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Legal alert

Updated guidelines on clearing share deals with foreign elements

The new protocol No. 143/4 of the meeting of the Government Sub-Commission was published on 27 March 2023 amending the guidelines on clearing share deals with foreign elements.

Previously according to protocol No. 118/1 dated 30 December 2022, the Sub-Commission provided guidance that one of the requirements for clearing such transactions was either (i) including terms on payment of the purchase price in installments for at least 1-2 years **OR** (ii) making a voluntary contribution of 10% of the purchase price to the federal budget.

According to the new guidelines, the requirement for making a voluntary contribution should be applied in most transactions regardless of the payment terms. Including a deferred payment mechanism (installments) into the transaction documents is still admissible and may be considered by the Sub-Commission. However, it is no longer a viable alternative to the contribution requirement according to the new guidelines.

The approach to calculating the voluntary contribution has also been the subject of some adjustments, and there are now two possible scenarios:

1

The contribution amounts to a minimum of **10% of half of the valuation of the target business based on the independent appraiser's report** (i.e., 5% of the market valuation).

2

If the discount included into the purchase price exceeds 90%, the contribution amounts to a minimum of **10% of the full figure of the target business' valuation based on the independent appraiser's report.**

Note that another requirement of the Sub-Commission is that the purchase price shall include a 50% discount to the valuation figure, so it is similar to the previous rule on 10% of the purchase price.

Discount	50-90%	90%+
Voluntary contribution	>5%	>10%

basis for calculation = market valuation (report of the independent appraiser + report of the self-regulated organization of appraisers)

Consequently, the voluntary contribution requirements will likely be applied to the majority of the transactions subject to clearance. For transactions whose purchase price is derived from the nominal value of shares or is otherwise substantially discounted, the contribution has now significantly increased.

In addition, the Sub-Commission recommends in the new guidelines for the independent appraiser's report to be confirmed by the self-regulated organization of appraisers.

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