shares have been approved for trading only on a regulated market in Croatia, non-Croatian law is applied, except for several provisions laid down by the Croatian Act on Takeovers of Joint Stock Companies (the provisions determining the percentage of voting rights and the obligation to publish the takeover bid, the exceptions from the obligation to publish the takeover bid, the conditions under which the target company's management board or supervisory board may take measures that may hinder or disallow the takeover bid). In this case, the governing law is the law of the country in which the target company has its registered seat.

2. **Croatian limited liability company**

When the target is a Croatian limited liability company, Croatian law is mandatory applied for the mere share transfer and the share transfer agreement (STA) as prescribed by the Croatian Companies Act. However, a non-Croatian law can be applied for other commercial aspects of the transaction and accordingly for the share purchase agreement (SPA). Some specific situations regarding the application of the Croatian law in cases of cross-border mergers are regulated by the Croatian Companies Act.

21. **What public-facing documentation must a buyer produce in connection with the acquisition of a listed company?**

The key transaction document is the takeover offer document. In order to comply with the legal requirements, set out in the Act on Takeovers of Joint Stock Companies, the offer document must contain the information necessary to enable target shareholders to adopt an informed decision on the offer, including information regarding the target company (name, registered seat, share capital, number and classes of the shares), the bidder (name, registered seat / address), the shares that are the subject of the offer, the price, as well as information on future business plans and post-closing governance.

Enclosed to the offer document, the bidder must submit (in original or certified copy) some additional documents, including the instruments relating to legal transactions by which the bidder has acquired the shares of the target company, the depositor's confirmation that the bidder has secured a fee for the takeover of all shares that are the subject of the takeover offer, agreement with the depositor for carrying out stockholding operation, confirmation of the stock exchange or regulated public market about the average price of the shares, agreement concluded with the depository, previous approval from the Croatian National Bank, HANFA (if the target company is a bank or other financial institution) or other industry-specific regulator, if their prior approvals are required according to industry-specific regulations.

If the documents enclosed to the offer document are prepared in foreign language, certified translation into Croatian language is required.

22. **What formalities are required in order to document a transfer of shares, including**

**any local transfer taxes or duties?**

When transferring a share in a limited liability company, two legal transactions must be distinguished – a share purchase agreement (SPA) and a share transfer agreement (STA). Only the STA has to be concluded in the form of a notarial deed and solemnized by the Croatian public notary, whereby the SPA, subject to certain terms and conditions, does not necessarily have to be in the form of a notarial deed. Both agreements may be concluded at one time, in the form of the same notarial deed or may be concluded as two separate legal transactions, in the form of two separate agreements. The notary fees generally depend on the amount of the purchase price.

The company's articles of association do not need to be changed. Transfer of a share must be entered in the company's book shares. The management board is obliged to submit to the Commercial court registry an updated list of shareholders evidencing that the change in the shareholders' structure has occurred. This registration with the Commercial court registry is only declarative *inter partes* and constitutive towards the third parties. Commercial court fees are typically fixed and need to be paid for each registration or amendment made in the Commercial court registry.

In joint-stock companies, together with the bid, the bidder is obliged to submit to HANFA the following documents, either originals or in form of a notarial deed: (i) legal documents based on which the bidder acquired the target's shares within 1 year preceding the obligation to publish a bid; (ii) bidder's sworn statement (and/or the sworn statement of the person acting in concert with the bidder) stating that there have not been concluded any other legal documents, except those on the basis of which the target's shares would be acquired; (iii) depository confirmation of the deposited remuneration for the shares subject of the takeover; (iv) confirmation of the stock exchange or regulated public market about the average price of the shares, (v) agreement concluded with the depository; (vi) previous approval from the Croatian National Bank if the target company is a bank or other financial institution, if its prior approval is required; (vii) acquirer's excerpt from the court register or other competent register certifying its legal form, registered seat, business address, and authorized representatives, which is not older than 30 days; (viii) a certified translation into the Croatian language is required if the acquirer is a foreign company; (ix) a fair market value report audited by an independent auditor, in cases when the shares have been illiquid during the last three months prior to the offer, *i.e.* if the shares have been traded for less than 1/3 of a trade day in that respective period; (x) other documents requested by HANFA; and (xi) evidence of the fee paid to HANFA. The share transfer agreement (STA) does not have to be concluded in the form of a notarial deed but only the seller's signature has to be notarized. In order to effectuate the transfer of non-materialized shares (most common situation), the share transfer agreement (STA) shall be delivered and registered with the Central Depository Agency.

23. **Are hostile acquisitions a common feature?**

The vast majority of the deals have involved friendly takeovers, with hostile takeovers virtually non-existent. Due to the fact that public M&A transactions are only a small fraction of the Croatian M&A market, hostile takeovers represent an even smaller share. In cases when the takeover is initiated as a hostile, it usually soon turns into friendly takeover after a certain period of time and negotiations.

24. **What protections do directors of a target company have against a hostile approach?**

Since Croatia hardly has any hostile takeovers, the common tactic against them, such as directors' golden parachute arrangements, have not been commonly activated in practice. As a common rule, the acquirer is in a position to remove the directors provided that certain requirements are met, the main protection of the directors is their management / service agreement, which continues to be in effect until directors' revocation and has to be fulfilled or compensated by the company.

25. **Are there circumstances where a buyer may have to make a mandatory or compulsory offer for a target company?**

The bidder is obliged to submit the offer (mandatory offer) when directly or indirectly, independently or jointly, acquires the target company's shares with the voting right so that, together with the shares already acquired, exceeds the threshold of 25% of the target company's shares with the voting rights (control threshold).

After the bidder has exceed the control threshold and has published the offer, it is required to publish the takeover offer when, independently or jointly, directly or indirectly, acquires the target company's shares with voting right and thus increases the percentage of voting rights by more than 10%.

26. **If an acquirer does not obtain full control of a target company, what rights do minority shareholders enjoy?**

Minority shareholders of a Croatian joint-stock company enjoy several protective rights. In the first place, they remain entitled to the right to be informed, voting rights and dividend rights.

Minority shareholders have the following minority rights (note that this list is more extensive so we list the most commonly used):

1. To convene the company's general meeting;
2. To submit their proposals and to oppose the proposals of the management and supervisory board;
3. To be informed with respect to convening of the general meeting and the insight / right to be informed on the company's business operations;
4. To decide on the transformation into a limited liability company (in case of a joint stock

company);
5. To raise claims for damages against:
    1. founders
    2. management and supervisory board members / executive directors and members of the board of directors
    3. a third person who uses her influence to damage company
6. To waive or settle the damages claims against:
    1. founders,
    2. management and supervisory board members / executive directors and members of the board of directors
    3. a third person who uses her influence to damage company
7. To seek involuntary dissolution and appointment / removal of dissolution officers.

A special group of minority shareholders' rights is associated with appointing and revoking members of the supervisory board provided that the company's articles of association envisage that certain shareholders (determined by their respective name) have right to appoint members of the supervisory board, up to 1/3 of the supervisory board members. Minority shareholders have the right to initiate mandatory and voluntary squeeze-out, as discussed in the below item 27.

27. **Is a mechanism available to compulsorily acquire minority stakes?**

Yes, in line with the EU corporate regulatory framework, the Croatian Companies Act provides for voluntary squeeze-out mechanism, and the Act on Takeovers of Joint Stock Companies sets out the terms for statutory squeeze-out.

**a) Statutory takeover squeeze-out**

The statutory takeover squeeze-out enables a controlling shareholder who, after completion of a takeover bid, holds at least 95% of the target's shares, to acquire the remaining minority shareholders' shares within three months after the expiration of the offer term. Fair value must be paid to the minority shareholders for their shares. Fair value is defined as the price offered in the takeover bid.

In addition to the 95% shareholder's right to implement a statutory squeeze out, minority shareholders in the target company in which a controlling shareholder holds at least 95% of the shares, have the right to sell to the controlling shareholder their 5% shares for fair value, within three months after the expiration of the offer term. If the controlling shareholder opposes implementing the squeeze out, the minority shareholders can request from the competent commercial court the implementation of the statutory takeover squeeze-out.

**b) Voluntary squeeze-out**

Besides the statutory takeover squeeze-out, the standard voluntary squeeze-out can be exercised by the 95% majority shareholder: namely, a shareholder holding at least 95% of the registered share capital of a Croatian joint stock company, has the right to propose to the general assembly that it adopts a resolution requiring the transfer of all remaining shares of the minority shareholders to the principal shareholder. The principal shareholder determines the amount of the payment (in cash) to be paid to minority shareholders for their shares. The adequacy of the payment must be reviewed by one or more auditors appointed by the court. The minority shareholders can separately challenge the general assembly's decision on the squeeze-out and the adequacy of the offered amount / payment for the shares.