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in 60 jurisdictions worldwide

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1 Types of transaction

How may businesses combine?

A business combination may take the form of:

- a merger in the form of amalgamation of two or more companies into one of them, or the amalgamation of two or more companies into a special purpose company set up for that purpose;
- acquisition of shares;
- acquisition of assets; or
- an arrangement, compromise or reconstruction between two or more companies.

2 Statutes and regulations

What are the main laws and regulations governing business combinations?

The main laws that regulate business combinations are the Cyprus Companies Law chapter 113 (Company Law) and the Public Takeover for the Acquisition of Shares in a Company and Related Matters Law No. 41 (I)/2007 (Takeover Bids Law), which is complemented by directives issued by the Cyprus Securities and Exchange Commission (CySec). In addition to this other sources of legislation govern certain aspects of such transactions such as the Cyprus Stock Exchange Law No. 14 (I)/1993 and the Inside Information and Manipulation of the Market Law No. 116 (I)/2005. It must be noted that in respect of specific sectors such as insurance, banking and regulated funds, and investment firms, other statutory provisions will also apply. Merger control issues may also be an applicable consideration depending on the structure of the proposed transaction.

3 Governing law

What law typically governs the transaction agreements?

Cypriot law is most commonly the governing law of the agreements where the transaction is between two or more Cypriot parties. The parties to such agreements may, however, provide for the law of any other jurisdiction to govern the agreements where there is a foreign interest; the most typical choice is English law.

4 Filings and fees

Which government or stock exchange filings are necessary in connection with a business combination? Are there stamp taxes or other government fees in connection with completing a business combination?

Filings should be made to the Cyprus Registrar of Companies, the Cyprus Securities and Exchange Commission, and the Cyprus Stock Exchange. In respect of specific sectors, filings may be required to be made to specialised government authorities including the Central Bank of Cyprus or the Competition Commission. The approval of the district courts of Cyprus may also be required in the case of a domestic or cross-border merger. The exact documentation which

requires filing ultimately depends on the structure of the business combination elected by the parties.

A non-exhaustive list of fees, other than professional legal and financial advisory fees, which may be payable include:

- transaction fees payable to the Cyprus Stock Exchange (Stock Exchange Transactions Law of 1999);
- examination fees payable to Å;
- filing fees payable to the Registrar of Companies; or
- stamps for filing the application to the District Court of Cyprus.

Exact fees payable will depend on the proposed structure of the business combination (see above on specific sector considerations).

5 Information to be disclosed

What information needs to be made public in a business combination? Does this depend on what type of structure is used?

Yes, the type of information to be disclosed depends on the type of structure used.

By way of indication in cross-border mergers, the common terms of the merger should be disclosed by way of publication in the Official Gazette of Cyprus at least one month prior to the holding of the general meeting of the shareholders. In domestic mergers, arrangements, compromises or reconstructions, it is common practice for the court to order that a publication be made of the proposal and the application before the court for the purpose of giving notice to creditors. The completion of a cross-border merger with a Cyprus company would also be published.

During a takeover bid period, any transaction of shares of the target by the bidder or any other person holding a certain percentage of voting rights in the target must be disclosed. Similar disclosure must also be made in the case of acquisition of certain percentages of the share capital of the bidder. The main terms of the offer and agreement reached between the target, its shareholders and bidder must be disclosed in the public offer document.

6 Disclosure of substantial shareholdings

What are the disclosure requirements for owners of large shareholdings in a company? Are the requirements affected if the company is a party to a business combination?

Disclosure requirements may be triggered under various legislative provisions where a company is party to a business combination. In addition to the information stated in question 5, disclosure requirements may be triggered under the provisions of the Cyprus Stock Exchange Law if a person acquires or disposes of the voting share capital of the target which falls below, meets or exceeds 5, 10, 15, 20, 25, 30, 50 and 75 per cent. The shareholder who acquires or disposes of these amounts must disclose this to the target, CySec and the Stock Exchange.

The Transparency Requirements (Securities Admitted to Trading on a Regulated Market) Law No. 190(I)/2007 (Transparency Law) and orders issued by CySec in connection with the same, sets out the conditions for the publication and disclosure of periodic and ongoing information required of issuers who have their shares admitted on a regulated market.

7 Duties of directors and controlling shareholders

What duties do the directors or managers of a company owe to the company's shareholders, creditors and other stakeholders in connection with a business combination? Do controlling shareholders have similar duties?

Directors have a duty to act in the best interests of the company at all times and not for their own purposes, interests or profit. Directors owe fiduciary duties to a company which is derived from the common law and liability may be imposed on directors through statutory provisions and otherwise for a failure or breach of such duties. There are no specific duties imposed on directors in cases of business combinations except as regards the provision of information to creditors, shareholders and employees, or in respect of relevant disclosures required. We also make reference to specific duties imposed in cases of takeover bids, for example, once the announcement to make a public offer has been made, the board of directors of the target company must promptly and accurately pass the information to its shareholders and employees to assess the bid.

Shareholders do not owe fiduciary duties to the company and may act and exercise their voting rights in their own best interests, but may have duties of notification or disclosure that arise pursuant to the Transparency Law and similar provisions (see question 6).

8 Approval and appraisal rights

What approval rights do shareholders have over business combinations? Do shareholders have appraisal or similar rights in business combinations?

In mergers, the shareholders representing not less than three-fourths of the shareholders present at the general meeting and entitled to vote must vote in favour of the merger in order for the same to be approved. The same approval level is required in cases of arrangements and compromises. Where a scheme or contract involving the transfer of shares in a company has been approved by the holders of not less than nine-tenths in value of the shares of that company, the transferee company may give notice to the dissenting shareholder that it wishes to acquire its shares. Time limits apply to such notice and the dissenting shareholder may apply to court to resist the mandatory acquisition. Such protection applies to mergers as well.

As regards takeovers in accordance with the Takeover Bid Law, squeeze-out provisions apply affecting the rights of shareholders – for further information see question 14. The rights of shareholders are also affected by mandatory bids. Any person who acquires securities solely or together with persons acting in concert with him, which when added to his existing holdings give him 30 per cent or more of the voting rights in the company, that person is required to make a bid for the remaining securities. Such a bid must be addressed to all the remaining shareholders and must be at a fair price.

Sell-out rights are exercisable under the same conditions as squeeze-out rights, but the minority shareholders in this situation have the right to require the bidder to acquire their securities at a fair price.

9 Hostile transactions

What are the special considerations for unsolicited transactions?

In a situation where a takeover bid is hostile, that is, the board of directors of the target does not recommend the bid to its shareholders, the bidder may still proceed with making the bid and the board

of directors of the target should not take any action that may result in frustration of the bid without prior shareholder approval. Provided that shareholder approval is obtained in the general meeting, the board of the target may take some defensive measures such as issuing shares or soliciting alternative bids, but must treat all bidders on an equal basis and cannot impose more onerous conditions on certain bidders as opposed to others.

10 Break-up fees – frustration of additional bidders

Which types of break-up and reverse break-up fees are allowed? What are the limitations on a company's ability to protect deals from third-party bidders?

There are no legislative provisions that relate to break-up fees and therefore, this may be provided for by agreement between the parties although corporate benefit issues must be considered.

The Company Law prohibits a company from giving, whether directly or indirectly, any financial assistance for the purpose of or in connection with a purchase or subscription made or to be made by any person of, or for any shares in the company or, where the company is a subsidiary company, in its holding company. Financial assistance expressly includes loans, guarantees, the provision of security but the inclusion of the words 'or otherwise' indicates a very wide application, the scope of which has not been tested in Cyprus courts.

Notably, the prohibition on financial assistance does not affect companies that are in the business of lending of money or which in accordance with any scheme of money give assistance for the purchase of shares for the benefit of employees of the company, or which makes a loan to employees other than directors to enable them to purchase or subscribe for fully paid shares in the company or its holding company.

Law No. 99 (I)/2009 has effected changes to the Company Law and specifically has introduced carve-outs to situations where financial assistance is prohibited. The newly inserted section 53(3) states that the prohibition on financial assistance will not apply in the case of a private company, provided the private company is not a subsidiary company of any company which is a public company and the specific act has at any time been approved by decision of the general meeting of the company by a majority of over 90 per cent of the votes of all the issued shares of the company.

11 Government influence

Other than through relevant competition regulations, or in specific industries in which business combinations are regulated, may government agencies influence or restrict the completion of business combinations, including for reasons of national security?

Yes, the Cyprus Securities and Exchange Commission must approve the public offer document in a takeover bid situation.

12 Conditional offers

What conditions to a tender offer, exchange offer or other form of business combination are allowed? In a cash acquisition, may the financing be conditional?

There are no restrictions on the imposition of conditions to mergers, takeovers or other forms of business combinations prior to the completion of the same. Usual conditions would include by way of indication only that no material adverse change in the financial position of the target company has taken place or any licences required by target to carry on its business are in full force and effect. In the case of cross-border mergers, the terms of the merger may provide that the members of the company being dissolved without going into liquidation, in addition to shares in the surviving company, are entitled to a cash payment which cannot exceed 10 per cent of the nominal value (or in absence of nominal value) of the accounting par value of those

securities or shares (unless a cash payment exceeding ten percent is permitted by the legislation of the member state regulating the other merging company.) Yes, obtaining financing or providing evidence that adequate funds are available to make the required cash payment may be conditional. In cases of takeover bids the cash consideration needs to be available before the announcement of the bidder's intention to make a public offer and the public offer document must be accompanied by evidence of the availability of funds by way of declaration from one or more reputable banks.

13 Financing

If a buyer needs to obtain financing for a transaction, how is this dealt with in the transaction documents? What are the typical obligations of the seller to assist in the buyer's financing?

If a buyer requires financing for a transaction, the seller will usually make the obtaining of finance and the taking of all necessary action by the buyer a condition to the completion of the business combination. In respect of takeover bids, see question 12 on the requirement for a declaration on availability of cash. Special consideration should also be given to financial assistance rules in Cyprus (see question 10).

14 Minority squeeze-out

May minority stockholders be squeezed out? If so, what steps must be taken and what is the time frame for the process?

Yes, minority shareholders may be squeezed out.

In accordance with the Takeover Bid Law (section 36(1)), a bidder who has made an offer to all the holders of the target company's securities for all of their securities has the right to require all the holders of any outstanding securities to sell him those securities if:

- he holds securities representing at least 90 per cent of the capital carrying voting rights and at least 90 per cent of the voting rights in the target company; or
- following acceptance of the bid, he has acquired or has firmly contracted to acquire securities representing at least 90 per cent of the target company's capital carrying voting rights and at least 90 per cent of the voting rights comprised in the bid.

A successful bidder may exercise his squeeze out right on application to CySec within three months from the expiry of the offer acceptance period. The application must include the amount and kind of consideration offered. On the working day following the submission of the application, the successful bidder must make an announcement of the same. When CySec has verified that the bidder has achieved the necessary control threshold, it issues a decision obliging the bidder to:

- notify the relevant shareholders in writing;
- pay them the consideration offered; and
- take all necessary actions to transfer the securities into its name.

15 Cross-border transactions

How are cross-border transactions structured? Do specific laws and regulations apply to cross-border transactions?

There are no laws which specifically apply only to cross-border transactions. Cross-border mergers may take place between Cypriot companies and companies registered in an EU or EEA member state. There are no restrictions on the structure of the transaction; therefore, the Cypriot entity may become the dissolved company without going into liquidation on completion of the cross-border merger or alternatively, may be the surviving entity.

16 Waiting or notification periods

Other than as set forth in the competition laws, what are the relevant waiting or notification periods for completing business combinations?

There are no waiting periods for completion of business combinations. The time limits within which certain actions must be taken by the relevant parties are set out, where applicable, within the various statutory provisions.

In domestic and cross-border mergers the time period within which business combinations will be completed will depend on the timing for holding of meetings of the shareholders, creditors (where necessary) and the court hearing date which is given upon filing of the application to court. In cross-border mergers time periods will also be affected by the issue of pre-merger certificates by the non-Cypriot member state and any mandatory two-month creditor notice periods which may be applicable in such member states. The application for the completion of the cross-border merger must by law be made within six months of the issue of the pre-merger certificate. The Takeover Bids Law contains time limits for the various stages of the procedure including the making of announcements, submission of documents to CySec, making and accepting offers, and notification of decisions by CySec. Finally, it is worth noting that special provisions with respect to the notification, prior approval and time limits for the same are also applicable to specific industries.

17 Sector-specific rules

Are companies in specific industries subject to additional regulations and statutes?

Yes, there are regulations and laws in place for specific industries.

18 Tax issues

What are the basic tax issues involved in business combinations?

The tax considerations will depend on the structure of the business combination. There is no capital gains tax payable in Cyprus except where there is a disposal of immovable property or disposal of shares in a company whose property consists of immovable property held in Cyprus. In addition to the above, where the transaction involves an asset acquisition, stamp duty may be payable on the transaction documents if it relates to any property situated in Cyprus or relates to a matter or thing which is performed or done in Cyprus.

Where the combination takes place by an acquisition of shares, no capital gains tax is payable (except as set out above) and there is no income tax payable on profits realised from the disposal of securities (securities have been classified to include shares, bonds, debentures and founder shares). Reorganisations (such as mergers, share for share exchange, contribution of assets in exchange for shares and divisions) are exempt from income tax, capital gains tax and stamp duty, but approval is requested from the tax authorities in such cases.

19 Labour and employee benefits

What is the basic regulatory framework governing labour and employee benefits in a business combination?

There is specific legislation which provides for the protection of employees in a business combination including the following:

- Law No. 68(I)/2002 on the Creation of European Councils to Ensure Employees Rights to Information and Consultation in Community Scale Undertakings;
- Law No. 104(I)/2002 on the Preservation of Employee Rights During the Transfer of a Business;
- Law No. 78 (I)/2005 on the General Framework of Consultation and Information to Employees;
- Law No. 277(I)/2004 on the Supplementing of the Statutes of a European Company on the Role of Employees (partial

applicability to cross-border mergers by virtue of section 201W of the Companies Law, chapter 113);

- Law No. 41 (I)/2007 on Public Takeover for the Acquisition of Shares in a Company and Related Matters Law (contains provisions requiring the board of the target to consult with its employees immediately after the offer has been announced); and
- the Companies Law, chapter 113.

20 Restructuring, bankruptcy or receivership

What are the special considerations for business combinations involving a target company that is in bankruptcy or receivership or engaged in a similar restructuring?

On the basis that winding-up proceedings have commenced, the special considerations will depend on the type of proceedings which are being taken, namely, winding-up by the court, voluntary liquidation, or members' or creditors' voluntary liquidation subject to court supervision, with special consideration to the potential insolvency of the target company.

Generally, the acquiring company will deal with the appointed liquidator (official receiver or manager) and not with the directors of the target in such situations. Under the provisions of the Company Law, the liquidator has wide powers, inter alia, to enter into compromises or arrangements and to sell the property of the company with powers to transfer the whole or part of the same to a third party.

Under the procedure of a members' voluntary liquidation, when the target is solvent, the liquidator has the power to sell the whole

or part of the business of the target with the sanction of a special resolution of the shareholders conferring either general authority on the liquidator or specific authority in respect of a particular arrangement. A dissenting member may notify the liquidator in writing of his dissent and the liquidator may elect not to proceed with putting into effect of the resolution, or alternatively purchasing the members' interest. In creditors' voluntary liquidation proceedings, where the target is insolvent, the exercise of such powers by the liquidator would require additional court approval.

21 Anti-corruption and sanctions

What are the anti-corruption and economic sanctions considerations in connection with business combinations?

The anti-corruption law that was enacted in Cyprus following the European Criminal Law Convention on Corruption was the Law on Providing for Registration, Funding of Political Parties and Other Similar Matters, which is not relevant to business combinations. Fraud, conspiracy and related offences are sanctioned as such by the criminal laws of Cyprus; however, the most relevant for business combinations is the Prevention and Suppression of Money Laundering Activities Law, No. 188(I)/2007, implementing the provisions of Directive 2005/60/EC. Persons who breach the anti-money-laundering laws are liable to imprisonment for up to 14 years and/or a fine of €500,000.

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