



Mergers and Acquisitions: Law and Practice

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WHAT IS M&A?

- **M&A** is an abbreviation of **mergers and acquisitions**, which refers to the aspect of corporate strategy, corporate finance and management dealing with the buying, selling and combining of different companies

HOW M&A CAN BE ACHIEVED IN AZERBAIJAN?

- **Acquisition** – Company A acquires controlling shareholding in Company B
- **Consolidation** – Company A and Company B merge to create Company C
- **Merger** – Company A sells its shares to, and merges into, Company B. The shares in Company A are converted into shares in Company B, and the latter ceases to exist

REGULATORY APPROVALS

- Acquiring a qualified shareholding in a **bank** (10%, 20%, 33%, and 50%) requires the consent of the Azerbaijani Central Bank
- Acquiring a qualified shareholding (more than 20%) in an **insurance company** requires the consent of the Ministry of Finance
- Acquiring a qualified shareholding (more than 20%) in **any company** satisfying any of the below thresholds requires the consent of the State Antimonopoly Service
 - ▶ the aggregate balance sheet value of the assets of the acquirer & the target exceeds 75,000 multiples of AZN 75;
 - ▶ the share of the acquirer OR the target in any particular market in Azerbaijan exceeds 35%;
 - ▶ the acquirer controls the seller.

NOTHING IS CERTAIN BUT DEATH & TAXES: PRACTICAL IMPLICATIONS

- **Registration** of a share transfer and / or amendments to the charter with the Ministry of Taxes (MOT)
 - ▶ Requires proof that all applicable taxes have been paid by the seller or withheld by the buyer
 - ▶ creates problems if both the seller and the buyer are non-residents, as a tax registration ID must be obtained in order to pay / withhold taxes in Azerbaijan
 - ▶ registration of non-resident individuals with the MOT requires, among other things, (i) an investment of AZN 500,000; or (ii) the deposit AZN 50,000 with a local bank

WHY BOTHER?

- Empirical evidence suggests that **M&A does create wealth*** by:
 - ▶ **Economies of Scale**, referring to the fact that a combined company can often reduce its fixed costs by removing duplicate departments or operations, lowering the costs of the company relative to the same revenue stream, thus increasing profit margins.
 - ▶ **Economies of Scope**, referring to the efficiencies primarily associated with demand-side changes, e.g. increasing or decreasing the scope of marketing and distribution of different types of products.
 - ▶ **Market Power**, referring to the fact that a combination of two companies can create market power that enables the combined firm to increase its market share and, thus, revenues.

*According to Robert G. Bruner, Applied Mergers and Acquisitions at 37, Exhibit 3.3

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