Russia: Mergers & Acquisitions

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

For a full list of jurisdictional Q&As visit here
1. **What are the key rules/laws relevant to M&A and who are the key regulatory authorities?**

The main document regulating the M&A sector in Russia is the Civil Code of the Russian Federation (Part 1) dated 30 November 1994 No. 51-FZ, which has recently undergone substantial reform aimed, inter alia, at liberalisation of legal regulation of the M&A sector and, generally, corporate and contract law.

Depending on the form of the target Russian company, Federal law ‘On joint-stock companies’ or Federal law ‘On limited liability companies’ also will apply to a transaction in question.

An important part of M&A regulation is set forth in Federal law ‘On protection of competition’ dated 26 July 2006 No. 135-FZ.

Specific M&A relevant provisions can be found in other laws and regulations, such as Federal law ‘On securities market’ dated 22 April 1996 No. 39-FZ, Federal law No. 57-FZ ‘On procedures for foreign investments in companies of strategic importance for national defence and state security’ dated 29 April 2008 and Federal law No. 160-FZ ‘On foreign investments in the Russian Federation’ dated 9 July 1999.

The Federal Antimonopoly Service of the Russian Federation (FAS) is responsible for control over compliance with antimonopoly legislation, legislation in the field of natural monopolies’ activity and legislation on foreign investments in Russia.

A wide range of powers is being exercised by the Central Bank of Russia starting 1 September 2013. Since that time, it has been responsible for adoption of regulations, control and supervision over all financial markets, keeping of shareholders’ registers and certain corporate affairs.

Finally, over the last several years the Supreme Court of the Russian Federation has been quite active in issuing rulings containing an official interpretation of various provisions of corporate and contract laws.

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

According to RBC (https://www.rbc.ru/economics/29/06/2018/5b34eb259a7947688431619b), during the first half of 2018 the total value of M&A transactions in Russia increased almost three times – to a 2014-2018 record of $13.4 billion, but the number of transactions turned out to be the lowest during the last 10 years.

In particular, acquisitions of Russian assets by foreign companies decreased by 15% if measured by total number of transactions and by 11% if measured by total value of
transactions.

The trend that emerged at the end of 2017 — consolidation of transactions and increasing role of state-owned companies that make large investments - remains relevant. For example, VTB Capital was responsible for 18.2% of all M&A transactions. At the same time, the number of transactions involving small and medium-sized businesses continues to drop.

Major deals in 2018 included (source: http://mergers.akm.ru):

- Acquisition by Dubai banking group “Emirates NBD” of Sberbank’s Turkish daughter Denizbank for $3.2 billion in May 2018.
- Acquisition by VTB of 29% shares in Magnit, the second-largest retailer in Russia, for $2.45 billion in March 2018.
- Acquisition by Japan Tobacco of Donskoi Tabak for $1.7 billion in March 2018.


3. Which market sectors have been particularly active recently?

According to mass media[1], during the first ten months of 2019 the number of M&A transactions in the Russian market increased by 11% compared to the same period last year. In terms of value, however, the market continued to decline - by 14.3% compared to the first 10 months of 2018 and by 32% - compared to the same period in 2017. The average transaction price in 2019 decreased by $21 million, to $140.4 million, when compared to 2018, but still remains at a fairly high level. Five of the eight billion-dollar M&A transactions in 2019 were entered into by foreign investors acquiring Russian assets.

Major deals in 2019 included[2]:

- Total of France, China National Petroleum Corporation and Japan Arctic LNG (a joint venture of Mitsui & Co., Ltd and Japan Oil, Gas and Metals National Corporation) invested in Novatek’s “Arctic SPG-2” project. The amount of the transaction is estimated at $10.56 billion.
Acquisition by DXC Technology of Luxoft Holding Inc. (IT developer and integrator) for $2 billion in January 2019.

Merger of gas companies Wintershall (owned by the German concern BASF) and Dea Deutsche Erdöloel (owned by Russian entrepreneur Mikhail Fridman) in May 2019. The deal was estimated at $7.18 billion.

Acquisition by Socar Energoresurs (owned 60% by Azerbaijani SOCAR and 40% by Sberbank of Russia) of 80 % of shares in Antipinskiy Oil Refinery for $2.32 billion in May 2019.

Sberbank returned to Yandex its “golden share” in Yandex in December 2019.

The trend that emerged at the end of 2017 — consolidation of transactions and increasing role of state-owned companies that make large investments - remains relevant.


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

Russian M&A’s current trend is a shift of focus to small transactions related to digitalization of all sectors of the economy and increased attention to the B2C segment.

The decrease of median value amid the increase in the number of transactions was caused by a large share of transactions in the services, trade and TMT sectors. This segment came first both in terms of the number of transactions and in terms of the aggregate value of transactions (39% and 34.9% of the market, respectively). The share of transactions in the oil and gas industry dropped to 5% in number, but they remain strong in aggregate value, with the second highest result - 34.2% of the market. The other notable sector in 2019 was the IT market: (i) high-profile acquisitions of Russian businesses by foreign investors (Excelsior and Vocord were acquired by Huawei, Nginx by F5 Networks); and (ii) major domestic transactions (several joint ventures of Sberbank with Yandex Market, Rambler Group and Mail.ru Group, and acquisition of IT-grad 1 cloud by MTS).[1]


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

The main and most widespread structure of an M&A transaction involves transacting with shares (participation interests) in a target company in a privately negotiated deal. Public acquisitions (through tender offers or otherwise) are practically absent – few Russian companies are listed, and those that are listed float the number of shares that is not sufficient
to gain control of the company. However, application of squeeze-out procedures is becoming more common in complex acquisitions of major public companies.

Asset deal are rather rare, as they are usually associated with considerable formalities, including transfer of real estate, assignment of operational agreements, obtaining of required operational permits, certificates and authorisations and transfer of personnel. These formalities are usually rather complex and time consuming.

Effecting corporate reorganisations (mergers and amalgamations) requires passing through a lengthy and formalistic process and registration formalities as well. In addition, reorganisation procedures may trigger creditors’ rights to request early performance under, or termination of, obligations of entities under reorganisation. Such reorganisations may or may not follow M&A deals in Russia but are very rarely an M&A vehicle.

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?

The Russian Civil Code requires that a good faith standard should be complied with in relation to the negotiation process. Pursuant thereto, non-disclosure of reasonably expected information in the course of negotiations or provision of false information can be regarded as bad faith behavior of a party to negotiations and therefore a breach of legal requirements. These provisions, however, have not been sufficiently tested in practice yet and there is no commonly accepted position on the standards and scope of the required disclosure.

A significant number of M&A transactions (especially with involvement of foreign investors) include a due diligence stage.

If the target company is a public joint-stock company or a non-public company which has issued publicly traded bonds, it shall disclose material information related to its business (annual and quarterly reports, financial reports, information on material facts (including, without limitation, information on main shareholders, officers and material transactions), etc.). The actual scope of disclosure depends of various factors, including the number of shareholders, whether the target company has made major issues of shares, whether it has publicly traded bonds, etc. Non-public joint stock companies which have not made public issues of securities should disclose annual reports, annual financial statements, lists of affiliates. There are additional disclosure requirements for non-public companies having more than 50 shareholders.

It should be noted that during the last several years a substantial scope of information on Russian companies became available to the public on various official web-resources which can be used in the course of due diligence of a Russian company. Relevant sources include:
- The official website of the Federal Tax Service of Russia (https://www.nalog.ru). It contains a database providing access to the official information from the Russian Unified State Register of Legal Entities. It also gives access to a wide range of tools, including a search through the registers of disqualified persons, mass registration addresses\(^{[1]}\), as well as access to the information on whether a general director of a company is also general director in other companies and whether the company duly performs its tax obligations.

- The Unified Federal Register of Legally Relevant Information on Business of Legal Entities, Individual Entrepreneurs and Other Economic Agents (http://www.fedresurs.ru/). Russian Federal Law ‘On State Registration of Legal Entities and Individual Entrepreneurs’ envisages that certain facts about the business of legal entities are to be published, including, among other things, information on reorganisation, liquidation, increase/decrease of charter capital, appointment/termination of authority of sole executive body, net assets, issuance and termination of permits (licenses) for specific activities, pledge of assets of a legal entity, issuance of independent guarantees (other than by banks), acquisition of more than 20% interest in other companies, location and changes of location, certain financial information, etc..

- Certain information on litigations in which a target company participates in any status can be obtained from Russian courts’ web database at https://sudrf.ru/.

- The official website for publication of notices on bankruptcy (insolvency) (http://www.kommersant.ru/bankruptcy/).


- The Public Register of Notices of Pledge of Movable Assets (https://www.reestr-zalogov.ru/state/index). Pledges of movable assets may be registered by the notary public in this public register. This registration is not mandatory but can become important in relations with the third parties (if the pledge is registered in the public register, third parties are deemed to be aware of the relevant pledge).

\(^{[1]}\) I.e. addresses which are used for registration of several legal entities at the same time.

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

Due diligence normally covers four aspects of a company’s business:

1. Operational and business matters;
2. Tax matters;
3. Financial and accounting affairs;
4. Legal issues.

Sometimes also environmental due diligence is undertaken.

The level of detail will depend on numerous facts, such as background and experience of the target company, scale of business, general current situation in the market, and may be
limited to quick diagnostics or may include deeper analysis.

The usual scope of legal due diligence includes corporate matters, real estate and title to other substantial assets, loans and financial matters, material contracts, including contracts with key customers and suppliers, disputes and litigations, regulatory affairs and investigations and employment matters.

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

Key decision-making organs, depending on the form of the target company, are as follows:

1. Modern Russian law provides for the possibility of extensive fine tuning of decision-making mechanics in a non-public company, and relevant specifics are provided in companies’ charters. Usually, in a non-public company, a general meeting of participants (shareholders) of the company acts as the managing body with ultimate authority, including a number of issues expressly reserved to it by law, such as reorganisations (including mergers) or introduction of changes to the company’s charter. Other issues typically reserved for the general meeting (unless delegated to the board of directors, an optional body) include approval of major and interested party transactions, thresholds for which are set in the law and the charter of the company. Additional approvals can be required by the charter of the company. Everyday business is managed by a chief executive body, which may now consist of one or several persons, acting together or independently from each other. Optionally, a board of directors and/or a management board may be formed as, accordingly, supervisory or collective management authority.

2. In a public joint-stock company, the scope of issues reserved to the competence of a general shareholders’ meeting is set forth in the law and cannot be changed or delegated to the board of directors/management board. The list of reserved matters includes, among others, decisions on reorganisation, changes in the company’s charter, approval of major and interested party transactions. No additional requirements related to sales of shares can be set in the charter of a public joint-stock company. Everyday business is managed by a chief executive body, plus a company should form a board of directors as supervisory authority and may form a collective management body (management board).

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

Pursuant to Russian law, there are no specific duties of directors and/or controlling shareholders applicable to shares (interest) sales (unless they act as a party to the deal). In the event of a corporate reorganisation (merger), like in connection with other affairs involving management of the company in question, directors are required, as a general rule, to act reasonably and in good faith in the interests of the relevant company. The same obligation to act reasonably and in good faith applies to shareholders and other parties directly or indirectly controlling the company in question.
An important recent trend in the Russian court practice is substantially increased attention to the liability of controlling shareholders and members of the company’s managing bodies for damages caused to the company. Generally, potential exposure for controlling shareholders and other controlling parties is increasing both in terms of potential grounds for liability and in terms of remedies available to creditors if relevant litigation is initiated.

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

In relation to Russian companies, (i) in limited liability companies, participants have preemptive rights to acquire shares intended for sale to third parties; (ii) in non-public joint stock companies, such pre-emptive right is optional and may be provided by companies’ charters. Relevant provisions of laws require that notices of proposed sales be given through the company. Relevant pre-emptive rights do not apply in case of a sale to another participant (shareholder) of a company. There is no legislative requirement to disclose information about a prospective buyer, but such requirement is rather often included in companies’ charters. The LLC Law provides for notarization requirement in relation to pre-emptive right related notices.

Use of tag-along and drag-along provisions is rather common in shareholders’ agreements. A minority shareholder will usually want to have a tag-along entitlement as an alternative to ROFO or ROFR.

Public joint-stock companies are not allowed to grant in their charters first refusal rights to any parties, except for the right of shareholders and holders of the company’s securities to buy additional shares in certain cases. However, a party which has acquired more than 30% or 50% or 75% of shares in a public company shall make to other shareholders a mandatory offer to sell such other shareholders’ shares at the price being the average stock exchange trading price for the six months preceding the offer, or if shares have been traded for less than six months – at the price determined by a valuer.

In the event of a merger or another corporate reorganisation, minority participants of a limited liability company can veto relevant resolutions. In a situation with a joint stock company, shareholders who voted against a resolution on reorganisation or did not participate in the voting are entitled to require purchase of their stakes by the company.

Usually, employees have no say in M&A matters.

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

Conditionality of an M&A transaction is an approach commonly accepted by the market.

The Russian Civil Code explicitly recognises the concept of conditioned performance of an
obligation, providing, *inter alia*, that potential conditions may be fully dependent on the actions of one of the parties to an obligation. The same conditionality may be agreed in relation to variation or termination of a contractual obligation.

Quite often, share purchase agreements contain extensive and complicated conditions precedent relating to (i) separation of non-target companies and businesses; (ii) mitigation of business and legal risks (for example, obtaining of a real estate development permit and/or permission to connect to utility lines); (iii) restructuring of the target’s financial obligations, etc. Generally, sellers are more eager to accept risk mitigation obligations in the form of a condition precedent rather than, for example, to give a relevant indemnity.

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

   Article 434.1 ‘Contractual negotiations’ of the Civil Code of the Russian Federation requires bona fide conduct of negotiations and establishes so-called pre-contractual liability of a party to negotiations that is acting in bad faith.

   Unreasonable and unexpected withdrawal from negotiations in a situation where the other party cannot reasonably predict such termination of negotiations is now viewed as bad faith negotiating and may result in a breaching party’s liability in the form of payment of other parties’ damages.

   In addition, the Civil Code now explicitly provides that parties to negotiations are entitled to enter into an agreement in relation to conduct of contractual negotiations, setting out relevant procedures and other covenants of the parties, including, *inter alia*, exclusivity undertakings. Such an agreement may provide for a penalty in the event of breach of relevant undertakings.

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

   The most common deal protection and cost coverage mechanism is a security deposit, whereby a buyer deposits with a seller an agreed amount in cash which is retained by the seller if the buyer unreasonably refuses to complete the transaction or is returned by the seller if the seller unreasonably withdraws from the negotiations (sometimes in double amount). This type of security is explicitly provided for by Russian law.

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

   The majority of M&A deals provide for cash consideration for the shares being purchased.

   However, in recent years the market finds itself in a situation of low availability of loan financing. In addition, real estate development and certain other businesses are
overburdened with debt. As a result, we are aware of several substantial deals which were busted because of the buyer’s inability to secure financing for the transaction.

Accordingly, alternative consideration arrangements are encountered more often, providing, for example, for the buyer’s assistance or investment in relation to another project, share exchange transactions, etc. At the same time, sellers are sometimes expected to provide long term post-completion support to the sold business, and post-completion operational results influence the ultimate consideration obtained by the seller.

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

Public disclosure is required in the following instances:

- Public disclosure by legal entities and sole entrepreneurs of certain facts about their business (e.g. reorganisation, liquidation, increase/decrease of charter capital) in the Unified federal register of legally relevant information on business of legal entities, sole entrepreneurs and other economic agents (http://www.fedresurs.ru/).
- Public disclosure of information on acquisition of more than 20% of shares/participation interest in a company and reorganisation of legal entities (including mergers, accessions, etc.) is required.
- Public companies and certain non-public companies having a considerable number of stakeholders should also disclose information about material facts (i.e. facts that if disclosed can materially affect the price of the issuer’s securities and their listed price), including, without limitation, information on:
  - information on acquisitions/sale of shares (or obtaining of indirect control over votes granted by relevant shares, including, without limitation, under a voting or shareholders agreement) each time any of the following thresholds is reached: 5%, 10%, 15%, 20%, 25%, 30%, 50%, 75% or 95% of the company’s shares;
  - sending by a joint-stock company of notification on reorganisation to the state registration authority;
  - acquisition/termination of control over a material controlled legal entity;
  - persons that gain/cease to exercise control over a joint-stock company;
  - receipt/making of voluntary public offer by a person upon acquisition of more than 30% (50%, 75%) of shares of a public joint-stock company, mandatory public offer by a person that acquired more than 30% (50%, 75%) of shares of a public joint-stock company made to the remaining shareholders;
  - mandatory redemption of shares by a person that acquired 95% of shares of a public joint-stock company following request for redemption by the remaining shareholders or a public offer made by the person that acquired 95% of shares;
  - entering into transactions the value of which is equal to or exceeds 10% of book value of a joint-stock company’s assets.

16. **At what stage of negotiation is public disclosure required or customary?**
Other than existing mandatory requirements (please see in question 15 above), there are no customarily accepted standards of disclosure. In certain cases, disclosure is made at the stage of signing of binding contractual documents. In others – upon completion of a transaction.

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

There is no pre-set maximum period for negotiations and/or due diligence. Usually, the process of entering into and completing an M&A transaction takes from two months to half a year or even longer in the case of complex deals including detailed due diligence.

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

Non-public companies can specify the sale price of shares (interest) being purchased within the scope of implementation of pre-emptive rights in the charter. The price can be specified as a fixed amount or as a method to determine on a case-by-case basis.

Notably, pursuant to Federal law ‘On joint-stock companies,’ a court may disregard the price fixed in the charter of a non-public joint-stock company in a dispute if it is below the market price as of the date of sale.

Public companies cannot set a minimum price of their shares.

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

There is no general restriction applicable to financial assistance. In practice, subsidiaries are rather often issuing corporate guarantees to benefit their parents and are lending cash to parents.

However, where a parent is itself a company with several shareholders, such type of transactions may be qualified as interested party transactions for the parent company, requiring approval by non-interested directors or shareholders. The same will be applicable to subsidiaries rendering financial assistance if they are not fully controlled by the parent to which such assistance is being rendered. It should be noted as well that minority participants (shareholders) in a subsidiary company in certain cases may be entitled to claim for compensation of damages caused to a subsidiary by a parent company.

20. Which governing law is customarily used on acquisitions?

Use of English law is rather widespread in Russia, because a considerable number of Russian transactions are still being implemented through an off-shore holding company.
Nowadays, however, after the Civil Code reform, use of Russian laws in M&A and joint venture transactions tends to become more common. This is driven by liberalisation of Russian law which is now becoming more understandable and comfortable for foreign investors and has been supplemented with such instruments as warranties, representations and indemnities.

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

Russian law does not require the buyer to produce any public-facing documentation, except as referred to in the response to question 15 and except as mentioned below.

In the event of acquisition of more than 30% of shares of a public joint-stock company, the buyer is required to submit its offer (whether mandatory of voluntary) to the Bank of Russia for preliminary review before its delivery to the target.

22. **What formalities are required in order to document a transfer of shares, including any local transfer taxes or duties?**

Under Russian law, formalities associated with registration of transfer of title would differ depending on the legal organisational form of a target company.

The right to register transfer of title to shares in joint-stock companies is vested with professional independent registrars or, as the case may be, depositaries (nominal holders).

Although overall approach to registration may slightly vary from one registrar/depositary to another, the general rule is that in order to register transfer of shares, the buyer shall provide to the registrar/depositary a set of required documents, which usually include the seller’s transfer instruction as well as a set of documents with respect to the buyer required to open the relevant personal account with the registrar / depositary (usually includes the new shareholder’s questionnaire, charter, resolution on establishment, etc.).

With regard to limited liability companies, transfer of participation interests requires mandatory certification by a notary public of the relevant participatory interest sale and purchase agreement. Once notarial certification is in place, the relevant title change is to be entered into the Unified State Register of Legal Entities. In order to effect such entry, an application drafted pursuant to an approved form is submitted within 2 (two) business days of certification of the agreement to the registration authorities, which then have 5 (five) business days to register the transfer of title to participatory interest.

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

The notion of ‘hostile acquisition’ has a very different meaning in Russia. We are talking
about raiders taking over companies by questionable (sometimes illegal) means, rather than through buy-ups of shares of publicly listed companies. Reportedly, such raids are still relatively frequent in the Russian market. However, governmental policy, including introduction of a notarisation requirement in connection with transfers of participation interests in limited liability companies, is intended to narrow the field for raiders’ takeovers of businesses.

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

From the corporate standpoint, certain protections can be provided by foundation documents of an entity. In certain cases it is possible to provide for the maximum member’s share in the company in question or provide that any sale of shares to a third party requires other members’ consent. These options, however, are working mostly for non-public companies.

Under Russian labour law, unilateral termination of employment of the sole executive body (CEO) (as well as his/her deputies and the chief accountant) at the initiative of the target company triggers the right of the sole executive body (his/her deputies and the chief accountant) to receive compensation (a certain equivalent of ‘golden parachute’) in the amount of at least 3 (three) monthly salaries.

The above provision, while establishing the minimum compensation, does not restrict the maximum amount of the compensation.

Despite the above, and given the fact that the practice of payment of ‘golden parachutes’ to management has been strongly criticised (e.g. the case of Ashurkov, Savchenko vs OAO ‘Rostelekom’ (case No. A56-31942/2013)), the Supreme Court of the Russian Federation has established that there should be a balance between the interests of the management and the interests of the shareholders, and the amount of ‘golden parachute’ should not infringe the rights and lawful interests of the shareholders and of the company itself.

The above position, among other things, has resulted in imposition of a limit of 3 (three) monthly salaries on compensation payable to sole executive bodies (their deputies and the chief accountant) of state corporations, state companies or companies at least 50% of which is owned by the Russian Federation or municipal entities.

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

Pursuant to Federal law ‘On joint-stock companies,’ the person that acquires more than 30%, 50% or 75% of shares of a public joint-stock company (taking into account the shares already owned by the acquirer and its affiliates) has to make a tender offer to other shareholders of the company to buy out their remaining shares of the same category.
The person that acquires more than 95% of shares of a public joint-stock company as a result of the above mandatory tender offer or a voluntary offer, is obliged to buy out the remaining shares of the company (and has the right to compel such buy-out).

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

In addition to the above opportunities to sell their shares to the buyer, minority shareholders have some general rights that are designed to protect their interests in the company.

Among these in joint stock companies are certain matters reserved to general meetings of shareholders that require at least 3/4 of votes to pass a decision, minority shareholders’ right to nominate candidates to board of directors (if they hold at least 2% of voting shares). In certain cases minority shareholders are entitled to file court claims against the company itself to overturn decisions made by the general meeting or the board of directors.

In limited liability companies, minority participants generally have broader veto rights, being able to block any resolution on reorganisation or liquidation of the company, acceptance of new members, capitalisation of shareholders’ loans (which resolutions require unanimous consent). Amendments to a charter require 2/3 majority voting.

Please note that additional voting requirements (and, accordingly, veto rights) in non-public companies may be set forth by a company’s charter.

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

The person that acquires more than 95% of shares of a public joint-stock company or the person that was the sole shareholder of a reorganised (merged) company that became the holder of at least 95% of shares of the new public joint-stock company created as a result of such reorganisation, is entitled to demand buy-out of all the remaining shares of such public joint-stock company.