



**COUNTRY
COMPARATIVE
GUIDES 2022**

The Legal 500 Country Comparative Guides

Qatar

MERGERS & ACQUISITIONS

Contributor

Al Tamimi & Company In Association
with Adv. Mohammed Al Marri



Muhammad Mitha

Senior Counsel, Banking & Finance | m.mitha@tamimi.com

Samiya F. Mitha

Senior Associate, Corporate Structuring | s.mitha@tamimi.com

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

For a full list of jurisdictional Q&As visit legal500.com/guides

QATAR

MERGERS & ACQUISITIONS



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

The Qatar Financial Markets Authority (QFMA) and the Ministry of Commerce and Industry are the regulators in this regard. The Qatar Central Bank (QCB) is also involved where a merger or an acquisition involves a financial institution. The Qatar Stock Exchange (QSE) also administers listed companies. The key laws/regulations are comprised of:

- a. Law No. 8 of 2012 (QFMA Law);
- b. Law No. 11 of 2015 as amended by Law No. 8 of 2021 (the Commercial Companies Law);
- c. The QFMA Mergers and Acquisition Rules;
- d. The QFMA's Board Decision No. (5) Of 2016 Concerning the Issuance of Governance Code for Companies & Legal Entities Listed on the Main Market;
- e. The QSE Rulebook;
- f. Law No. 13 of 2002 (the QCB Law);
- g. QCB Instructions to Banks; and
- h. Law No. 19 of 2006 (the Law on Protection of Competition and the Prevention of Monopolistic Practices).

2. What is the current state of the market?

While the stock market in Qatar has previously never been a very active market, recently a shift in the market perception can be seen with companies showing interest to go public. Currently there are 50 companies listed on the Qatar Stock Exchange. After the listing of QLM Life & Medical Insurance Company, which was listed in January 2021, the latest companies to be listed on the Qatar Stock Exchange are Al Faleh Educational Holding Company which was listed in April 2021 and Mekdam Holding Group which was listed in August 2021. In the banking sector in 2019 Barwa Bank and International Bank of Qatar (IBQ) (both being unlisted financial institutions) merged in which Barwa Bank is the surviving entity and was rebranded as Dukhan Bank. More recently in November 2021 Al Khaliji Commercial

Bank merged with Masraf Al Rayan to create a leading Shari'ah-compliant regional bank.

The Qatar Financial Markets Authority (QFMA) has issued a new Offering & Listing of Securities on the Financial Markets Rulebook (Securities Rulebook) in April 2021. The Securities Rulebook has replaced the previous Offering and Listing of Securities Rulebook of 2010. The purpose of issuing the Securities Rulebook is to encourage local as well as Qatar Financial Centre entities, free zone entities and foreign issuers to participate in the securities market in Qatar.

3. Which market sectors have been particularly active recently?

The government sector as well as hotels & leisure sector remains the most active sector in Qatar based on the hydrocarbons industry and major infrastructure projects.

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

- a. During the period leading up to the FIFA World Cup 2022, Qatar has gone through major construction projects however, post FIFA World Cup 2022, the market may witness a consolidation phase.
- b. A recent change in the legislation to allow for up to 100% foreign ownership in banks in Qatar could potentially interest foreign banks to invest in or acquire local banks in Qatar.
- c. The easing of the ongoing political issues are likely to have effects on investment and activities in the region generally.

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

Under the Commercial Companies Law, where a company seeks to acquire shares that will result in it

holding 51% of the capital of the target company or will result in it holding 40% of the shares of the target company (where that makes it the largest shareholder) then the same will need to be completed by way of resolution of the shareholders of both companies in a meeting in which at least 75% of shareholders must be in attendance.

The QFMA Mergers & Acquisitions Rules provide that any person who owns 10% of the shares (either on its own or in concert) must notify the QFMA if he or she will acquire more shares and any person or group that acquires 20% of the shares must be notified to the QFMA. Any acquisition up to 30% is to be made through the market or by formal offer to the shareholders.

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 specific obligation to disclose imposed on the target company. The only information publicly available will be that which can be found on the website of the target (which must include biannual financial reports) or on the QSE website or which is published in newspaper in connection with the target's annual general meeting. Such publication will include the balance sheet, profit and loss statement, board of directors' report, auditor's report and general assembly agenda.

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

Ordinarily a due diligence will be undertaken although it is not required by law. A due diligence will look at various matters including corporate & shareholder information; government & regulatory matters; details of assets; financial position & statements; financial obligations & commitments, material contracts, real estate, insurance policies, taxation position & issues, employees, intellectual property & technology, litigation, arbitration & other disputes.

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

The shareholders' meeting and the board are the approving organs.

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

Under the QFMA Mergers & Acquisitions Rules, the directors of the company should not act in a way that could harm the company or make the deal more complex. Shareholders' spouses and children are not allowed to trade shares before a decision has been made on whether or not to implement an acquisition or merger. Shareholders and directors may not exploit any information for trading purposes. Furthermore, board of directors' spouses and children cannot trade their shares from the time the merger and acquisition has been announced until a general assembly has been held and decision has been taken on whether to implement, or not, the acquisition or merger. Additionally, under the Governance Code for Companies & Legal Entities Listed on the Main Market, the QFMA requires necessary disclosures be made to the shareholders if the company enters into a Major Transaction (*which is a transaction aiming to own, sell, lease, exchange, or otherwise dispose of (except for establishing guarantees) assets of the company or assets to be acquired by the company or transactions which would change the essential nature of the company business; or those whose gross value exceeds (10%) of the lesser of either the company's market value or the net value of the company's assets according to the latest announced financial statements*) that might harm the interests of the shareholders or prejudice the ownership of the company's capital.

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

No. But the effect of any merger under Qatar law is that the merged entity is the successor in law to any contractual rights and obligations that existed in any merging entity prior to the merger, so this would apply to contracts such as employment agreements, leases, supply agreements etc.

Furthermore, the QCB may require merging financial institutions to provide certain comforts in relation to the customers of merging financial institutions. This may include, without limitation, an action plan to be provided by the financial institutions setting out the details on how to deal with customer accounts / facilities and consents. The QCB has the right to impose certain conditions, grace periods or require certain guarantees from the financial institutions before it issues a final approval.

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

It is not.

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

Only by way of an agreement to do so.

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

Leak protection mechanisms or agreements, which prevents leaks of information.

14. Which forms of consideration are most commonly used?

Cash and share issues.

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

Under Article 2 (4) of the QFMA Mergers & Acquisitions Rules, each individual/entity who owns individually or with minor children or spouses 10% of a listed company's shares, must notify the QFMA and the QSE of any deal or act that will lead to an increase of this percentage upon the completion of the purchase.

Further, under Article 2 (5) of the QFMA Mergers & Acquisitions Rules, if an individual/entity or several allied individual/entities, having together 20% of listed company's shares, want to undertake any act which leads to an increase of such percentage ownership up to an amount of 30% of the issued shares, they must inform the QFMA and the QSE of any deal or act that will lead to an increase of this 20% figure immediately upon completion of the purchase. Any increase above 30% requires a public offer to be made. Also under Article 34 of the QFMA Mergers & Acquisitions Rules, if an individual/entity or several allied individual/entities, wish to own more than 75% of listed company's shares, they must notify the QFMA and submit a compulsory offer to buy all the remaining shares of the listed company.

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

In most cases there is a degree of negotiation with the QFMA. For instance, Article 2(2) of the QFMA Mergers & Acquisitions Rules states that a listed company which is party to an acquisition or merger outside of Qatar must disclose the offer details immediately upon approval of regulators in the offeree country.

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

No.

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

No.

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

Yes.

20. Which governing law is customarily used on acquisitions?

Qatar Law

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

Under the QFMA Mergers & Acquisitions Rules, the offeror must submit a merger and acquisition application containing the following information:

1. The offeror's name, nationality, and address.
2. Information about the offeror's company, such as its headquarters, objectives, current capital, company's address, names of directors, names of shareholders, the percentage each shareholder owns in the offeree company.
3. The name, headquarters, address and capital of the offeree company
4. The number of shares owned by the offeree in the listed offeree company must be shown in a statement.
5. Minimum and maximum of the shares to be

acquired and minimum and maximum percentage of the offeree company's capital.

6. The price offered to the offeree.
7. The purpose of the merger or acquisition.
8. A copy of the articles of association and memorandum of association of the target company shall be provided to the offeree and the offeror.
9. The offeror shall submit an updated copy of its shareholders' register.
10. A copy of acquisition or merger agreement signed by both parties.
11. In case of cash payment, a bank guarantee issued by a local bank ensuring that the offeror has the capability of fully or partially paying.
12. A valuer's valuation of the offeree company's assets.
13. Commitment by the offeror to the authority to pay full fees in relation to acquisition and merger.
14. The offeror and offeree company must submit an audited financial report for the last three years.
15. A copy of the commercial license and the commercial register for the legal advisor of the target company.
16. A copy of the commercial license and the commercial register for the financial advisor of the target company.

Furthermore, a notice of the process must be given to the Competition Protection and Anti-Monopoly Committee of the Ministry of Commerce and Industry.

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

There are no taxes and duties on a share transfer. If the transfer is of shares of a listed company, the same must be registered on the exchange and the company's own register. If a company is not listed then the transfer must be approved by or notified to, as applicable, the Ministry of Finance/ General Tax Authority, Ministry of Commerce and Industry, Department of Labour and a transfer document needs to be authenticated at the Ministry of Justice.

Under the QFMA Mergers & Acquisitions Rules, following the merger a certificate has to be given to the acquirer proving that the assets owed to him have been transferred.

Further, under Article 174 of the QCB Law a merged

financial institution is exempted from all the fees of registration, documentation and notarisation with the various competent authorities.

23. Are hostile acquisitions a common feature?

No.

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

The QFMA requirements make no provision of protections directors have against hostile takeovers. However the QFMA requirements are all based on the fact that a takeover/merger are consent based. For example, the QFMA Mergers & Acquisition Rules contemplate a merger agreement being entered into. Also many requirements (such as the requirement to have a valuation) cannot be carried out if the target company does not co-operate.

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

Under the Commercial Companies Law, where an acquisition is approved by the shareholders of the target, the remaining minority shareholders may be required to acquire their shares at the offered price or at a price determined by a valuer undertaking a formal valuation.

The QFMA Mergers & Acquisitions Rules requires a person who wants to acquire 75% or more of the shares to notify the authority and he may submit a mandatory offer to buy the remaining shares of the company.

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

Under the QFMA Mergers & Acquisitions Rules, if a shareholder acquires 90% or more of the capital or voting rights in a company; minority shareholders who own 3% or less in a company have the right to send a request to the authority to compel the majority shareholder to buy their shares.

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

Under the Commercial Companies Law, in the event of acquiring 50% or more of the shares, the acquirer is required to take steps to protect the minority rights, including providing offers of not less than 30 days to purchase the rest of the shares for an amount not less

than the value of the shares that are subject of the acquisition, or the value determined by a valuer appointed in accordance with the provisions of the Law.

The authority can compel majority shareholders to acquire the shares owned by minority shareholders, as suggested in Article 38 of the QFMA Mergers & Acquisitions Rules.

Contributors

Muhammad Mitha
Senior Counsel, Banking & Finance

m.mitha@tamimi.com



Samiya F. Mitha
Senior Associate, Corporate Structuring

s.mitha@tamimi.com

