Polish mergers and acquisitions market

2017-05-15 13:05:31

One of the natural methods of implementing projects in Poland is to take over existing business entities.

Nowadays, the following reasons for transactions in **Poland can be identified**:

- good business opportunities resulting from the:
  - Market size,
  - Well educated personnel,
  - Low labour costs.
- taking over businesses in order to obtain preferences resulting from operations in Special Economic Zones,
- the privatisation of state-owned companies,
- looking for strategic partners to enable further growth while financial markets are frozen.

The Polish market is large enough to be interesting for global players and the economy suffered least during the last crisis. Moreover, a company based in Poland could be a good platform to reach the whole Central and Eastern Europe market. One of the biggest advantages about investing in Poland is that there is still easy access to qualified personnel, people are well educated and the labour costs are very competitive.

A definite advantage of takeovers in Poland is the use ofen tities enjoying preferences related to operations in Special Economic Zones. After certain requirements are met, it is possible to take over an entity operating within the Special Economic Zone, which may relate to future reduction in operating costs.

Privatisation processes which still involve a relatively significant percentage of Polish state-owned companies make it possible to find interesting targets for takeovers. Nowadays all the biggest entities are sold. But there is still a great deal of small and medium companies to be sold. The reasons why they could be good targets:

- not so many buyers are interested,
- good price can be achieved,
- profitability can be increased very easily.

It should be noted that the intention of selling a company via such a process includes taking part in public tendering procedures organised by the Ministry of State Treasury. It is crucial to prepare the appropriate documentation professionally as indicated in the freely available, detailed tender specifications.

Undoubtedly, the initial signs of market improvement will cause investors to return to standard transactions between intact companies in conditions which justify a company's purchase or sale.

In the case of a takeover, it is necessary to plan the whole process in an appropriate way, which usually consists of the following elements:

- the choice of an investment adviser/partner looking for entities to be potentially taken over,
- initial negotiations,
- due diligence - extensive legal, tax and business analysis of the entity concerned,
- final negotiations, according to results of due diligence,
- closing the transaction - executing a contract.

What makes the transaction easier, and sometimes determines its success, is the choice of the right advisers/partners that will find the right entity to be taken over and will obtain an appraisal beneficial for the buyer.

A crucial element of a successful transaction is the appropriate performance of due diligence, which requires cooperation with highly competent legal advisers, tax advisers and business consultants. These people will conduct the necessary analyses and describe all circumstances that are crucial to the analysed company in a final report. The above actions are necessary to identify the legal and tax hazards in the company's operations and to validate future business plans.

The representation of the parties constitutes part of the investment contract (Share Purchase Agreement), which includes the basic agreements of the parties, representations and promises of the present owners, contractual penalties and conditions precedent.

Entities which perform the most takeovers in Poland include:

- private equity funds,
- companies based in the EU,
- companies based outside the EU, which expand into the EU market,
- Polish business entities which increase the scale of their operations.

The most commonly encountered barriers for investors during company takeovers, which often prevent the implementation of expansion plans, include:

- insufficient knowledge about the local market, its structure and entities operating on it (difficulties in finding potential entities to be taken over/partners for cooperation),
- insufficient knowledge of the legal and tax realities in the target investment country,
- insufficient knowledge of solutions which allow more profitable acquisitions of business entities with the use of companies already operating in the Special Economic Zones,
- ignorance of the specific negotiation process and local business culture resulting from cultural differences.

Regulations governing

The rules of the mergers and acquisitions of the companies have been included in the Polish Code of Commercial Companies. Companies may merge with other companies or partnerships; however, a partnership may not be the bidding party or the newly formed one. Partnerships may merge with other partnerships only through formation of a company.

A merger may be effected through:

- transfer of all assets of a company or partnership to another company in exchange for the shares that the bidding company issues to the shareholders or partners of the target company or partnership (merger by takeover),
- formation of a company to which the assets of all merging companies or partnerships devolve in exchange for shares of the new company (merger by formation of a new company).

The target company, partnership or companies or partnerships merging by the formation of a new company will be dissolved, without conducting liquidation proceedings, on the day in which they are removed from the register. It should be noted that a plan of the merger of the companies requires a written accord between those merging companies.

As of the day of merger, the bidding company or the newly formed company takes all rights and duties of the target company or partnership merging by formation of a new company. In particular, the bidding company or the newly formed company will take over any permits, concessions and reliefs granted to the target company or partnership or any of the companies or partnerships merging by formation of a new company (unless otherwise provided in the commercial companies code or the decision on granting the permit, given consent or relief).

Mergers have an effect on the territory of Poland, and the turnover of the involved enterprises that exceed a certain amount is covered by the initial control of the President of the Office of Competition and Consumer Protection.

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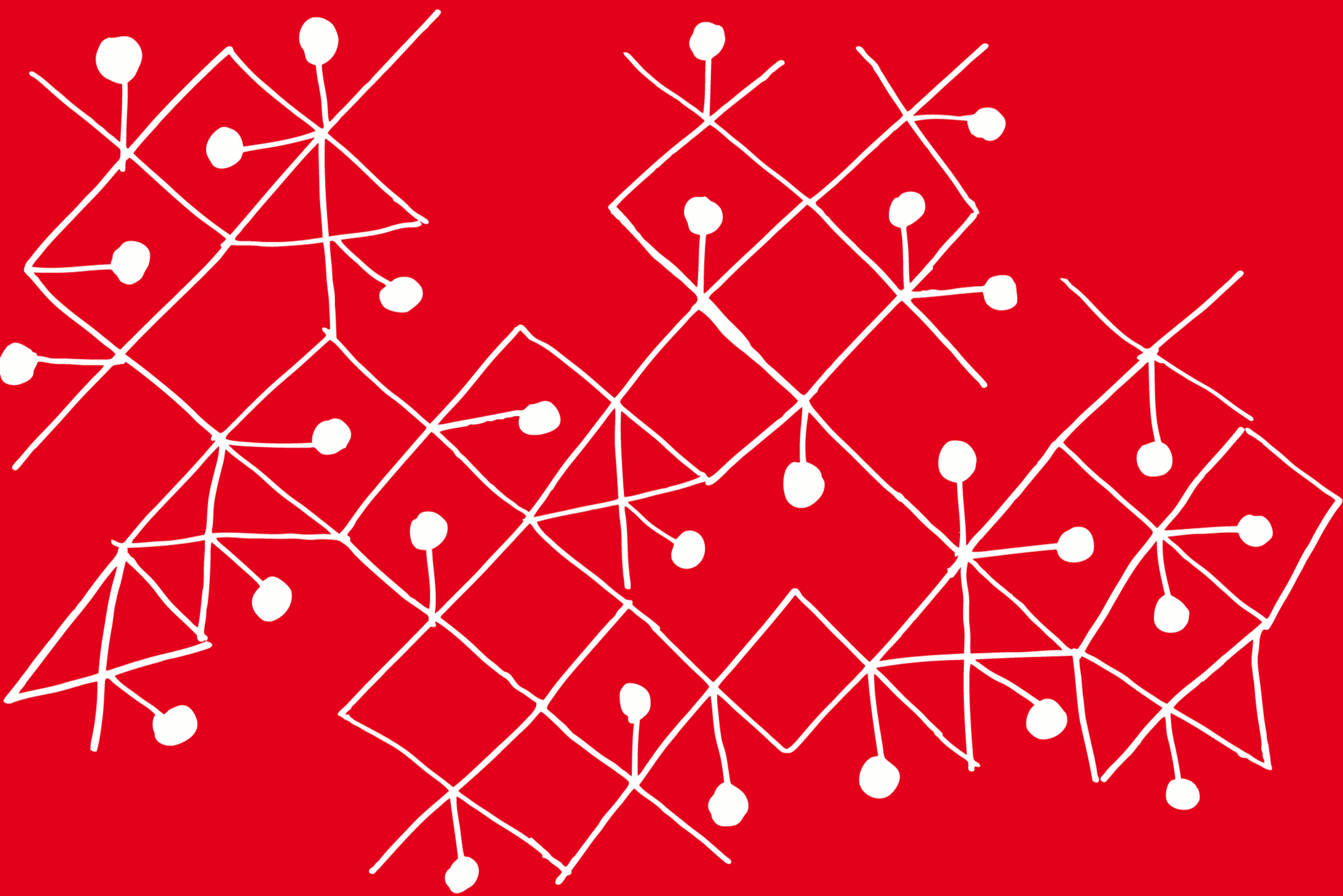
Source: Polish Investment and Trade Agnecy, *Poland your business Partner. Invest in Poland, 2016.*



INNOWACYJNA GOSPODARKA
NARODOWA STRATEGIA SPÓJNOŚCI

MINISTERSTWO
ROZWOJU

UNIA EUROPEJSKA
EUROPEJSKI FUNDUSZ
ROZWOJU REGIONALNEGO

Projekt jest współfinansowany przez Unię Europejską ze środków Europejskiego Funduszu Rozwoju Regionalnego