

Are They Authorised to Make Cross-Border Transfers of HR Data?

It is important that the provider is authorised to transfer the correct type of data across international lines. The Privacy Shield is one way a US-based company can obtain authorisation to transfer personal data out of the EEA.

When a company certifies to the Privacy Shield, it commits to having a uniform methodology to approach, manage, and protect data that originates in the EEA. US companies

may certify under the Privacy Shield for Non-HR Data, and for HR Data. Most HR services providers deal with human resources data, so they should certify their compliance with Privacy Shield accordingly. Evaluate whether the provider's international transfer mechanism covers the correct type of data.

Importance of Privacy Notices

Many global privacy laws, including GDPR, require the data subject to be informed of the manner in which personal data will be collected and

processed. Privacy notices, made available to the data subject at the time of collection, are critical to recognising the data subject's rights under these laws. Ask the provider to show you their privacy notices for review, and to explain their data-collection practices.

Understanding an organisation's data-privacy obligations, including the types of data those obligations attach to, is an essential component of any compliance programme. Asking questions about the issue included above can help focus a growing company on important aspects of its relationship with a third-party employer.

M&A Trends with Regards to COVID-19 in Russia

By Kristina Ikayeva

The COVID-19 pandemic and the unprecedented restrictive measures introduced by the Russian government to combat the virus have had, and continue to have, a significant impact on various aspects of business. M&A transactions are certainly not an exception to this.

The first quarter of 2020 did not fully reflect the crisis caused by the pandemic in the M&A market. Statistics show that in the first quarter the M&A market showed an increase in activity compared to the same period of the last year. However, this was most likely due to the agreements of the parties to M&A transactions on their closing dates, the implementation of which occurred in the first quarter of 2020. Later, the COVID-19 pandemic caused business



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to make adjustments, and since the beginning of the period of restrictive measures (**quarantine**), introduced by the executive Order of the President of Russia on 02 April 2020, there has been a significant decrease in the number of M&A transactions, and this tendency is expected to remain till the end of this year.

Meanwhile, active growth in M&A transactions is expected in those industries that maintained business activity during the period

of quarantine: industries such as medicine/pharmaceuticals, online services, and IT. A rise in M&A activity is also expected in those industries and for those companies that require redistribution of property due to financial difficulties caused by restrictive measures. Several key trends that will determine M&A activity in 2020 in connection with the pandemic should be highlighted.

First, the variety of sectors of the economy in which M&A transactions are concluded has been reduced and will continue to be. This trend will increase as investors are less interested in the industries that suffered during the period of quarantine. Nevertheless, M&A activity should increase in industries that are able to actively work and develop



during the period of quarantine. Second, foreign participation in M&A transactions will be in decline. This is due not only to the negative consequences of quarantine, but also to continuing sanctions against Russia. It is expected that the United States and European Union will impose tougher sanctions and Western and European investors will be extremely cautious about getting involved with Russian business. At the same time, sanctions open access to the Russian market for other investors, for example, from Asia (subject to limitations associated with the US secondary sanctions).

Third, a change in the structure of M&A transactions is expected. M&A transactions are usually structured

as a sale of company shares (share deal) when the buyer acquires an active business with its assets and liabilities. As a result of quarantine and the crisis, it is expected that M&A transactions will be structured as a sale of assets (asset deal), and not as a sale of shares (share deal). The buyer will seek to acquire only the needed assets that bring benefits. Thus, uncollectible receivables, disputed payables, fines, litigation, and other liabilities will remain with the company itself and will not be transferred to the buyer.

Fourth, the conditions for closing transactions will be tightened. This trend is already actively in place, and not only in relation to M&A transactions. The conditions for concluding a transaction are dependent on issues that are studied as part of the due diligence of the target company. The buyer seeks to assess the degree of negative consequences for the target in connection with the crisis, including the following issues: risks of non-fulfilment or termination of key agreements, bad receivables with poor possibility of collection, debts, and disputed accounts payable.

The buyer should also determine whether the target company belongs to the sectors affected by the COVID-19 pandemic, since the government provides support for recovery and development for such companies. Also, special attention should be paid to the conditions of exclusion and limitation of liability, and the representations of the seller and the target company as for the consequences of restrictive measures affecting the financial condition of the target.

Fifth, there will be a change in the procedure for evaluating a business and, accordingly, determining the value of a transaction. When determining the value of a business, mechanisms for adjusting the price of a business will be more actively used based on the financial condition of the company at the closing date of the transaction, and not, for example, at the date of the latest reporting. Such an evaluation of the business will most realistically reflect the financial condition of the target and will ensure the interests of the buyer in terms of the fair value of the acquired business.

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It is evident that negative consequences of restrictive measures and the ongoing crisis will push sellers to look for sources of investment capital to prevent the undesirable ramifications. Many companies have seen their financial indicators abruptly worsen, so multiple transactions will be of a forced nature. Therefore,

sellers will be interested in merging with the major players in the relevant markets, including on unfavourable conditions, in order to save their businesses. Otherwise, sellers will have to sell a non-core business, at a below-market price, so that the proceeds of the sale are used as urgent support for the main business.

As for potential business acquirers, the falling price of the assets will certainly create new possibilities for them. Investors who are ready to take on increased risks in a situation where the target business is in a situation of uncertainty, due to the consequences of restrictive measures, will be able to purchase the asset at a low cost.

Undertakings for Collective Investment: Albania Adapts Itself to European Standards

By **Evis Jani**

The Purpose of the New Law

On 30 April 2020, the Albanian parliament approved Law 56/2020 "On the Undertakings for Collective Investment" (**Law 56/2020**) which entered into force on 20 June 2020. This legal change is being undertaken

at a time when the market dynamics of investment funds have undergone major developments that do not meet the requirements of European markets.

Law 56/2020 regulates the establishment, registration, and operation of (i) fund managing companies, (ii) managing companies of undertakings for collective investment with public offer and alternative investment fund managers (**AIFM**), (iii) depositary of undertakings for collective investment, and (iv) undertakings for collective investment (**UCI**).

Further, the new law regulates the sale and marketing of UCI established in Albania or abroad, through local and foreign fund managing companies, and marketing and management of UCI outside Albania by management companies established in Albania.

Law 56/2020 intends partial harmonisation of Albanian



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legislation with the EU directives, namely, Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations, and administrative provisions relating to undertakings for collective investment in transferable securities (**UCITS Directive**), and Directive 2011/61/EU of the European Parliament and of the Council of 08 June 2011 on alternative investment fund managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (**AIFMD Directive**).

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