

CHALLENGES IN THE LEGAL REGULATION OF CROSS-BORDER MERGERS AND ACQUISITIONS IN THE REPUBLIC OF UZBEKISTAN

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Abstract. This paper examines selected challenges in the legal regulation of cross-border mergers and acquisitions (M&A) in the Republic of Uzbekistan. The analysis focuses on the relationship between national corporate reorganization procedures and foreign legal systems, the coordination of registration procedures, and the distinction between corporate-law and competition-law requirements. It substantiates the need for differentiated regulations of cross-border transactions according to their legal form. The paper proposes avenues for legislative improvement aimed at enhancing legal certainty without unjustified duplication of existing mechanisms.

Keywords: cross-border M&A, merger, acquisition, corporate reorganization, foreign investment, applicable law, economic concentration, Republic of Uzbekistan.

1. Relevance, Object, Subject Matter, and Purpose of the Study

The development of international corporate relations gives practical significance to transactions in which the parties, assets, or corporate structures relate to different states. For the Republic of Uzbekistan, it is particularly important to ensure legal certainty for such transactions while preserving safeguards for creditors, members of legal entities, and competition.

The concept of cross-border M&A encompasses heterogeneous legal arrangements. An acquisition by a foreign investor of shares in an Uzbek joint-stock company is a transaction involving corporate rights, whereas a merger entails the reorganization of legal entities and universal succession. These arrangements must not be conflated: a transfer of shares does not in itself terminate the target company's existence or result in the universal transfer of its obligations to the acquirer.

The object of the study is the social relations arising in the preparation and implementation of cross-border M&A transactions involving legal entities of the Republic of Uzbekistan.

The subject matter of the study comprises the rules of civil, corporate, private international, and competition law of the Republic of Uzbekistan governing the reorganization of legal entities, the acquisition of corporate rights, state registration, and economic concentration.

The purpose of the study is to identify legally substantiated challenges in coordinating national regulation with foreign legal systems and to determine avenues for its improvement.

The methodology is based on formal legal, systemic, and comparative legal methods. The study does not assume that the absence of a separate statute on cross-border M&A automatically signifies an absence of legal regulation of the relevant transactions.

2. Main Discussion

2.1. Relationship Between the National Reorganization Procedure and Foreign Corporate Legal Systems

The legal essence of the first issue lies in the need to coordinate two autonomous systems of corporate regulation where the contemplated merger involves legal entities incorporated in different states.

The Civil Code of the Republic of Uzbekistan provides for forms of reorganization of a legal entity and governs succession in mergers and consolidations. Articles 49–52 establish the relevant basic provisions; Article 50 governs the transfer of rights and obligations upon reorganization. In the version effective from 8 May 2025, the rule on succession in a merger provides for the

transfer of rights and obligations irrespective of whether they are specified in the deed of transfer.[1]

Corporate procedures are further specified in legislation governing particular organizational and legal forms. In particular, the Law of the Republic of Uzbekistan “On Joint-Stock Companies and Protection of Shareholders’ Rights” regulates the reorganization of a joint-stock company, the adoption of corporate resolutions, and the transfer of rights and obligations. The reorganization provisions address, inter alia, a merger agreement, a deed of transfer, and the state registration of the resulting legal entity.[2]

However, the regulation of domestic reorganization does not in itself provide an exhaustive answer to every issue arising from a transaction in which a foreign company participates as an entity undergoing reorganization. In particular, it is necessary to determine whether the law of the state of its incorporation permits the relevant form of merger, which resolutions and documents must be adopted or executed in that state, and which consequences of the termination of the foreign legal entity are recognized in Uzbekistan.

The limits of the conclusion must be observed here. It cannot be asserted that every cross-border merger is prohibited or that universal succession is not recognized in principle. It is more appropriate to conclude that national rules on domestic reorganization and general rules of private international law should not automatically be regarded as a sufficient procedural framework for a merger of

legal entities from different states. A definitive conclusion regarding a specific transaction requires an analysis of the applicable conflict-of-laws rules, international treaties, and the legislation of the foreign participant's state of incorporation.

The practical consequences are reflected in the risk that registration requirements, time frames for corporate resolutions, and conditions for the termination of legal entities may not coincide. A company may obtain approval for a reorganization in one jurisdiction but faces requirements for additional documents or procedures in another. For the investor, this increases transaction costs and makes it more difficult to determine the moment at which the transaction is completed. Creditors and members face uncertainty as to which person has become the holder of a particular right or obligation.

Proposed direction for improvement: special provisions on cross-border reorganization, or a separate procedural chapter in corporate legislation, should be developed. Such a chapter should define permissible forms of participation by foreign legal entities, requirements for confirming their legal capacity and corporate resolutions, procedures for submitting foreign documents, criteria for determining the moment at which reorganization is completed, and rules for coordinating registration actions. At the same time, the distinction between universal succession in a merger and the acquisition of shares or equity interests should be preserved.

2.2. Private International Law Coordination and Protection of Participants in Corporate Relations

The second issue concerns private international law and arises not from the absence of general reorganization rules, but from the need to determine consistently the law applicable to the various elements of a complex transaction.

A cross-border M&A transaction may simultaneously involve corporate resolutions, a share purchase agreement, a shareholders' agreement, a transfer of assets, a change of control over subsidiaries, and the performance of obligations owed to creditors. These elements are not necessarily governed by a single legal system. The law governing the agreement between the seller and the purchaser should not automatically be equated with the law determining the powers of the company's bodies, the procedure for adopting corporate resolutions, the transfer of title to shares, or rights in rem over property.

In Uzbekistan, the general provisions of civil legislation and special rules of corporate law provide a basis for regulating individual elements of such relations. The Law "On Investments and Investment Activity" establishes the legal regime governing foreign investors and their investments, including protection guarantees.[3] At the same time, guarantees afforded to a foreign investor do not replace special rules governing the procedure for a cross-border merger and do not automatically resolve all conflict-of-laws issues.

Accordingly, any deficiency should be framed narrowly: the matter requiring further examination is not the absence of private international law as such, but the adequacy and consistency of its application to complex corporate transactions, particularly where a single transaction combines a contractual acquisition of corporate rights with the reorganization of legal entities.

The practical significance of this issue is particularly evident in the protection of minority members and creditors. An agreement between an investor and a controlling shareholder may allocate economic risks between the parties, but it should not in itself deprive third parties of rights conferred on them by mandatory provisions of the applicable law. Similarly, a choice-of-foreign-law clause does not automatically exclude mandatory requirements of Uzbek corporate law applicable to a domestic legal entity.

Where the legal characterization of a transaction is insufficiently predictable, the parties must expand the scope of legal due diligence, include additional representations and warranties, agree on indemnification provisions, and provide for conditions precedent. For minority members and creditors, the principal risk lies not in the foreign element itself but in the potentially uncoordinated application of different procedures and the insufficient clarity of protective mechanisms.

Proposed direction for improvement: conflict-of-laws guidelines for corporate transactions should be systematized by clearly distinguishing matters governed

by the law of the state of incorporation of the legal entity, the law governing the contract, and the law of the situs of the relevant property. The list of documents confirming the authority of foreign corporate bodies and representatives should also be defined, and the requirements for their recognition and use in registration procedures should be clarified.

Attention should be paid to procedural protection for interested people: access to information concerning the reorganization, time limits for creditors to submit claims, procedures for challenging corporate resolutions, and the consequences of declaring such resolutions invalid. The proposals should be coordinated with existing rules rather than duplicating safeguards already in force.

2.3. Distinguishing Corporate Reorganization from Merger Control

The third issue is intersectoral nature. Its essence lies in the need to coordinate the corporate actions required for the legal completion of a transaction with prior control of economic concentration.

Law of the Republic of Uzbekistan №-850 of 3 July 2023 “On Competition” provides for the institution of economic concentration and a mechanism for obtaining prior consent in the cases prescribed by law. Article 27 governs the obtaining of prior consent for economic concentration.[4] Consequently, the merger-control dimension of M&A is already regulated by national legislation; it would be incorrect to assert that special transaction control is absent.

At the same time, the corporate law completion of a transaction and its merger-control clearance pursues different objectives. The former ensures the validity of corporate resolutions, the registration of changes, and the transfer of the relevant rights. The latter aims to prevent adverse effects of economic concentration on competition. Compliance with one set of requirements does not replace compliance with the other.

For cross-border transactions, the practical question is when an acquisition by a foreign company of control over an Uzbek undertaking, a group reorganization, or the formation of a joint venture falls within the applicable control criteria. The statutory scope of application, threshold conditions, and prescribed exemptions must be analyzed separately. A foreign element does not in itself automatically trigger a requirement for prior consent, just as the absence of a physical cross-border movement of assets does not preclude the application of competition law.

Structuring a transaction through a foreign holding company may complicate the collection of information concerning the group of people, control, and financial indicators. If the parties incorrectly assess the applicability of the clearance procedure, the consequences may include a delay in closing, additional costs, and the risk of statutory enforcement measures. For the seller, this creates uncertainty as to the timing of payment; for the purchaser, a risk of

acquiring control before completion of mandatory procedures; and for the target company, a risk of disrupting the agreed timetable for corporate changes.

The OECD's findings concerning the development of competition policy in Uzbekistan and the need to improve the institutional enforcement of competition rules should be considered as confirmation of the practical significance of the merger-control dimension.[5] These findings do not establish a specific gap in the regulation of cross-border mergers, but they support the case for further study of the effectiveness of the relevant procedures.

Proposed direction for improvement: accessible official guidance should be developed on the application of economic concentration control to cross-border transactions. It should explain the criteria for determining a group of people, approaches to assessing control, rules for calculating the applicable thresholds, and requirements for submitting information concerning foreign participants. In addition, the sequence of merger-control clearance, corporate resolutions, and state registration should be coordinated to prevent the mistaken interpretation of one stage as a substitute for another.

The preferred first step is not the introduction of a new authorization regime, but greater transparency in the application of rules already in force. Legislative amendments are justified only to the extent that an analysis of enforcement practice identifies specific inconsistencies or inadequacies in existing procedures.

3. Scientific Novelty and Practical Significance

The scientific novelty of the study does not lie in the assertion that legislation on cross-border M&A requires improvement: this issue is well known in comparative corporate law and private international law. Corporate mobility and conflict-of-laws regulation have been examined extensively in foreign legal scholarship; the relevant general propositions therefore cannot in themselves be claimed as novel.

The intended research contribution consists in systematizing three distinct levels of legal coordination as applied to Uzbekistan: (1) the permissibility and procedure of corporate reorganization; (2) determination of the law applicable to individual elements of a complex transaction and protection of third parties; and (3) compliance with economic concentration control requirements. The author's analytical conclusion is that the principal practical risks should be sought primarily in procedural coordination and predictability of application, rather than automatically characterized as an absence of legal regulation.

The practical significance of the study lies in the possibility of using the proposed classification in preparing legislative initiatives, methodological guidance for corporate lawyers, and official explanations by competent authorities. The proposals may be applied in transaction due diligence, the

drafting of closing conditions, and the planning of the sequence of corporate and merger-control procedures.

4. Conclusion

The analysis supports three conclusions. First, national rules on the reorganization of legal entities provide a general legal framework, but their application to the participation of foreign companies requires coordination with the law of the relevant entity's state of incorporation and verification of the registration consequences in each affected jurisdiction. Second, the contractual and corporate elements of a cross-border transaction may be governed by different legal systems; more predictable characterization of the applicable law and coordinated protection of members and creditors are therefore required. Third, legislation on economic concentration already provides for merger control, and improvement should consequently focus primarily on transparency in its application to cross-border structures.

The following priority measures are proposed: preparation of special procedural provisions on cross-border reorganization; systematization of conflict-of-laws guidelines and requirements applicable to foreign corporate documents; and publication of official guidance on the application of merger-control criteria to cross-border transactions. Before amendments are introduced, judicial and

administrative practice should be analyzed to confirm the existence of specific difficulties and to avoid duplicating safeguards already in force.

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