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United Arab Emirates MERGERS & ACQUISITIONS

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

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UNITED ARAB EMIRATES
MERGERS & ACQUISITIONS

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

Prior to briefing on the key legislations that would be relevant to the M&A, it is important to identify initially the jurisdiction to which target(s) to be then identify which legislation would be applicable.

The UAE adopts a dual legal system of civil and Sharia laws. The principles of the laws in United Arab Emirates ("**UAE**") are drawn basically from Islamic Sharia (the system of law). However, most codified legislations in the UAE are a mixture between Islamic laws and other civil laws such as the Egyptian and French civil laws. The UAE civil law system includes all relevant laws which are largely codified and adapted to meet the evolving needs of business demands, locally and internationally.

The legal system of the UAE is constitutional and based on both Federal Law No. (5) of 1985 on the Civil Code ("**UAE Civil Code**") and Sharia principles. The UAE Constitution, federal and local emirate laws and regulations, Sharia law, custom and practice are sources of law for civil matters.

Therefore, there are the federal laws which would be applicable to all mainland entities and then there are the local laws which would be relevant depending on which emirate the target(s) is located. If a target is located for example in the Emirate Dubai, then Dubai laws would be also applicable in addition to the federal laws.

The most important legislations that would be relevant to M&A in mainland UAE would be the UAE Civil Code and the UAE Commercial Companies Law which came into force pursuant to the Federal Decree Law No. (32) of 2021. If any of the parties to an M&A transaction whether it is the buyer, seller or the target is a public joint stock company, then the regulations of the UAE Securities & Commodities Authority ("**SCA**") would be applicable, specifically SCA Decision No. (3) of 2000 on Disclosure and Transparency, SCA Decision No. (18/R.M.) of 2017 on the Rules of Acquisition and Merger of Public Shareholding Companies, SCA Administrative Decision No. (62/R.T.) of 2017 on the Technical Requirements for Acquisition and Merger Rules, and SCA Decision No. (1) Of 2022 on Special Purpose Acquisition Companies Regulations.

In terms of the key regulators that would be usually involved in UAE mainland transactions, this would be usually the competent authority of the relevant emirate. Below is a list of the competent authorities in the seven (7) emirates of UAE:

- Emirate of Abu Dhabi – Abu Dhabi Department of Economic Development
- Emirate of Dubai – Dubai Economy & Tourism Department
- Emirate of Sharjah – Sharjah Economic Development Department
- Emirate of Ajman – Ajman Department of Economic Development
- Emirate of Umm Al Quwain – Umm Al Quwain Department of Economic Development
- Emirate of Ras Al Khaimah – Ras Al Khaimah Department of Economic Development
- Emirate of Fujairah – Fujairah Department of Industry and Economy

Other relevant authorities usually involved in an M&A transaction would be the notary public, SCA (if any of the parties is UAE based public joint stock company), and/or UAE Ministry of Economy (if any of the parties is a UAE based private joint stock company). Depending on the targeted sector or industry and the size of the transaction, additional regulators could be also involved such as the Competition Department at the UAE Ministry of Economy for the purposes of securing the merger control approval if the size of the transaction exceeds the 40% threshold, or the UAE Central Bank if any of the parties is licensed as a banking or insurance business, or the relevant department in each emirate with respect to healthcare, education, telecommunication or transport. Regulated financial markets such as Abu Dhabi Exchange (ADX), Dubai Financial Market (DFM) and NASDAQ Dubai are also relevant if the target is listed on any of them.

Another relevant point of consideration is when the target(s) is located in a free zone, in which case, some or all of the federal laws might not be applicable. To highlight more on this, it has to be pointed out that there are two common law system based regimes in the UAE. These are the ADGM (Abu Dhabi Global Markets) and the DIFC (Dubai International Financial Centre) which run parallel to the civil law regime applicable to the rest of the UAE.

Both ADGM and DIFC have a self-contained legal system which incorporates Anglo-American legislation framework. The relationships, rights and obligations created pursuant to the ADGM and DIFC legislations can in turn be enforced through the ADGM Courts and DIFC courts respectively. ADGM laws and DIFC laws provide that questions are to be resolved under the general (i.e., judge-made) law applying in England and Wales from time to time, in other words, the case law of England and Wales. The bench of the ADGM Court and DIFC Court comprise mainly of experienced common law jurists drawn from major commercial jurisdictions (e.g., the UK and Singapore) and the proceedings are in English. The court's procedures are similar to those of the English High Court. ADGM and DIFC court judgments have the same standing as those of other UAE superior courts.

In ADGM, the key legislations usually relevant within the M&A context are the Companies Regulations 2020 (as amended), Beneficial Ownership and Control Regulations 2018 (as amended), Commercial Licensing Regulations 2015 (as amended), Takeover Regulations Rules 2015, and Financial Services and Markets Regulations 2015 (as amended). Additionally, M&A transactions which involve regulated entities or activities within the ADGM would further require the involvement of the ADGM Financial Services Regulatory Authority (ADGM FSRA).

In DIFC, the key legislations that are relevant for M&A would be the Companies Law No. (5) of 2018, Companies Regulations 2018, Special Purpose Company Regulations, Regulatory Law 2004, Markets Law 2012, and the Rules of the Dubai Financial Services Authority (including the Market Rules and Takeover Rules). M&A transactions involving regulated entities or activities within the DIFC would further require the involvement of the Dubai Financial Services Authority (DFSA).

On a relevant note, it is usual to have a special purpose vehicle (SPV) being incorporated for the purposes of restructuring the target entities and consolidating the group companies. The purpose of such SPV is usually to act as a holding company for the purposes of the transaction where the sale of shares would take place between the buyer and the seller at the level of that SPV. On other occasions the SPV would be incorporated for the purposes of holding assets or shares in subsidiaries or even beneficial rights in JV projects or consortium vehicle(s).

This is relevant because many transactions in the Gulf and Middle East regions have been restructuring the target businesses to have their holding SPV incorporated in the ADGM or DIFC in which case the ADGM Authority and DIFC Authority respectively become relevant for the purposes of the M&A transaction. For incorporating an SPV in ADGM for example, the application for incorporating the SPV would be carried out through the ADGM Authority. The same case in DIFC where the DIFC Authority would become the competent authority for incorporating the SPV.

In addition to the ADGM and DIFC, the UAE offers more than 40 (forty) multidisciplinary free zones, and depending on the free zone, it could be a case where certain federal and/or local laws would be applicable in addition to the rules of the free zone authority or only. Each free zone has its own regulatory body which would oversee the rules and legislations that would apply within such free zone. Examples of such free zone authorities would be KIZADA (Khalifa Industrial Zone Abu Dhabi Authority), JAFZA (Jebel Ali Free Zone Authority), DDA (Dubai Development Authority), DMCCA (Dubai Multi Commodities Centre Authority), RAKEZA (Ras Al Khaimah Economic Zone Authority), etc.

2. What is the current state of the market?

According to the EY MENA M&A Insights 12M 2023 update, the MENA region witnessed a steady M&A market with total deal value for 2023 reaching US$86.0b, indicating a 4% increase on the previous year. The UAE dominated the lists of target countries as well as bidder countries by value last year. It also secured the largest M&A deal in the region in 2023 following the announcement by Apollo Global Management and Abu Dhabi Investment Authority ("**ADIA**") regarding the acquisition of Univar Solutions for a total of US$8.2 billion.

Sovereign wealth funds such as ADIA and Mubadala continue to be the most active with regards to the M&A deal activity in the UAE. Local and GCC investors along with private equity firms have also been active with several transactions being driven by them.

It was further reported according to EY that in 2023, the chemicals industry experienced a substantial increase in deal value, amounting to US$4.7 billion. Noteworthy was ADNOC's acquisition of a 50% stake in Fertiglobe for US$3.7 billion.

3. Which market sectors have been particularly active recently?

It was reported according to EY that "the UAE consolidated its status as the preferred destination for investors due to its business-friendly regulations and efficient legal framework."

Sectors such as healthcare, education, hospitality, infrastructure, media & entertainment and technology (specifically digital banking, consumer finance, artificial intelligence and fintech) are indicated to be the most attractive sectors for M&A transactions in the UAE. In 2023, the strong emphasis on energy and resources in the region was also clearly demonstrated by substantial capital investments made across the Energy & Resources sector.

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

We believe that as the commercial climate readjusts from the uncertainty of the pandemic, M&A activity will begin to increase again in the UAE. The UAE has proven to be resilient in this regard and has taken strong measures to counteract the restrictions previously imposed during the pandemic. The three most significant factors influencing M&A activity over the next 2 years in the UAE will be the implementation of:

1. The Entrepreneurial Initiative whereby the UAE government has been implementing the proper infrastructure in order to attract and retain startups, especially in the technology space. This initiative is meant to foster and create unicorns in the UAE.
2. Business and visa reforms will also play a huge role in influencing M&A activity in the region. UAE has reformed these two areas in order to attract investors and international companies to the UAE. This includes simplifying the process to establish businesses in the UAE and providing more permanent visa solutions for non-Emiratis. It is worth mentioning that the Dubai Free Zones Council (**DFZC**) has taken a significant step forward by adopting a preliminary agreement for the One Free Zone Passport Initiative. This initiative enables companies licensed in one of Dubai's free zones to expand their operations seamlessly into other free zones within the emirate, eliminating the requirement for obtaining a second commercial license. The UAE government has also launched the "Work Bundle" to facilitate employee residency procedures and work permits in private sector companies. The first phase of the initiative will be implemented in Dubai and will be gradually expanded to include other emirates.
3. Changes to corporate tax structure will also influence M&A activity in the region. The Corporate Tax Law was implemented as of 1 June 2023 with a headline rate of 9%.

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

Assuming that the transaction is taking place in the mainland and not an over-the-counter transaction, or the acquisition is made by the UAE government or to restructure a distressed publicly traded company, approval of the relevant competent authority (i.e., the emirate department of economic development as well as any industry-specific regulator) should be secured prior to submitting an application to SCA (being the relevant authority regulating publicly traded companies).

For an offer to acquire a publicly traded company to be approved by SCA, the offer document should include amongst other things the following:

1. A note indicating that an independent financial consultant licensed by SCA must be consulted in case there is any doubt about the offer.
2. The publishing date, the name and address of the acquirer and the person who submitted the offer on behalf of the acquirer, if any.
3. Details of the securities subject of the offer, indicating that they shall be transferred with or without the profits.
4. Total consideration price submitted to acquire the target publicly traded company.
5. Details of all the documents required and the procedures that must be followed to accept the offer.
6. The closing price of the securities to be acquired and the closing price of the offered securities (in case of acquisition through swap) on the first day of every month of the 6 months immediately preceding the offer document's publishing date and on the last day preceding the offer term as well as on the last day available before the offer document publishing date, provided that the prices of the listed securities shall be obtained from the regulated financial market whether it is ADX or DFM. In the event the securities are not listed, the information available on the

number and value of the deals completed within the last 6 months and the source of such information shall be disclosed or a note shall be submitted to indicate that none of such information is available.
7. Indication of the impact of accepting the entire offer on the acquirer's assets, profits, and business.

If the payment of the offer consideration price includes the issuance of securities, and if the acquirer is a company that is not listed in a UAE mainland regulated financial market, the offer document shall further include the following information about the acquirer:

1. The sales, net profits or losses, before tax, if any, and after tax, the amount of paid tax, if any, and any exceptional items, minority interests, and the total amount of dividends, proceeds, and profits for each security, for the past three fiscal years where such information was published.
2. A list of the assets and liabilities based on the latest audited financial statements published.
3. The cash flows, if they are available, based on the latest audited financial statements published.
4. All the material changes to the acquirer's financial or commercial position after the latest audited financial statements published, or a statement indicating that none of such changes took place.
5. Details relating to the any announcement or financial statements issued post publishing the latest audited financial statements.
6. Any information concerning any of the above that has been amended to consider inflation.
7. The significant accounting policies and any key notes on the financial statements related to the adjustment of data, including any data that was amended to consider inflation. If it is not possible to compare the data due to the change of the accounting policy, this shall be disclosed and the estimated sum of the discrepancy arising from the change shall be defined.
8. The details of the board members of the acquirer.
9. The nature of the acquirer's activity and the financial and commercial forecasts.
10. A summary of the main content of every material contract concluded by the acquirer or any of its affiliates outside the normal course of its activity in the 2 years preceding the offer. The summary shall include a note to the related parties, and the terms, date, and provisions of each contract, and any sums paid by the acquirer (or any of its affiliates) or paid thereto based on each contract.

The offer document shall also contain a description of how the offer will be funded, the source of funding, and the names of key lenders or the parties who arrange the funding. If the acquirer decides that payment of the fees, repayment, or provision of a guarantee for any obligation (conditional or otherwise) shall significantly depend on the target company's business, the arrangements to be taken shall be described or a statement indicating the absence of such arrangements shall be submitted.

If the payment of the offer consideration price includes issuance of securities that will be publicly traded, a prospectus of the new securities shall be drafted in accordance with the issuance and offering rules applied by SCA.

If any document issued to the holders of securities in the target company contains a recommendation or opinion by a financial consultant regarding acceptance or rejection of the offer, the offer document shall contain a statement indicating the financial consultant's approval or rejection including any recommendation or opinion in the form and wording set forth by such consultant.

In addition to the above, public traded companies seeking merger shall file an application for merger signed by the representatives of these companies to SCA attached to it the following documents:

1. A copy of the resolutions of the boards of directors of the companies seeking the merger.
2. A copy of the merger contract.
3. Copies of the financial statements for 2 fiscal years preceding the merger date which should be audited by the external auditor of the companies.
4. A copy of the initial approvals issued by the competent authorities on the merger.
5. A copy of the agreements concluded with the consultants involved in the merger.
6. A report on the action plan and approach, the merger method and schedule approved by the consultants of the merger.
7. The audited financial positions of the companies seeking the merger dated no later than 3 months from the date of submitting the application for merger to the Authority.
8. A preliminary appraisal drafted by the companies seeking the merger or by their financial consultants.

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?

If a target company is a private company then there are no material disclosure obligations to a potential acquirer. This varies greatly from a public company which does have to follow a set of strict disclosures and filings. A public company will have to file an application with the SCA, the competent authority, and any other trade specific regulatory authority.

Without prejudice to the legally prescribed disclosure rules, and prior to announcement of the offer to acquire a publicly traded company, the concerned parties of the transaction shall not disclose any confidential information in relation to any offer or potential offer, and they shall conduct the due diligence process maintaining the confidential information, in particular the information which influences the price of the securities. All concerned parties of the transaction shall take all the necessary measures to prevent the leakage of any information regarding any offer or potential offer, as well as not leak or publish any statements or allow any person, entity, or a certain investor group to have access to any information concerning the transaction prior to the announcement of the offer.

Providing any concerned party of the transaction with information, whenever it is absolutely necessary shall not be deemed a disclosure of confidential information, provided that the disclosing person informs the concerned party that the information is confidential. The concerned party shall be liable to conduct the due diligence process to prevent leakage of such information.

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

Customarily in the UAE, the seller will undergo a commercial, financial, and legal due diligence. A seller will create a virtual data room and populate the data room with relevant legal documents for the buyer to review and create the necessary due diligence report. The seller usually opts for full transparency working with the buyer on any red flag issues in an effort to close the sale. Generally, due diligence reports are limited to key red flags rather than detailed comprehensive reports in order to minimize expenses. The red flag issues typically include anti-fronting law and restrictions on foreign ownership, employment considerations, and change of control provisions in material contracts and facility agreements. It is also worth mentioning that since the introduction of the corporate income tax in June 2023, tax considerations have become an additional crucial aspect to consider during the due diligence process.

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

The key decision-making organs of a target company are the shareholders, board of directors and the senior officers. In both public and private mergers, shareholders have the right to approve a merger by way of a special resolution if the sale of shares is greater than 50%. Public company shareholders are further subject to SCA takeover rules.

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

Directors of a target company have an obligation to understand the transaction, consider it with reasonable care, and make decisions in the best interest of the company. Directors should ensure that the shareholders are getting a fair price for the assets and/or securities. Shareholders have an obligation to act in good faith, and to deal fairly in the best interest of the company. Both directors and shareholders must avoid any conflict-of-interest issues. It's important to note that the specific duties and responsibilities of directors and shareholders may vary depending on the company's structure, as outlined in its articles of association and shareholders' agreements. For instance, responsibilities of directors in a limited liability company are owed to the company itself, its shareholders, and any relevant third parties. Similarly, in public joint-stock companies, directors have the same obligations, but the SCA extends their duties to encompass all stakeholders, including creditors.

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

Employees and other stakeholders do not have any specific approval, consultation, or other rights under UAE law, unless they are also shareholders of the company. If the transaction is structured as a share purchase agreement, under UAE Labor Law, no change to the employees' status is required since they remain employed by the target company. However, if the transaction is structured as an asset purchase agreement, and employees are being transferred from

one entity to another, then contractual and procedural arrangement should be made to transfer such employees.

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

Conditionality is a common characteristic observed in the market. In M&A transactions, as well as in the subsequent closing, certain obligations may be contingent upon the fulfillment of specific conditions precedent, milestones, or obligations. Typically, if due diligence uncovers issues, it is standard practice for the buyer to request that the seller rectify these concerns before finalizing the transaction. Furthermore, to protect against potential risks highlighted during the due diligence process, buyers often negotiate protective measures. These can include adjustments to the purchase price, escrow arrangements for a portion of the purchase funds, fundamental and business warranties and/or specific indemnities (such as tax as an example). Such strategies are instrumental in safeguarding the buyer's interests against unforeseen liabilities or discrepancies discovered prior to the transaction's completion.

Furthermore, Conditions precedent (CPs), such as regulatory approvals, due diligence satisfaction, and the fulfillment of certain pre-closing obligations, are standard UAE market practice. These conditions ensure that critical requirements are met before the transaction can proceed to closing.

The degree to which conditionality is employed varies depending on the complexity of the deal, the regulatory environment, and the specific risks associated with the transaction. In more complex deals, or those involving cross-border regulations, conditionality can be more extensive to navigate the intricate legal and regulatory landscape. Both buyers and sellers leverage conditionality to protect their interests, negotiate better terms, and provide a structured path to closing. This balancing act of risk and protection makes conditionality a fundamental aspect of transaction structuring and negotiation in the M&A process.

On the flip side, sellers in private M&A transactions are equally strategic, focusing on minimizing their liability and exposure. To this end, sellers often seek to narrow the scope of their warranties and representations, thereby limiting the conditions under which they can be held liable post-transaction. They may also push for the inclusion of caps on indemnification amounts and time limits for claims to restrict their financial and legal exposure over time. Furthermore, sellers might negotiate for "baskets" or thresholds that must be exceeded before indemnification obligations are triggered, ensuring minor issues do not result in disproportionate penalties. These efforts are crucial for sellers aiming to secure a clean exit, with a clear delineation of their post-sale liabilities, enabling them to protect their interests and manage risk effectively in the transaction.

Additionally, sellers may strategically shift the responsibility of fulfilling certain conditions onto the buyer, designating them as a CP or, in some cases, conditions subsequent (CS). This tactic is particularly prevalent in scenarios where the transaction needs to be expedited. By transferring the onus to the buyer, the seller can facilitate a quicker closing process, all while potentially reducing their own obligations to rectify any outstanding issues or to meet specific benchmarks. This approach not only accelerates the transaction timeline but also cleverly redistributes the burden of ensuring that key conditions are satisfied, thereby enabling sellers to navigate more swiftly towards the completion of the deal with minimized encumbrances.

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

A target company can sign off on a binding initial term sheet or memorandum of understanding that outlines deal exclusivity with the sellers in order to secure deal exclusivity. Alternatively, an acquirer of a target company can sign a letter of intent with the target company, giving them exclusivity during the due diligence phase and subject to the outcome of the due diligence, the parties can proceed with negotiating the definitive arrangements.

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

Acquirers in the UAE will largely produce a red flag due diligence report rather than a more comprehensive due diligence report in order to save costs during the transaction. Depending on the outcomes of the due diligence, necessary warranties, indemnities, conditions pre-completion conduct and completion deliverables will be agreed in the definitive transaction documents. Deal protection mechanisms include amongst other things placing the amount of the purchase price in escrow, or agreeing on the leakage restrictions and permitted leakage. On a related note, some M&A deals include break-up fees which may serve as an extra layer of comfort to the acquirers should a seller decides to back

out of a deal in order to compensate the buyer for all the costs and expenses incurred with regards to a transaction. Costs are usually split between the parties except in relation to the cost of each party's advisors which are borne solely by the concerned party appointing such advisors.

It is worth mentioning that Material Adverse Change (MAC) clauses are also usually used in UAE transactions to allow the acquirer to withdraw from the deal if there is a material adverse change in the target company's business, financial condition, or prospects between signing the agreement and closing the transaction. These clauses provide the acquirer with protection against unforeseen risks.

14. Which forms of consideration are most commonly used?

Both "locked-box" and "completion accounts" mechanics are frequently used in M&A transactions in the UAE and they are widely accepted. Choosing either of them depends on the outcome of the commercial negotiation between the parties.

The most prevalent types of consideration are payment of cash or through the issuance of shares. Payment by way of shares entails the buyer issuing new shares or transferring existing shares to the seller as consideration for the acquisition. Additionally, earn-outs are fairly common in M&A deals in the UAE whereby which a portion of the purchase price or an additional compensation would be paid to the sellers post-completion contingent upon the satisfaction of certain objectives or financial thresholds.

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

In cases of acquisition of private companies, the issuance of shares necessitates corporate and regulatory approvals, however, there is no obligation for a public disclosure to be made.

If the offer to acquire publicly traded company is coming from a person, or a group of associated persons or related parties whose total shareholding in the target company amounts to be more than 30%, such person(s) is required to submit an offer in accordance with the SCA takeover rules in which case a disclosure will be required according to SCA disclosure and transparency obligations.

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

As explained above, private M&A transactions do not require public disclosures but rather regulatory filings with the relevant competent authority to reflect changes in 25% or more of the ultimate beneficial ownership.

On the other hand, public M&A deals require disclosure to take place on the regulated financial market where the target company is listed once a definitive agreement is signed (i.e., the sale and purchase agreement). These requirements typically mandate the timely disclosure of material information that may affect the price of the company's securities or the investment decisions of shareholders.

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

There is no legislation or regulation that specifies a maximum amount of time for M&A negotiations or due diligence. The duration of discussions and due diligence will depend on the precise conditions of the parties' agreement, as well as the transaction's complexity and the amount of data that must be assessed.

However, it is common for the parties to include a time period for negotiations or due diligence in the binding agreement, such as a memorandum of understanding or a term sheet. This term, known as the "Exclusivity Period," is typically agreed upon by the parties in order to provide a structure for the negotiations and due diligence process and to restrict the target from engaging in negotiations with other parties during this time.

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

The minimum price protects investors from purchasing shares at artificially low prices and ensures that the company raises adequate capital to meet its financial responsibilities.

Therefore, the minimum price for shares in a target company may be set by the company's board of directors or by SCA, which may set a minimum price for shares in a target company in certain situations, such as when the target company is deemed to have significant public interest.

Before finalizing a transaction, the board of directors often consults an independent financial advisor for a

fairness opinion. This assessment determines if the offer for the target company's shares is equitable, influencing the decision on a minimum acceptable share price. Such evaluations are crucial in ensuring that shareholders receive fair compensation, reflecting the company's actual worth and future prospects.

In the realm of call and put option agreements, these mechanisms offer strategic flexibility to both the acquirer and the target company's shareholders. Shareholders have the right, but not the obligation, through put options, to sell their shares at a set minimum price within a specified period. This ensures they can exit their investment at a known value, particularly useful in volatile markets or if the company's future prospects are uncertain. Conversely, call options allow the acquirer to purchase shares at a predetermined price, facilitating the consolidation of ownership without immediate compulsory acquisition.

Beyond these arrangements, minimum prices for shares in a target company might also be set in various other circumstances:

1. **Merger Agreements:** As part of merger negotiations, the acquiring and target companies might agree on a minimum share price to ensure the deal aligns with both parties' valuations of the target company's worth.
2. **Regulatory Requirements:** In certain jurisdictions, regulatory bodies may impose guidelines on the minimum pricing of shares in transactions involving public companies to protect minority shareholders and ensure fair treatment.
3. **Defensive Measures:** Companies might set a minimum price for their shares as a defensive mechanism against hostile takeovers, ensuring that any potential acquirer pays a premium reflective of the company's perceived long-term value rather than short-term market fluctuations.
4. **Employee Stock Ownership Plans (ESOPs) and Long-Term Incentive Plans (LTIPs):** Companies may establish a minimum share price for the sale or buyback of shares under ESOPs or LTIPs, protecting employees' interests by ensuring they receive a fair value for their shares, especially in privately held companies where market prices are not readily available.

These scenarios underscore the importance of setting a minimum share price from different perspectives: ensuring fairness in transactions, meeting regulatory standards, defending against undervaluation, and safeguarding stakeholder interests. Each context requires a tailored approach to determine the appropriate minimum price, reflecting the unique aspects of the transaction and the parties involved.

Where share swap transactions are considered, setting minimum share prices are considered for the following reasons:

1. **Equity Valuation**: In UAE-based share swap deals, determining a minimum share price is crucial for establishing an accurate equity valuation of the companies involved. This valuation impacts the exchange ratio, setting the terms for how many shares of one company are exchanged for another's. Given the diverse nature of companies in the UAE and the different free zones, from energy firms to real estate and technology, valuations must account for sector-specific risks, growth prospects, and regulatory impacts, ensuring that the share price reflects true market value.
2. **Protecting Shareholder Interests**: Setting a minimum share price in share swap transactions is vital to protect shareholders, ensuring they receive a fair exchange rate for their shares. This protection is especially important in a market like the UAE, where family-owned businesses transitioning into public ownership and multinational companies seeking regional expansion may be involved in M&As.
3. **Regulatory Compliance and Transparency**: The SCA and financial markets such as the Dubai Financial Market (DFM) and Abu Dhabi Securities Exchange (ADX) have stringent regulations governing M&A activities, including share swaps. Setting a transparent, justifiable minimum share price helps comply with these regulations, ensuring the deal is fair and transparent.

Expanding further into the realm of M&A transactions, setting minimum share prices in the context of capital increases and venture capital mergers and acquisitions (M&A) scenarios are also to be considered:

Capital Increase:

In situations where a company seeks to raise additional capital through the issuance of new shares, determining a minimum share price is critical. This price setting serves multiple purposes: it protects existing shareholders from dilution, attracts new investors by setting a floor price that reflects the company's value

and growth prospects, and complies with regulatory requirements that may exist to ensure fairness and transparency in the capital raising process. The minimum price in such cases might be influenced by recent share performance, independent valuations, and strategic considerations regarding the company's future funding needs and investment opportunities. Establishing a minimum price ensures that the new capital raised reflects the true value and potential of the company, thereby aligning the interests of new and existing shareholders.

Venture Capital M&A:

In the dynamic environment of venture capital-backed M&A transactions, minimum share prices play a pivotal role in negotiations and deal structuring. Venture capitalists (VCs) are particularly keen on establishing minimum share prices to safeguard their investments and ensure a favorable return. These scenarios often involve complex valuation methods, taking into account the target company's growth trajectory, intellectual property, market position, and other intangible assets. The minimum share price in such deals is not only a reflection of the company's current valuation but also an instrument to negotiate future earn-outs, performance milestones, and other contingent compensation mechanisms that can adjust the final transaction value based on the acquired company's post-deal performance.

Moreover, in venture capital M&A, the negotiation of a minimum share price can serve as a crucial tool for VCs to ensure that their exit strategies are aligned with the valuation thresholds they require. This can include specific ratchet provisions that adjust the shareholding structure if future financing rounds are completed at lower valuations, thus protecting early-stage investors from dilution and preserving their percentage of ownership and value return.

In both capital increase scenarios and venture capital M&A transactions, the determination of a minimum share price is not merely a financial exercise but a strategic negotiation point that reflects the interplay between current valuation, future growth expectations, investor protection mechanisms, and the overall market environment. These considerations ensure that the pricing of shares is fair and equitable, reflecting the genuine value of the company while protecting the interests of all stakeholders involved.

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

It is prohibited for UAE shareholding companies to provide financial assistance. According to article (224) of the UAE Commercial Companies Law, a joint stock company or any of its subsidiaries may not provide a financial aid to any person so as to enable him to own any securities issued by the company. Financial aid includes in particular providing loans, granting gifts or donations, providing the company's assets as collateral, providing a collateral or guarantee for the obligations of another person or using, using any of the company's reserves or funds or profits generated to pay off any of that person's obligations. It should be noted that financial aid does not include any guarantees, undertakings, or compensation that the company provides to any of the underwriters during any offering or subscription to the company's shares.

However, as an exception to the above, companies licensed by the UAE Central Bank to engage in financing activities may provide loans to enable its shareholders to own any securities issued by these companies licensed by the UAE Central Bank, provided that the loans granted do not include any preferential terms that they do not grant to their other clients and in a manner that does not conflict with the legislation and regulations in force at the Central Bank.

It should be noted that the above prohibition on financial assistance does not apply to limited liability companies and is only limited to shareholding companies.

20. Which governing law is customarily used on acquisitions?

There are two aspects to be considered with regards to the governing law. There is the governing law agreed in the transaction documents which governs the agreement itself, and then there is the governing law with regards to completion mechanics where the shares and/or assets are being transferred between the parties. For the latter, it would be typically the law of the jurisdiction where the target company is incorporated whether it is an Abu Dhabi or a Dubai mainland entity, or the DIFC or ADGM or any of the other UAE free zones.

For the transaction documents and depending on what the parties would mutually agree, typically, the law that would be used would be either:

- UAE law as applied in one of the seven emirates to avoid any conflict of laws. So for example you would find clauses stating that "*the governing is the UAE as applied in the Emirate of Abu Dhabi*" or "*the governing is the UAE as applied in the Emirate of Dubai*";
- DIFC law which is strongly recommended if the target HoldCo is based in DIFC;

- ADGM law which again is strongly recommended if the target HoldCo is based in ADGM; or
- Non-UAE law; i.e., a foreign law. English law and New York law are frequently chosen.

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

Please refer to question 5 above.

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

The specific formalities required to document a transfer of shares will depend on the legal form of the target company and where it is registered. For example, if the target company is a:

- mainland limited liability company in Dubai that is non-regulated, then the formalities would require a share transfer agreement that is notarized before the notary public and obtaining the necessary approvals from Dubai Economy and Tourism Department to reflect the changes in ownership and amend the commercial license;
- non-regulated private joint stock company which shares are in custody with private registrars such as banks and Abu Dhabi Exchanges (ADX), then the formalities would require procuring the approval of the UAE Ministry of Economy and effecting the transfer before the ADX after signing the necessary transfer forms and paying the fees, then amending the commercial license before the Abu Dhabi Department of Economic Development;
- public joint stock company that is regulated for example by the UAE Central Bank (CB) and listed on Dubai Financial Market, then the approval of SCA and CB would be required and then there is the process of publishing the offer document, and effecting the transfer before DFM after signing the necessary share transfer forms and paying the fees and finally amending the commercial license before the Dubai Economy and Tourism Department;
- non-regulated DIFC based entity, then a share transfer instrument must be signed and share certificates are amended and the changes are reflected before the DIFC registrar;
- company that is based in ADGM and regulated by FSRA, then the approval of FSRA should be obtained and a share transfer instrument must be signed and share certificates are amended and the changes are reflected before the ADGM registrar.

In all events, one formality that is common between all of the above is that the necessary corporate approvals would be required from the target company or seller and/or acquirer, or from either the board of directors or the shareholders (depending on the applicable law and the constitutional documents).

23. Are hostile acquisitions a common feature?

Hostile acquisitions are not common in the UAE as they are perceived to be somewhat aggressive in nature and are therefore not a common market feature. The UAE has a comparatively low percentage of hostile takeovers, and the majority of M&As in the country are amicable deals negotiated between the acquirer and the management or board of directors of the target company. This is mainly because a hostile bid would require the acquirer to obtain the consent of the shareholders, which becomes challenging as UAE laws require the sellers' consent for selling his/her shares.

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

Directors of a target company in the UAE have several protections against a hostile approach, and some of these include:

- "Poison pills": Which means adopting measures that dilute the voting power of a hostile bidder by issuing more shares to all other shareholders for instance.
- "Just Say No" defense: The board of the target company can reject the hostile bid by recording the same in the minutes of a meeting and advise the shareholders to do the same. They cannot however "stop" a bid from taking place.
- SCA Approval: The SCA has the power to approve or block mergers and acquisitions, which gives it significant influence over the outcome of any takeover attempt. The SCA may consider factors such as the impact of the proposed merger or acquisition on the public interest, competition, and the rights of

shareholders before making a decision, some of which might be linked to the directors.

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

There are certain circumstances where a buyer may be required to make a mandatory or compulsory offer for a target company, as per the regulations of the SCA and the rules of the relevant stock exchange where the target company is listed.

- Acquisition of a controlling interest: If a buyer acquires a controlling interest in a listed company, they may be required to make a mandatory offer to purchase the remaining shares of the company. The threshold for a controlling interest varies depending on several factors, but in all events it becomes mandatory if the transaction will allow for controlling more than 30% (30%+1) of the share capital.
- Increase in shareholding percentage (For existing shareholders): If a buyer increases their shareholding in a listed company to a certain threshold, they may be required to make a mandatory offer to purchase the remaining shares of the company. The threshold again varies depending on several factors, but in all events it becomes mandatory if the transaction will allow for controlling more than 30% of the share capital.

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

If an acquirer does not obtain full control of a target company in the UAE, minority shareholders typically enjoy certain rights as provided by the UAE Commercial Companies Law, the regulations of the relevant stock exchange and the constitutional documents of the target company. These rights may include:

- Right to dividends: Minority shareholders have the right to receive dividends on their shares, in proportion to their shareholding in the company, if the company declares dividends.
- Right to vote: Minority shareholders have the right to vote on certain matters at the company's general meetings, such as the appointment of directors and the approval of financial statements.
- Right to inspection: Minority shareholders have the right to inspect the company's books and records, and to receive copies of the company's financial statements.
- Right to appointment of director: In some circumstances, minority shareholders have the right to appoint a director to the board of the company.
- Right to sell shares: Minority shareholders have the right to sell their shares to other investors, if they so choose.
- Right to tag along: Minority shareholders have the ability in very limited circumstances to sell their shares in the company along with the majority shareholders in the event of a sale or transfer of control if agreed contractually or in the event the acquirer of a publicly listed company will own more than 90% and shareholders with at least 3% of the total share capital of that company submit an offer to the acquirer to purchase the minority shares.

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

Only if the "Right to Drag Along" is agreed contractually. However, enforcement of such right is quite challenging. For example, if the target company is based in the ADGM or the DIFC, ADGM Courts or DIFC courts would acknowledge such right and make the necessary interim measures to enforce such right. However, if the target is a mainland, UAE courts would usually not enforce such rights and in return would allow for damages claims.

That being said, the UAE Commercial Companies Law and SCA regulations allow for minority squeeze-outs which only apply to public joint stock companies when an acquirer who acquires, or as a result of an acquisition will hold, more than 90% of the total share capital. The acquirer may then apply to the SCA for approval to force the remaining minority shareholders to sell or swap their shares to the acquirer within 60 days (the offer period) from the date of the final settlement of the offer. The minority shareholders can then object and take the matter to court; however, the mandatory acquisition will not be suspended save by court order. If there is no objection or no court order to suspend the mandatory acquisition, the squeeze-out should be then completed within 7 days from the expiry of the offer period.

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