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

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 key rules/laws relevant to M&A are the Companies Act (ZGD-1), the Takeovers Act (ZPre-1), the Market in Financial Instruments Act (ZTFI-1), the Book Entry Securities Act (ZNVP-1), the Prevention of Restriction of Competition Act (ZPOmK-1) and the Ljubljana Stock Exchange Rules.

The key regulators are the Slovenian Competition Protection Agency (AVK) and the Securities Market Agency (ATVP).

2. What is the current state of the market?

The current situation in the Slovenian market remains very desirable and attractive for domestic and foreign investors which are willing to participate in M&A transactions. Both investors and sellers have improved confidence in the economy which is encouraged by low interest rates. Consequently, investors have high levels of cash reserves and are therefore seeking more and different ways to deploy capital.

3. Which market sectors have been particularly active recently?

In Slovenia we were last year witnessing the biggest M&A transaction in the financial sector. There were also some noticeable M&A transactions in the industrial, consumer, technology and utilities sectors.

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

We believe that the biggest risk which could negatively influence M&A activity in Slovenia over the next two years is political instability in Slovenia, which is increasing (resignation of prime minister in January 2020), and in other European countries. Slovenia as a small economy is very exposed to external factors stemming from other countries usually members of the European Union. We are also witnessing a turnaround in US policy which, as one of the biggest economies could also mean a greater risk for the European economy as a whole. There is also a threat of volatility in global capital markets which cannot be predicted and prevented but it still must be taken into account. We also estimate that the monetary policy of the European Central Bank could have a huge influence on M&A activity over the next 2 years.

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

The key means of effecting the acquisition of a publicly traded company is through a takeover in accordance with the provisions of the Takeovers Act (ZPre-1), which regulate the takeover bid procedure. There are two types of possible takeover bids, namely the voluntary takeover
bid and the mandatory takeover bid, which is applicable when the acquirer reaches the threshold of a 1/3 share of all voting rights in the 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?

Some information relating to the target company will be publicly available within the Companies Register accessible on the website of the Agency of the Republic of Slovenia for Public Legal Records and Related Services (AJPES), for example information about the managing directors, authorized signatories, share capital as well as some corporate documentation for example the articles of association and certain general assembly resolutions. Annual reports of business entities are also publicly available on the website of AJPES. In case it is known that the target company owns certain real estate, it is also possible to obtain additional information from the publicly accessible land register.

The target company is not obliged to disclose diligence related information; however, this can be done voluntarily upon the decision of the management that is in the best interest of the company to achieve a better purchase price or to avoid potential warranty claims. Since the management is obliged to protect the business secrets of the company non-disclosure agreements are regularly used when information is being disclosed to a potential acquirer.

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

The level of detail to which due diligence is undertaken in each case depends on the particular agreement of the parties. The content and scope will depend upon circumstances such as available time, the value of the transaction, the business sector of the target company and the amount of costs the parties are willing to incur for this purpose. The higher the value of the transaction and the higher the risk undertaken by the buyer in case of realization of the purchase, the bigger the need for a thorough and detailed due diligence procedure. Often a two-part procedure is carried out, whereby in the first instance a limited high-level overview is performed to identify any potential red flags, whereupon the decision is made whether a more detailed analysis should be conducted or not.

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

In a private limited company, the managing directors are responsible for the day to day business. The articles of association may provide for a supervisory board; however, such an organ is not obligatory. In accordance with Article 505 of Companies Act (ZGD-1) shareholders decide on the adoption of the annual report and the use of accumulated profit, request for payment of basic inputs, payment and return of subsequent payments, division and termination of business shares, setting up and recalling managing directors, measures to review and supervise the work of managing directors and enforcement of the company’s
claims against managing directors. According to Article 481 of ZGD-1 shareholders have a pre-emptive right to acquire business shares before other persons; however, this right can be excluded in articles of association. In line with Article 620 of ZGD-1 mergers must be approved by a resolution of the shareholders adopted with at least a three-quarters majority of votes, whereby the articles of association may stipulate a larger majority and lay down other requirements. Unless provided by the articles of association, shareholders of the target company do not have other approval rights.

Public limited companies are governed either by one-tier board system or a two-tier board system. The management board in a one-tier board system and board of directors in a two-tier board system are responsible for the management of the company. In a one-tier board system the board of directors also has supervisory authority. In a two-tier board system, the managing board is supervised by a supervisory board. Shareholders exercise their rights at the general meeting and are not entitled to issue instructions to the board of directors or management board, which generally acts independently.

In accordance with Article 293 of the Companies Act (ZGD-1) the general meeting in a public limited company decides on the adoption of the annual report, the use of accumulated profit, appointment and recall of members of the supervisory and management boards, granting discharge to the members of the management or supervisory bodies, amendments to the articles of association, measures to increase and reduce capital, the dissolution of the company and statutory restructuring. In line with Article 585 of ZGD-1 mergers must be approved by a resolution of the shareholders adopted with at least a three-quarters majority of the subscribed capital represented in the voting, whereby the articles of association may stipulate a larger majority and lay down other requirements. A transfer of assets in the value of at least 25% of its total assets is also subject to approval by the general meeting of a public limited company with a 75% majority vote. However, this restriction is only internal and does not have any legal effect against third parties. The articles of association may also set forth that the general meeting of the target company must approve an M&A transaction with a certain majority of votes.

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

In line with Article 263 of the Companies Act (ZGD-1) applicable to both private and public limited companies’ members of the management and supervisory bodies must in performance of their duties act with the diligence of a conscientious and fair manager and safeguard the company’s trade secrets. They are jointly and severally liable to the company for damage arising from violation of their duties unless they can show that they fulfilled their duties fairly and conscientiously or that their action was based on a lawful resolution of the general meeting. The liability of the members of the management shall not be excluded even though the act has been approved by the supervisory board or the board of directors.

In accordance with Article 264 of ZGD-1 which also applies to both private and public limited
companies persons who use their influence (for example controlling shareholders) to induce the members of the management or supervisory bodies, the procurator or proxy to act to the detriment of the company or its shareholders are liable for the resulting damage.

In case of a public takeover the company’s management or supervisory bodies must according to Article 47 of the Takeovers Act (ZPre-1) refrain from certain actions from the date of receipt of the notice of the intended takeover, such as increasing the company’s share capital, acquiring own shares and extraordinary transactions that could impede the company’s future operations or might impede the bid.

As regards the controlling shareholders of a target company Article 547 of ZGD-1 sets forth that if a controlling company induces a controlled company to carry out a legal transaction that is detrimental to it, or to perform or omit performing an act to its own detriment without actually compensating for the loss by the end of the financial year, or without providing the right to benefits determined as compensation, the controlling company shall compensate the controlled company for damage. In addition to the controlling company, representatives of the controlling company shall also be jointly and severally liable in such case.

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

The Worker Participation in Management Act (ZSDU) requires the employer to consult the employees in case of major ownership changes. The employer must firstly notify the employees about the planned change in ownership. Employees should then be invited to reply to the notice. The notice should be sent to the employees at least 30 days prior to the closing of the transaction, leaving them at least 15 days to reply to the notice.

In case of a public takeover, the management of the target company and the acquirer must inform the employees about the takeover intent. The employees must also be given access to the prospectus. The management of the target company must provide the employees with its opinion on the takeover offer and publish the employees’ opinion on the effects of the takeover offer on employment.

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

Certain conditions regarding regulatory approvals are mandatory in both public and private M&A. In public M&A deals a takeover offer may only contain conditions expressly allowed by the Takeovers Act (ZPre-1). Acquirers may condition the success of their takeover offers upon a certain acceptance threshold (Article 21 of ZPre-1), and such threshold may generally be lowered during the takeover process, provided that some timing restrictions are respected. If there are any consent or approval requirements for the acquisition, the offer has to contain a condition subsequent, by which it shall be revoked if such consent or approval is not issued or is denied until the expiry of the period for acceptance of the offer (Article 20 of ZPre-1).
Financing may not be conditional according to Article 36 of Takeovers Act (ZPre-1). Prior to the announcement of a takeover bid, the offeror shall deposit with the Central Securities Clearing Corporation (CDD) the sum required for payment of all securities concerned by the takeover bid. The offeror may, instead of depositing the sum, deposit a guarantee by a bank established in a EU Member State, whereby the bank unconditionally undertakes to pay, on the first demand of CDD and without objections, the sum necessary to cover the obligation of payment to accepting parties, with a validity period of at least 30 days after the period for payment has expired.

Acquisitions also often include conditions related to obtaining consent of creditors or repayment of loans as well as compliance with certain administrative rules (for example environmental law requirements).

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

The acquirer and the seller usually sign a letter of intent which can include an agreement on a limited period of exclusivity of negotiations. An agreement on break-up fees is generally allowed as well. It should also be considered that the Slovenian Obligations Code (OZ) provides in Article 20 that a party that has negotiated without the intent of concluding a contract shall be liable for any damage inflicted on the other party.

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

Deal protection and cost coverage mechanisms can be contractually stipulated and apply if the transaction with the acquirer is not completed, but this does not occur frequently in Slovenia.

According to Article 20 of the Obligations Code (OZ) a party that has negotiated without the intent to conclude a contract and a party that negotiated with the intent to conclude a contract but abandons the intent without justifiable grounds, thus inflicting damage on the other party shall be liable for any damage incurred by the other party due to unfair negotiations.

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

The most commonly used form of consideration used is cash consideration. To a lesser extent securities and debt claims (debt/equity swaps) are also used.

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

In accordance with Article 147 of the Market in Financial Instruments Act (ZTFI-1) and pursuant to the Rules of the Ljubljana Stock Exchange a public company shall publish the
information from the notice of changes in major holdings as soon as possible and at the latest on the third trading day after receipt of the notice from the acquirer. The thresholds of major holdings are the holdings of voting rights in each public company which belong to each individual shareholder and represent 5, 10, 15, 20, 25 percent, 1/3, 50 or 75 percent of total voting rights in a public company.

Article 24 of the Takeovers Act (ZPre-1) stipulates that in case of a planned acquisition of a direct stake in a publicly traded (target) company that exceeds 1/3 of voting rights, the Securities Market Agency (ATVP), the target company’s management, the Slovenian Competition Protection Agency (AVK) and the public shall be notified. The offeror who has achieved the takeover threshold shall fulfil the obligations of notification and public announcement within three business days of the day in which such threshold was achieved.

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

If the condition set in Article 24 of the Takeovers Act (ZPre-1) is not fulfilled (as explained in answer No. 15) then public disclosure is not required in the stage of negotiation. However, if the circumstances on the capital market indicate that the offeror intends to carry out a takeover and in particular:

1. If there exists an agreement on takeover between two persons;
2. If the price of a security has considerably increased on the regulated market and this would lead to a conclusion that a takeover bid is about to be launched; or
3. If the competent body of the offeror has set a final price in a takeover bid which has not yet been announced

The Securities Market Agency (ATVP) may request that such offeror makes a clear statement whether he/she intends to make a takeover bid, within 24 hours of the receipt of the request by ATVP.

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

There is no maximum time period for negotiations or due diligence. When a bidder formally launches an offer, a timetable stipulated in Takeovers Act (ZPre-1) has to be respected until completion of the transaction. The time allowed for acceptance of a takeover bid may not be less than 28 days nor more than 60 days from the date of publication of the bid; nonetheless the time for acceptance of a takeover bid can be extended in certain circumstances (for example in case a competitive bid has been made).

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

In accordance with Article 17 of the Takeovers Act (ZPre-1) the price offered in the takeover bid shall not be less than the highest price paid for the same securities by the offeror in the
period of 12 months prior to the announcement of such bid.

Many private M&A transactions contain the determination of a final purchase price based on closing accounts. In such cases sellers often seek to set a minimum price that must be paid for the shares.

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

In case the target company is a public limited company such company is not allowed to secure advance payments or loans for acquisition of its shares. Such financial assistance is namely limited by the Companies Act (ZGD-1) in Article 248, which sets forth that a legal transaction by which a company secures an advance payment or a loan for the acquisition of its own shares or any other transaction with a comparable effect shall be void. Article 227 of ZGD-1 further limits such financial assistance with the provision prohibiting the refunding of equity contributions or payment of interest on equity contributions, which includes the prohibition of concealed payments of profits. Furthermore, according to Article 32 of the Takeovers Act (ZPre-1) the Securities Market Agency (ATVP) only issues the authorization for a takeover bid if the offeror provides evidence that for the payment of securities that are subject of the bid he did not, directly or indirectly, give or pledge as collateral or insurance securities, or other form of property of the target company that are not the property of the offeror.

In case the target company is a private limited company the limitations for financial assistance are less strict, as Article 495 of ZGD-1 only provides for the maintenance of share capital and tied-up reserves.

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

Acquisition agreements are customarily governed by Slovenian law. They can also be governed by foreign law, for example the law of the acquiring company, or the law of a neutral third country; however, in such cases some obligatory rules of Slovenian corporate law apply nonetheless, for example certain rules on the transfer of shares from the Companies Act (ZGD-1) and the Book Entry Securities Act (ZNVP-1), the Market in Financial Instruments Act (ZTFI-1) and the Takeovers Act (ZPre-1). Other contractual elements such as for example liability, warranties and indemnification can be regulated by foreign law.

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

The offeror shall announce the takeover bid simultaneously with the offer document (the prospectus) within 30 days at the latest after the announcement of the intention of a takeover. The prospectus shall contain all the information needed by holders of securities which will allow them to make an informed decision concerning the acceptance of the takeover bid. All requirements of the prospectus are listed in the Article 28 of the Takeovers
Act (ZPre-1). The offeror shall publish also a notice of takeover bid results within three days of the expiry of the time limit for accepting the takeover bid. All requirements of the notice of takeover results are listed in the Article 54 of the Takeovers Act (ZPre-1).

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

In case of a private limited company the share purchase agreement must be concluded in the form of a notarial deed. The buyer acquires the business share after conclusion of the share purchase agreement. The transfer of a business share is formally finalized with the entry of the buyer as the holder of the business share in the court register as the entry into the register is constitutive in effect.

In case of a public limited company the acquisition of shares is formally finalized by the transfer of shares in the central registry of securities that is managed by the Central Securities Clearing Corporation (CDD).

Sellers of shares who are tax residents and also who are tax non-residents of Slovenia are liable to pay personal income tax on any profits made from the sale of shares in companies set up in accordance with the regulations of Slovenia. Legal entities pay tax in accordance with corporate income tax regulation. No local duties are applicable for a transfer of shares.

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

Hostile acquisitions are not a common feature in Slovenia; however, they cannot be completely excluded. Buyers usually prefer to find agreement with the management of the target company and receive information which could help them to determine the right price for the shares in the target company and to correctly predict the company’s business future. On the other hand hostile acquisition is used when the management of the acquirer company evaluates that the target company management will not work in their favor. This approach is more common for domestic buyers which usually personally know the management of the target company and is very rare for foreign buyers.

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

According to Article 47 of the Takeovers Act (ZPre-1) the company's management or supervisory bodies must be passive from the date of receipt of the notice of the intended takeover. The management of the target company requires a resolution of the general meeting of shareholders for most of the protective measures. Therefore, the management in the case of hostile approach usually starts to spread the news about the inadequacy of the offer (e.g. low offering price, job loss especially when shareholders work in the target company, suggestions to wait for a better offer). Management could also try to find a “White Knight”, start litigation proceeding against the buyer, or try a “Pac-Man” defense. However, the most used protective approach in Slovenia by the management of the target company is
to try to convince regulators (i.e. Slovenian Competition Protection Agency (AVK) and the Securities Market Agency (ATVP)) that the potential acquisition is bad for the market.

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

In cases where the Takeovers Act (ZPre-1) is applicable, namely when the target company is a listed public limited company or an unlisted public limited company with at least 250 shareholders or total capital of not less than 4 million EUR, the acquirer of a takeover threshold of a 1/3 share of all voting rights in the company is obliged to offer to buy shares from all the remaining shareholders at a price not lower than the one at which the 1/3 threshold was acquired.

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

In situations where the majority shareholder holds at least 90 percent of the share capital in a public limited company one or more minority shareholders may request that the majority shareholder offers such minority shareholders appropriate cash compensation for the purchase of all of the remaining shares within one month of receipt of the request (right of minority shareholders to exit the company or minority shareholder sell-out). If the cash consideration offered is not appropriate, each minority shareholder may propose that the court determine the appropriate level of consideration. The same shall apply if the majority shareholder offers no compensation or offers it in an inappropriate manner.

Furthermore, on a proposal by shareholders whose holdings total not less than one tenth of the subscribed capital or a nominal amount or the pertaining amount of subscribed capital totals at least 400,000,00 EUR the court may appoint a special auditor with the aim of verifying the foundation procedures and management of individual operations of a company or an extraordinary auditor with the aim of verifying a possible underestimate of items in the annual report.

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

Yes, at the proposal of the majority shareholder possessing at least 90 percent of the share capital in a public limited company the general meeting of a public limited company may adopt a resolution to transfer shares of the other minority shareholders to the majority shareholder against the payment of appropriate cash compensation (exclusion of minority shareholders or minority shareholder squeeze-out).