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Cyprus

MERGERS & ACQUISITIONS

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This country-specific Q&A provides an overview of mergers & acquisitions laws and regulations applicable in Cyprus.

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CYPRUS
MERGERS & ACQUISITIONS

1. What are the key rules/laws relevant to M&A and who are the key regulatory authorities?

M&A transactions in Cyprus, for public and private companies, are governed both by statutory provisions and by the applicable principles of common law, inherited by the British rule.

The key legislation regulating M&A transactions is the Companies Law Cap.113 (as amended from time to time) (the "Companies Law"), which contains provisions about mergers, divisions and the reconstruction and amalgamation of both public and private companies as well as the exchange of shares between two or more companies. The relevant sections of the Companies Law provide, inter alia, for obtaining approval from the shareholders and creditors of the merging companies, as well as the need of sanctioning of the transaction by the competent Court. The Companies law further establishes the regulatory framework for the cross-border mergers of limited liability companies within the European Union.

Other legislation which is of importance in M&A transactions is, the Control of Concentrations between Enterprises Law of 2014 (No.83(I)/2014) which relates to fair competition, the Safeguarding and Protection of Employees Rights in the Event of the Transfer of Undertakings, Businesses or Parts Thereof (No. 104(I)/2000) (as amended) and the Income Tax Law (No. 118(I)/2002) (as amended).

In case the M&A transaction involves public companies and/or listed companies in the Cyprus Stock Exchange, the following legislation is further applicable:

i. The Public Take Over Law 41(I)/2007 (as amended);
ii. The Securities and Cyprus Stock Exchange Law of 1993 (No. 14(I)/1993) (as amended);
iii. The Transparency Requirements (Securities Admitted to Trading on a Regulated Market) Law of 2007 (No. 190(I)/2007) (as amended);
iv. The Market Abuse Law of 2016 (No. 102(I)/2016); and
v. The Cyprus Corporate Governance Code.

In terms of the key regulatory authorities in relation to M&As in Cyprus for private and/or public companies, these include the Registrar of Companies, which is the competent authority for recording changes in the shareholding and management of both public and private companies, the Cyprus Stock Exchange for listed companies, the Cyprus Securities and Exchange Commission which is the regulator for public takeover bids and the Commission for the Protection of Competition which is the national competition authority to which mergers, acquisitions and JVs that meet the jurisdictional thresholds are notified.

It is noted that, in addition to the above, both public and private companies, depending on their industry sector and business activities, may be subject to regulatory controls from specific regulatory authorities and regulatory regimes. One such case is in relation to credit institutions whereby M&A authorizations may be required from the Cyprus Central Bank and regard should be had to the provisions of the Business of Credit Institutions Law (No. 66(I)/1997) (as amended) which governs acquisitions in the banking sector, in conjunction with subsidiary legislation issued by the Central Bank.

2. What is the current state of the market?

During the last years, the global market has been disrupted both due to the difficulties and uncertainty created from the COVID-19 pandemic, as well as the continuing events between Russia and Ukraine and the imposition of unprecedented sanctions and financial restrictions against Russia and Russian individuals by the European Union and internationally, as well as the relevant actions taken by Russia in relation to the black listed EU Members States.

Despite the above, there is a steady demand for M&As, both local and cross-border, whether in relation to achieving more efficient structures or due to new market

opportunities being sought.

3. Which market sectors have been particularly active recently?

There has been a continuing growth in the tech and fund industry in Cyprus as well as stable activity in the business, banking and financial services, the private equity market as well as the energy and tourism sectors.

4. What do you believe will be the three most significant factors influencing M&A activity over the next 2 years?

The events between Russia and Ukraine and the imposition of sanctions and restrictions by all parties seem to have had an impact and are expected to continue having an impact on M&A activity. Organizations will be resolving to M&A activity to resettle their operations and continue their activities.

Ongoing regulatory reforms and developments in the area of transparency and reporting will continue to have a significant effect on M&A activities and influence decisions about restructuring groups, both local and international.

Cyprus's stability of its financial sector will likewise continue to be an influencing factor for M&A activity and growth.

5. What are the key means of effecting the acquisition of a publicly traded company?

Generally, control over a public company can be obtained either directly from the shareholders without making a public offer in case it is not publicly traded, or through merger and/or division of public companies subject to obtaining relevant court approval or by the making of a public offer in the case of publicly traded companies.

In case of a public offer under the regulations of the Cyprus Stock Exchange and the Public Take Over Law 41(I)/2007 (as amended), the procedure shall be supervised by the Cyprus Security and Stock Exchange Committee. The bidder must announce its bid to the Cyprus Stock Exchange, the Cyprus Security Committee and the board of directors of the company, in order to obtain the relevant approvals and follow the procedure outlined by the Public Take Over Law 41(I)/2007 (as amended).

It is also possible for the acquisition of a publicly traded company to take place outside the market of the Cyprus Stock Exchange, provided it falls under one of the permitted transactions under the Securities and Cyprus Stock Exchange Law of 1993 (No. 14(I)/1993) (as amended). The permitted transactions are the following:

In relation to public bonds issued by the Government of the Republic of Cyprus listed on the Stock Exchange;

In relation to securities of Cyprus incorporated legal persons or group of persons, listed on the Cyprus Stock Exchange as well as in another stock exchange abroad, provided the transaction is executed through the stock exchange abroad in accordance with the governing legislation thereof;

In relation to securities of foreign legal persons or group of persons, listed on the Cyprus Stock Exchange, provided the transaction is executed abroad in accordance with the relevant legislation.

In addition to the above permitted transactions outside the market of the Cyprus Stock Exchange, and subject to the making of a timely announcement to the Cyprus Stock Exchange as per relevant decision of the Council, the following transactions for the acquisition of a publicly traded company are also allowed outside the market of the Cyprus Stock Exchange:

- Issue and purchase of securities by the issuer;
- Transactions between same family members;
- Gifts or other transactions for non-monetary consideration;
- Transfer of securities due to death;
- Transaction carried out by virtue of a court order;
- Transaction of securities of a Cyprus incorporated company that are listed on the Cyprus Stock Exchange, which fulfils the conditions of applicable laws, regardless of whether the transaction is executed in Cyprus or abroad;
- Transactions which have as their object movable securities of the same category, of a stock exchange value of at least 100,000 pounds;
- Transactions executed following direct invitation to all holders of the same category of movable securities of one issuer, which concern at least 10% of the total of these securities; and
- Transactions which are specifically exempted by Stock Exchange Regulations and may be executed outside the Cyprus Stock Exchange.

6. What information relating to a target company will be publicly available and to what extent is a target company obliged to disclose diligence related information to a potential acquirer?

There is no obligation under Cyprus law for a target company to disclose any due diligence related information and/or documentation to a potential acquirer. The provision of such information and/or documentation is customarily voluntarily agreed for as part of the negotiations between the parties. It is always advisable for such an agreement to be made and due diligence information to be acquired by the potential buyer for the target company, given that, although certain information is publicly available, as will be noted further below, such information might not be up to date.

As mentioned above, certain information about the target company, whether public or private shall be publicly available and may be acquired as such by the potential acquirer. One source of information are the public records for companies of the Cyprus Registrar of Companies. The information available through the public records of the Registrar include the following:

i. Memorandum and Articles of Association of the target company;
ii. Information as to the members of the Board of Directors;
iii. Information for the secretary;
iv. Information about the share capital and registered shareholders of the target company;
v. Annual Accounts;
vi. Relevant court orders (if any);
vii. Statutory forms filed with the Registrar in relation to the target company.

Following the establishment of the Companies Register of Beneficial Owners, maintained again by the Cyprus Registrar of Companies, information as to the physical persons ultimate beneficial owners of the Cyprus target company will also be publicly available.

In addition to the above, in relation to public companies listed in the Cyprus Stock Exchange, certain information is also available through the official portal of the Stock Exchange, such as industry and sector specific information and information from the annual reports and semi-annual results of the company.

7. To what level of detail is due diligence customarily undertaken?

Customarily in an M&A transaction the potential acquirer carries our both a legal due diligence and a tax, financial and commercial due diligence.

In relation to the legal due diligence on the target company, and subject to any specific activities of the target company, the scope usually includes receipt and review of the following:

i. Up to date corporate documents, i.e. memorandum and articles of association and corporate registers to provide information on the directors, secretary, registered office, shareholders, charges;
ii. Up to date certificates issued by the Cyprus Registrar of Companies, i.e. certificate of directors and secretary, certificate of shareholders, certificate of share capital, certificate of registered office, certificate of incorporation, certificate of good standing, certificate of non-winding up;
iii. Information on any existing mortgages, encumbrances, floating charges or other obligations as registered with the Registrar and/or relating to assets owned by the target company;
iv. Annual returns together with latest available audited financial statements and evidence of payment of the annual levy;
v. Organization chart of the group, shareholding agreements, intra-group and financial agreements;
vi. Confirmation of any current lawsuits, or pending litigation and/or disputes which the company is involved with;
vii. Key commercial agreements, i.e. service/employment agreements and related.

As noted above, subject to any specific activities of the target company, due diligence may be exercised, additionally, in relation to any regulated activities of that company as well as in relation to any industry specific agreement and/or commercial arrangement that may be in place.

8. What are the key decision-making organs of a target company and what approval rights do shareholders have?

It is firstly worth clarifying that the term Mergers and Acquisitions cover two different notions in practice. The term merger is used when two separate entities combine forces to create a new, joint entity. Meanwhile, the term acquisition refers to a takeover or purchase of an entity by another.

Generally, the decision-making bodies comprise by the board of directors and the shareholders of a company. Decisions are taken by the board of directors subject to any matters that require the decision of the shareholders.

In private mergers and re-organizations, the Board of Directors of the companies in question (both the target and the acquiring company) will consider and negotiate the terms of the merger/re-organizations, taking into account the business of each of the companies, weighing the advantages and disadvantages of a proposed merger/re-organization in terms of i.e. increasing sales, efficiencies and capabilities and, following the drafting of the merger plan, they will present the same to the shareholders of the companies for their consideration and approval. The creditors of the target company (acquired company) will also be required to provide their approval for the proposed merger/re-organization.

In private acquisitions (i.e. in an asset sale), it is the board of directors of the acquiring company (the purchaser) who shall need to assess and decide whether the acquisition of the other company will be proven beneficial for the purchaser and its activities. It will depend on the articles of association of the purchaser whether any approval should be sought by the shareholders as well. The terms governing the private acquisition is a matter of negotiation between the purchaser company and the sellers (individuals or entities). The board of directors of the target company have no say I the actual decision of the sellers nor do they have any obligations towards the selling shareholders.

Acquisitions of shares of Cyprus listed public companies, on the other hand, are governed by the Public Take Over Law 41(I)/2007 (as amended). Although the ultimate decision lies with the shareholders of the target company, such decision will be much depended on the information that the Board of Directors will furnish them with. In accordance with the provisions of the said law, once a public offer is received, the Board of Directors must provide prompt and accurate information to its shareholders as well as its recommendations so as to make a well-informed decision on the M&A.

9. What are the duties of the directors and controlling shareholders of a target company?

Directors:

The duties of the directors can be summarized as follows:

- The Fiduciary duty in accordance to which the directors owe a duty to the company to act in good faith and in the best interests of the company. This means that the directors are obliged to promote the business and profitability of the company and to protect its interests. Directors ought to avoid any conflict of interests as well.
- The Duty of Care, in accordance with which the directors owe a duty towards the company to exercise skill and care and have the general knowledge, skill and experience to run the company.
- Statutory Duties deriving from various legislation.

The duties of directors derive from (i) the legislation (including but not limited to the Cyprus Companies Law, Cap. 113), (ii) common law principles and (iii) any specific provisions that may be contained in the articles of association of a company.

In considering an M&A, the directors ought to exercise their duties in order to assess the effects and results of the M&A on the activities of the companies in question, their employees and creditors.

The duties of the directors expand in the event of a public takeover. In particular, the Public Take Over Law 41(I)/2007 (as amended) sets some additional duties on directors, such as the following:

a. When directors and their close relatives sell shares or enter into transactions with a third party, as a result of which that third party is required to make a bid/ public offer under the Public Takeover Law, the said directors and the persons closely related to them, must ensure that as a condition for the sale or other relevant transaction, the third party undertakes to fulfil the obligations imposed by the said Public Takeover Law;
b. The offeror, persons acting in the name of the offeror and persons acting in concert with the offeror may not be appointed to the board of directors of the target company, nor may they exercise, or procure the exercise of, the votes attaching to any shares they hold in the target company, until the expiration of the time allowed for acceptance of the bid/public offer;
c. Following the announcement of the decision to make a bid/public offer, the board of directors of the target company is obliged to provide quick and accurate information to its shareholders and the representatives of its employees or, where there are no such

representatives, to the employees themselves, regarding the content of the bid/public offer, as well as about (i) any information about any material changes in information previously announced or published; (ii) any revision or revocation of the bid/public offer; (iii) any competing takeover bids/public offers submitted; (iv) the result of the takeover bid/public offer; (iv) the views of the board of directors as well as those of special experts on the takeover bid/public offer or the revised or the competing bid/ public offer; and (v) anything else on the takeover bid/public offer and for every document or information made public according to the relevant legislation;

d. The board of directors of the target company shall draw up and make publicly available, a document setting out, inter alia, its justified opinion in relation the bid/public offer or the revised or competing bid/public offer as well as the reasons on which it is based, including its views on the results of the implementation of the public offering in the interests of the company as a whole, and in particular on the employment of the personnel, as well as on the strategic plans of the offeror for the target company and their possible effects on the employment as well as where the places where the company's activities are carried out, as indicated in the public offer document;
e. With the exception of seeking alternative bids/public offers, as soon as the board of directors of the target company becomes aware that a bid/public offer is imminent and until the expiration of the deadline allowed for acceptance or the revocation or cancellation of the bid/public offer, it may not, without prior authorization of the general meeting of shareholders, take any action which may result in the frustration or cancellation of the bid/public offer.
f. The board of directors of the target company shall obtain the prior authorization of the general meeting of shareholders before deciding, inter alia, (i) the issuing of shares of the company; (ii) any lawful acts entailing the substantial differentiation of the assets or the obligations of the company and (iii) the buy-back of own shares, unless with the approval of the Commission, which is granted when the Commission is satisfied that it does not result in the frustration of the bid.

Shareholders:

Both in private and public M&As, the shareholders' duties mostly derive from the articles of association of the target company or a contractual arrangement between them, such as a shareholder's agreement. In addition, controlling/majority shareholders have a duty not to act in an oppressive manner towards the minority shareholders.

10. Do employees/other stakeholders have any specific approval, consultation or other rights?

The general principle is that the shareholders of the target company must be equally treated, Hence, the offeror must treat employees or other stakeholders who hold shares or have the right to acquire shares equally in terms of the benefits or terms offered.

The rights of employees in the event of a sale or transfer of a business or part of a business are regulated and secured under the Safeguarding and Protection of Employees Rights in the Event of the Transfer of Undertakings, Business or Parts Thereof Law (Law 104(I)/2000). More specifically, employees are granted with the following rights in the event of a sale or transfer:-

The transferor's rights and obligations arising from a contract of employment or from an employment relationship existing on the date of a transfer shall, by reason of such transfer, be transferred to the transferee;

Provided that the transferor and transferee may agree that after the date of transfer, they shall continue to be jointly and severally liable in respect to obligations created before the transfer and which arise from a contract of employment or employment relationship in force at the time of the transfer; and

Following the transfer, the transferee shall continue to observe the agreed terms and conditions of any collective agreement on the same terms applicable to the transferor under that agreement, or practice, until the date of the termination, or expiry of the collective agreement, or until the entry into force, or application of another collective agreement. The existing agreed terms and conditions of employment shall be preserved for a minimum period of one year.

Furthermore, sections 198-200 of the Companies Law regulate the procedure that needs to be followed in private mergers and re-organizations. The Companies Law provides for the approval of the proposed scheme at a general meeting of the members by at least 50% +1 of those present and entitled to vote as well as an approval from a meeting of the creditors (again 50%+1 of those

present and entitled to vote) as well as obtaining the sanction of the competent Court.

In relation to a public takeover, the Cyprus Securities and Exchange Commission is designated as the competent authority which regulates and sanctions/approves the procedure.

11. To what degree is conditionality an accepted market feature on acquisitions?

As we mention above, M&As are regulated by a number of national legislations. There are, therefore, a number of steps which in effect make the completion of a successful M&A conditional.

To start with, private mergers and schemes of re-organization, require the approval of the majority of the shareholders both of the target company as well as of the acquiring company.

The creditors of the target company must also provide their consent to such action and finally the court will be required to sanction the proposed M&A for the completion of the procedure.

Mergers and schemes or re-organization between private companies are also required to fulfil the provisions of section 30 of the Income Tax Law (Law 118(I)/2002), in order to be exempted from a taxation on such a re-organization.

With respect to private acquisitions there are no regulatory requirements making the successful completion of the acquisition conditional. The conditions are a matter of negotiation between the parties.

The Public Take Over Law 41(I)/2007 (as amended), sets out the conditions for a successful public takeover.

What is of importance in all cases (private M&As and public takeovers), is to ensure that the parties involved obtain the necessary regulatory approvals (to the extent these are required and depending on the line of business of the parties) prior to the completion of the merger or acquisition.

Finally, the provisions of the Merger Controls Law (Law 83(1)/2014) must also be taken into account and followed in order to ascertain whether any notifications or approvals are required by the relevant authority prior to the completion of the merger or acquisition.

12. What steps can an acquirer of a target company take to secure deal exclusivity?

The most common and secure option is a contractual arrangement (i.e. a deal exclusivity agreement) between the acquirer and the target company setting out the terms and conditions which will enable them to secure deal exclusivity. Most commonly such type of agreements are entered into for a specific period of time. However, the directors of the target company will be required to consider whether granting exclusivity will be in the best interests of the company.

13. What other deal protection and costs coverage mechanisms are most frequently used by acquirers?

Given the conditionality of the successful completion of a private merger, as we mentioned above, it is quite common in private mergers and re-organizations for the parties to agree the following so as the deal is protected for the acquirers:

That from the moment of signing of all relevant and until final completion of the merger/re-organization, the target company:

- Shall stand possessed of all its assets and properties in trust for and for the benefit of the acquirer; and
- Shall be deemed to have carried on the business and its activities for and on behalf of and for the benefit of the acquirer and that any income or profit accruing to the target company and any costs, chargers, expenses or loss, as the case may be incurred by the target company, from the date of signing of the M&A documentation and until its completion, shall, for all purposes and intents, be treated as the income, profits, costs, charges, expenses or loss, as the case may be, of the acquirers.

In terms of a private acquisition, it is also quite common for the parties to contractually agree that the seller shall not sell or in any way dispose any assets of the target company or diminish the value of the target company and that the target company will continue its ordinary course of business. The parties could also agree on a break fee in the event that the private acquisition is not materialized.

With respect to public takeovers, one common way of securing deal protection, is to acquire a holding in the target company in order to strengthen and support their chances of following up with a successful public offering

and in the meantime offering them some protection in case a competing public offering ultimately acquires the target company at a higher price. Needless to say that any such steps and actions shall need to be taken in accordance with the applicable legislation.

14. Which forms of consideration are most commonly used?

Consideration in an M&A transaction can be either in the form of cash or in kind (or a combination of both). It is important to state that in relation to mergers/re-organizations of private companies, the Income Tax Law sets out certain requirements in relation to the consideration.

As regards to the takeover of public companies, the Public Take Over Law 41(I)/2007 (as amended) contains specific provisions in relation to the consideration in such transactions.

The offeror/bidder may offer cash, shares or a combination of both. In case the offer is for cash consideration, the offeror must support the offer with a guarantee from one or more banks or other organizations or persons with the necessary capital adequacy.

There are certain circumstances which in accordance with the Public Take Over Law 41(I)/2007 (as amended), the offer is obliged to offer cash alternatives as part of the consideration:

1. When the consideration offered by the offeror does not consist of liquid securities admitted to trading on a regulated market (in the Cyprus Stock Exchange) (the Commission may in such cases set the criteria taken into consideration when deciding whether the securities offered by way of consideration are liquid);
2. When an offeror has purchased shares in the target company within the last 12 months before the announcement of public offer has been made, which amount to 5% or more of the voting rights of the company, cash must be offered; and

When an offeror is exercising a 'squeeze out' and 'sell out' right, or in the event of a mandatory offer."

15. At what ownership levels by an acquirer is public disclosure required (whether acquiring a target company as a whole or a minority stake)?

Private Acquisitions

No express public disclosure requirements are applicable for private acquisitions; however, the provisions of the Concentrations Law should be taken into consideration as there might be a trigger of an obligation to notify a transaction and obtain clearance from the Commission for the Protection of Competition if a concentration of undertakings is deemed to be of major importance, as defined in the aforementioned law.

On finalisation of the relevant procedures, the necessary filings are performed with the Registrar of Companies, in accordance with the provisions of the Companies Law, for the recording of the change in the registered and/or beneficial ownership of the subject company, as the case may be.

Public Listed Companies

- Regulated Market

Pursuant to The Transparency Requirements (Securities Admitted to Trading on a Regulated Market) Law of 2007, any person who acquires shares to which voting rights are attached, in a company listed on the Regulated Market of the Cyprus Stock Exchange for the first time, is considered a shareholder, provided that, with the acquisition, the percentage of voting rights held in the issuer reaches or exceeds the thresholds which are detailed below.

A shareholder who acquires or disposes shares, to which voting rights are attached, in such company, has an obligation to notify:

a. the issuer, and
    i. where the Republic is the home member state, the Cyprus Securities and Exchange Commission, or
    ii. (ii) in the case where the home member state in other than the Republic, the competent

authority of such member state,

of the percentage of voting rights held provided that, as a result of such acquisition reaches or exceeds or in the case of disposal reaches or falls below, the thresholds of 5%, or 10%, or 15%, or 20%, or 25%, or 30%, or 50% or 75% of the total voting rights of the issuer.

- Emerging Companies Market

Further, in order to enhance transparency, the Cyprus Stock Exchange ("CSE") has amended its Regulations regarding the participation in a company listed on the Emerging Companies Market ("E.C.M.").

A person who acquires or disposes shares to which voting rights are attached in a company listed on the E.C.M. , must, within two days of such acquisition or disposal, provide a notification to the company regarding the percentage of the voting rights which holds, which as a result of such acquisition or disposal, the said percentage, in case of acquisition, reaches or exceeds or in case of disposal, reaches or falls below the thresholds of 5%, or 10%, or 20%, or 30%, or 50% or 75% of the total voting rights of the company. In such case, the said company has the obligation to inform CSE, without undue delay, of such acquisition or disposal for publication.

16. At what stage of negotiation is public disclosure required or customary?

Private M&As

The Companies Law does not provide for any express requirement for disclosure for private M&As prior to the completion of the relevant procedures. On finalisation of the relevant procedures, the necessary filings are performed with the Registrar of Companies, in accordance with the provisions of the Companies Law, for the recording of the change in the registered and/or beneficial ownership of the subject company, as the case may be.

As explained above, the provisions of the Concentrations Law should be taken into consideration obligations to notify a transaction and obtain clearance from the Commission for the Protection of Competition.

Listed companies in the Cyprus Stock Exchange

The Public Take Over Law 41(I)/2007 (as amended) provides that an offeror, prior to taking a decision to make a takeover bid, must comply with the provisions of section 5 (f) of the same law to (i) ensure that he/she can fulfil in full any cash consideration, if such is offered, and (ii) secure the approval of the general meeting of the shareholders for the issuing or allotment of securities, if such is offered; and must ensure that such decision is final and must announce his decision only when he has every reason to believe that it can materialize.

An offeror must also immediately announce the making of a bid (a) when he has a firm intention to make a bid; or (b) upon an acquisition of securities which give rise to an obligation to make a bid under the law.

In regard to the obligation to submit the offer document, the Public Take Over Law 41(I)/2007 (as amended) provides that within a period of 12 days from the announcement of a final intention to make a bid, the offeror must draw up the offer document, according to the provisions of a directive issued by the Cyprus Securities and Exchange Commission ("CySEC"), and communicate it to CySEC and the board of the target company. CySEC may, approve the offer documents or indicate to the offeror amendments before the final approval or prohibit the publication of the offer document, if it deems that it does not satisfy the requirements of the Public Takeover Law.

Once the approval of CySEC to publish the offer document is secured, the offeror-

a. announces, in accordance with section 7, and publishes as soon as possible in at least two daily newspapers the approval of the offer document. The same obligation exists in case the offer document is rejected by the Commission, in which case the reasons for rejection must be stated;
b. communicates as soon as possible the offer document to the offeree company and to the representatives of the offeror's employees or where there are no such representatives, to the employees themselves;
c. within 7 days from the announcement of the document approval – (i) sends by post a copy of the offer document to the holders of securities subject to the bid, (ii) lists the said document to its internet site, provided it maintains one, and (iii) sends the said document to the regulated market where the

securities are listed, with the purpose of listing the document on its internet site.

It should also be noted that during the takeover bid period, according to the provision of the Public Take Over Law 41(I)/2007 (as amended)-

a. the offeror, any other person holding a percentage of five per cent (5%) or more of the voting rights of the offeree company or the offeror, must announce immediately, every acquisition of securities of these companies by themselves, persons acting in their own name on their behalf or in concert with them, by controlled undertakings, as well as the acquisition price and any voting rights already held in that company;
b. anybody acquiring a percentage equal to half per cent (0,5%) or greater of the voting rights of the offeree company or the offeror, must make an announcement for this acquisition, as well as every subsequent acquisition of securities of these companies by himself, persons acting in their own name on his behalf or in concert with him or by his controlled undertakings, as well as the acquisition price and any voting rights already held in that company.

In accordance with the provisions of the Public Take Over Law 41(I)/2007 (as amended), where the obligation to announce is mentioned, this is done by the person making the announcement with simultaneous announcement to the following:

a. to the regulated market in the Republic where the securities are listed, and the regulated market lists it on its internet site;
b. to the Commission;
c. to the internet site of the person making the announcement, provided it maintains one;
d. if the announcement is made by the offeror, to the representatives of its employees, or where there are no such representatives, the employees themselves, and the board of the offeree company;
e. if the announcement is made by the offeree company, to the representatives of its employees, or where there are no such representatives, the employees themselves, and the board of the offeror.

17. Is there any maximum time period for negotiations or due diligence?

There are no express provisions providing for any maximum time period for negotiations or due diligence.

18. Are there any circumstances where a minimum price may be set for the shares in a target company?

Private M&As

For private M&A's there is no minimum price set for the shares in a target company considering that the particulars of such transactions are subject to the negotiations made and decisions reached by the transacting parties.

Listed Companies

In accordance with the Public Take Over Law 41(I)/2007 (as amended), as to the determination of equitable consideration, in every bid, the consideration must be equal at least to the highest price paid or agreed to be paid for the same securities by the offeror or by persons acting in concert with him/her, during the last twelve months prior to the announcement of the bid.

In case of a voluntary bid, CySEC may, at its absolute discretion, allow a lower price than the one provided above.

19. Is it possible for target companies to provide financial assistance?

The Cyprus Companies Law, specifically section 53 (1), imposes a prohibition on a Cyprus company to provide, whether directly or indirectly and whether by means of a loan, guarantee, provision of security or otherwise, any financial assistance for the purpose of or in connection with a purchase or subscription of shares made or to be made by any person in the company or in its holding company.

The Cyprus Companies Law allows, however: –

1. the lending of money by the company in the ordinary course of its business, where the lending of money is part of the ordinary business of a company;
2. the provision by a company, in accordance with any scheme for the time being in force, of money for the purchase of, or subscription for, fully paid shares in the company or its holding company, being a purchase or subscription by trustees of or for shares to be held by or for the benefit of employees of the company, including any director holding a salaried employment or office in the company;

3. the making by a company of loans to persons, other than directors, bona fide in the employment of the company with a view to enabling those persons to purchase or subscribe for fully paid shares in the company or its holding company to be held by themselves by way of beneficial ownership.

Section 53 has also been amended introducing whitewash provisions, under which financial assistance by a private company is not unlawful:

i. if the private company is not a subsidiary company of any public company; and
ii. if the relevant action has been approved at any time by a resolution of the general meeting of the company passed by a majority of more than 90% of the votes of all the issued shares of the company.

20. Which governing law is customarily used on acquisitions?

On a more general note, it should be clarified that the governing law of any agreement may be agreed by the parties subject to any choice of law restrictions. The governing law customarily used on acquisitions in Cyprus is Cyprus law.

It is also the case that for some transactions, English law is chosen to govern the relevant agreements considering that Cyprus is a common law jurisdiction and the legal environment is particularly accommodating to English law-governed agreements.

21. What public-facing documentation must a buyer produce in connection with the acquisition of a listed company?

In accordance with the Public Take Over Law 41(I)/2007 (as amended), for public takeover bids, the following steps/documents are required:

- an announcement of the intent to make a public offer or confirming the decision to make a public offer. The announcement shall include, inter alia, the terms of the bid, the identity of the offeror and the offeree and the preconditions to which the takeover bid is subject to;
- preparation of the offer document, which must contain every crucial information for the valuation of the bid by the recipients. In case where the offer is for cash, the offer document must include confirmation by a credit institution or other organisation that sufficient funds are available to satisfy full acceptance of the offer;
- an acceptance and transfer form, issued by the offeror and sent to all of the target's shareholders;
- an opinion of the board of directors of the offeree company, regarding the bid and the reasons for their opinion accompanied by an independent expert report;
- a revised offer document, where applicable;
- an announcement of the decision on the offer should be published in two daily national newspapers;
- an announcement of the extension of the time allowed for acceptance, the revocation or cancellation of the bid and the intention to revise the terms of the bid, should also be published in two daily national newspapers, if applicable.

22. What formalities are required in order to document a transfer of shares, including any local transfer taxes or duties?

It is a statutory requirement for private and public companies that a properly executed instrument of transfer of shares is delivered to the company in order to register a transfer of shares. The signing of a sale and purchase of shares agreement between the said parties is optional. On receipt by the company of the duly executed instrument of transfer of shares a relevant resolution will be issued by the Board of Directors instructing the Secretary of the company to update accordingly the Register of Members of the company, cancel the share certificates held by the selling shareholder of the shares and issue new ones for the Purchaser. A relevant filing bearing a nominal cost must also be made the Cyprus Registrar of Companies and Official Receiver.

For public companies whose shares are listed in foreign capital markets it is possible to record a transfer of shares lawfully even if an appropriate instrument of transfer is not delivered to the company, provided that the transfer has taken place in accordance with the law and/or regulations of the relevant market.

23. Are hostile acquisitions a common feature?

Hostile take-overs are not common at all in Cyprus.

24. What protections do directors of a target company have against a hostile approach?

It is crucial to note that pursuant to the Public Take Over Law 41(I)/2007 (as amended) only if the shareholders provide their approval to oppose a hostile approach can the Board of Directors respectively adopt a decision to take defensive measures against such a bid. Protective/defensive measures include rotational re-appointment of directors, seeking alternative bids, issuance of share or the buyback of the company's own shares amongst other actions.

25. Are there circumstances where a buyer may have to make a mandatory or compulsory offer for a target company?

In accordance with the Public Take Over Law 41(I)/2007 (as amended) where a person a result of his/her own acquisition or the acquisition by persons acting in concert with him/her, holds securities of a company which, added to any existing holdings of those securities of his/hers and the holdings of those securities of persons acting in concert with him/her, directly or indirectly give him/her a percentage of thirty per cent (30%) or more of existing voting rights in that company at the date of the acquisition, such a person is required to make a bid at the earliest opportunity to all the holders of those securities for all their holdings at an equitable price.

In case the acquirer already holds more than fifty per cent (50%) of the voting rights of a company, the further acquisition of securities does not create an obligation to make a mandatory bid, provided the competent authority grants an exception to this end pursuant to the provisions of the Public Take Over Law.

26. If an acquirer does not obtain full control of a target company, what rights do minority shareholders enjoy?

As a general comment, minority rights must be examined on a case-by-case basis given the fact that the level of protection may be affected by the articles of association of the relevant company.

In the case of a public take over, a minority shareholder holding 10% or less of the voting rights is able to require the offeror to buy his/her securities from him/her at a fair price provided that this right is exercised within three months of the end of the time allowed for acceptance of the bid.
The Companies Law affords minority shareholders the right to apply to court if they consider that the affairs of the company are being conducted in a manner oppressive to a specific minority or to the minority as a whole. If on any such a petition, if the court is of the opinion that the company's affairs are being conducted as aforesaid, the court may make such order as it thinks fit whether for regulating the conduct of the company's affairs in the future, or for the purchase of the shares of any member of the company by other members of the company or by the company.

27. Is a mechanism available to compulsorily acquire minority stakes?

For private companies the existence of such a mechanism will depend on whether it is included in the articles of association of the relevant company or whether there is any other ancillary agreement between the shareholders that includes such a mechanism.

The Public Take Over Law 41(I)/2007 (as amended) which deals with Cyprus companies whose shares are admitted to trading on a regulated market in the Republic or abroad, provides for two such mechanisms: the "Squeeze Out" and the "Sell Out".

For the Squeeze Out in case an offeror makes a bid to all the holders of securities of the offeree company for the total of their holding, he is able to require all the holders of the remaining securities to sell him/her those securities in the following situations: –

1. where the offeror holds securities in the offeree company representing not less than ninety per cent (90 %) of the capital carrying voting rights and not less than ninety per cent (90 %) of the voting rights in the offeree company;
2. where the offeror holds or has irrevocably agreed to acquire, following the acceptance of a takeover bid, securities in the offeree company representing not less than ninety per cent (90 %) of the capital carrying voting rights and not less than ninety per cent (90 %) of the voting rights included in the takeover bid.

Furthermore, the law provides the Sell Out, in any of the aforesaid cases, the holder of the remaining securities of the offeree company is able to require the offeror to buy his/her securities from him/her at a fair price.

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