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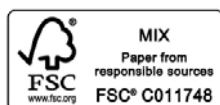
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Cyprus

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1 Relevant Authorities and Legislation

1.1 What regulates M&A?

The detailed rules and procedures relating to public company M&A transactions in Cyprus are principally regulated by the Law to Make Provision for Public Takeover Bids for the Acquisition of Securities of Companies and Related Matters, Law 41(I)/2007, and amending Laws 47(I)/2009 and 7(I)/2015 (together, the “Takeover Bids Law”).

The Takeover Bids Law is supervised and administered by the Cyprus Securities and Exchange Commission (“CySEC”), being the competent statutorily designated authority which, operating within the legislative framework of the Takeover Bids Law and the Cyprus Securities and Exchange Commission (Establishment and Responsibilities) Law (“CySEC Law”), has the jurisdiction either *ex officio* or upon a complaint made to it to, *inter alia*, investigate any administrative violations, impose administrative sanctions and conduct investigations and inspections. The CySEC also has a general all-encompassing authority to exercise the additional competencies, powers and responsibilities afforded to it pursuant to the provisions of the CySEC Law, which allow it to oversee, regulate and enforce the various provisions of the Takeover Bids Law, *mutatis mutandis*.

Other relevant laws and regulations applicable to M&A transactions include:

- the Companies Laws of Cyprus, Cap. 113, as amended, which govern schemes of arrangement, amalgamations and reconstructions (see further question 2.1) and the compulsory acquisition of shares of dissenting shareholders, commonly known as the “squeeze-out” procedure;
- the Cyprus Securities and Stock Exchange Law, Law 14(I)/1993, as amended;
- the Transparency Requirements (Securities Admitted on a Regulated Market) Law of 2007 (Law 190(I)/2007), as amended (the “Transparency Law”); and
- the Market Abuse Law, Law 102(I)/2016 (the “Market Abuse Law”).

1.2 Are there different rules for different types of company?

The Takeover Bids Law does not distinguish between different types of public company.

It applies in relation to:

- every takeover bid for the securities of a company registered in Cyprus where all or a part of such companies’ securities

are listed on a regulated market in Cyprus (being the Cyprus Stock Exchange); and

- every takeover bid for the securities of a company registered outside of Cyprus if any of the requirements of section 4(3) of the Takeover Bids Law apply, namely:
 - (a) the securities of the target are admitted to trading exclusively on the Cyprus Stock Exchange;
 - (b) the securities of the target have been admitted to trading first on the Cyprus Stock Exchange and subsequently on a regulated market of another Member State (other than the Member State in which the target has its registered office); or
 - (c) the securities of the target have been simultaneously admitted to trading on the Cyprus Stock Exchange and on a regulated market in another Member State (other than the Member State in which the target has its registered office), and the latter has elected the CySEC as the competent authority for the supervision of the takeover bid, has notified the CySEC on the first day of trading and has published such fact immediately.

In the above cases, the regulation of the takeover bid will be split between the target’s Member State country of incorporation and the jurisdiction of the regulated market on which its shares are admitted for trading (this being Cyprus in cases where section 4(3) is deemed to apply).

Any matters relating to the notification of the target’s employees, corporate law matters, the percentage of voting rights necessary for the acquisition of control, the exceptions from the obligation to launch a bid and the terms for cancelling or revoking the bid are governed by the laws and competent authority of the Member State in which the target has its registered office.

Where the CySEC is designated as the competent authority to regulate the bid in accordance with section 4(3), it shall regulate and oversee matters such as the consideration for the bid, the price, the bid process, notification of the intention by the offeror to make a bid, the content of the offer document and the publication of the bid in accordance with the provisions of the Takeover Bids Law.

1.3 Are there special rules for foreign buyers?

There are no special rules for foreign buyers.

1.4 Are there any special sector-related rules?

The banking, financial services and insurance sectors are subject to special rules which require certain consents from the Central

Bank of Cyprus, the CySEC and the Superintendent of Insurance, respectively, where a change of control is contemplated.

1.5 What are the principal sources of liability?

The provisions of the Takeover Bids Law remain judicially untested in Cyprus.

Since the Takeover Bids Law came into force, the tendency of the CySEC has been to issue written warnings (whether private or public) and administrative fines and/or sanctions for violations in the case of breach. The maximum fine payable is capped to approximately €342,000 and in the case of continued breach, the fine imposed may be as much as double that amount. Where a person has gained a pecuniary benefit as a result of breach of any of the provisions of the Takeover Bids Law and such gain exceeds the maximum fine prescribed under such law, the CySEC may impose a fine of up to double the amount of the financial benefit gained.

Civil liability comes in the form of restitutionary damages. Criminal liability or the imposition of an administrative sanction does not absolve an offender from civil liability.

Furthermore, under section 21(3) of the Takeover Bids Law, the board members of the target are liable for the accuracy and completeness of the offer document. The provision of any false or misleading information on material elements of the offer document or the concealment of material facts from the offer document is, aside from being an administrative violation, a criminal offence punishable by imprisonment for up to five years, or a fine, or both.

2 Mechanics of Acquisition

2.1 What alternative means of acquisition are there?

Apart from a public takeover bid made in accordance with the Takeover Bids Law and the various directives issued thereunder, the main methods of structuring public company acquisitions in Cyprus are as follows:

- a court-sanctioned scheme of arrangement under sections 198–200 of the Companies Laws of Cyprus, Cap. 113, as amended;
- acquiring shares directly from the targets' shareholders without making a public offer where the target company is a public but unlisted company; and
- under sections 201A–201H of the Companies Laws of Cyprus on the Merger and Division of Public Companies transposing Third Council Directive 78/855/EEC and Sixth Council Directive 82/891/EEC as amended by Directive 2009/109/EC.

2.2 What advisers do the parties need?

The parties will need to have on board legal advisers, financial advisers, accountants, brokers and public relations consultants.

2.3 How long does it take?

The Takeover Bids Law contains detailed rules on the bid timetable. The process commences on the making of an announcement by the offeror that it intends to make a takeover bid, with such an announcement only being made when the offeror has every reason to believe that it may be implemented. The announcement is made either when the offeror has a firm intention to make a bid, or once

he has acquired securities which trigger the obligation to make a mandatory takeover bid. The obligation to announce also arises where there is speculation of a proposed transaction.

The maximum bid timetable set by the Takeover Bids Law to effect a total acquisition of all the securities of the target is as follows:

- Day 0(–60) – a potential bidder is given a 60-day window (imposed by the CySEC) to announce its intention to proceed in making a bid. The first announcement is on the date beginning on Day 0.
- Day 3 – the offeror must: (i) convene a general meeting of its shareholders to approve the issuing of new securities if these are being offered as consideration; (ii) submit any necessary applications to obtain the relevant regulatory permits or approvals; and (iii) commence its legal and financial due diligence exercises.
- Day 12 – the offeror submits the offer document to the CySEC and the target board.
- Day 20 – the earliest date by which the CySEC issues its decision, assuming no additional information is requested by it.
- Day 25 – the offeror submits additional information if required to do so by the CySEC.
- Day 27 – the target board provides its recommendations and sends these to the holders of the securities subject to the bid.
- Day 28 – the CySEC announces its final decision (assuming additional information has been requested from the offeror).
- Day 35 – the offeror sends a copy of the offer document by post to the holders of securities subject to the bid.
- Days 65 or 90 – the offeror sets the acceptance period in the public offer document as a date being no fewer than 30 days and no more than 55 days from the date on which the offer documents were posted to the recipients. The total extended acceptance period allowed for acceptance must not exceed 75 days (except in certain cases).
- Days 158 or 183 (being Days 65 or 90 plus three months) – the offeror may exercise its right of squeeze-out.

The above timeline assumes that cash consideration is being offered and there are no revisions to the public offer document during the offer process which may extend the bid timetable by a further 14 to 17 days.

2.4 What are the main hurdles?

The main obstacle to a successful bid is to obtain the requisite level of acceptances from target shareholders to accept the terms of the bid both before the announcement of the offer and for a certain period of time during the public offer period itself (see question 2.15 below). These acceptances usually take the form of irrevocable undertakings or letters of intent and are crucial to the success of a bid, particularly where a mandatory takeover for an outright acquisition is contemplated. The obtaining of necessary regulatory approvals, which are usually industry- or activity-specific, are also relevant. Competition clearance is a common example. Financing can also be a hurdle given that the offeror must be in a position to secure the necessary financing before announcing the bid. This can prove to be a major impediment, particularly where the bid is dependent on heavy leveraging over the target's assets.

2.5 How much flexibility is there over deal terms and price?

It is a fundamental premise to every takeover bid that all holders of target shares of the same class must be afforded equal treatment. Furthermore, where a person acquires control of a target company, the other holders of securities must be sufficiently protected.

Specifically, section 25 of the Takeover Bids Law provides that, in the period prior to the announcement of the bid up to and including the expiry of the acceptance period, the offeror and persons acting in concert with it may not: (i) make any arrangements with shareholders of the target; (ii) enter into arrangements with persons who, although not shareholders of the target, nevertheless acquire voting rights in the target; (iii) deal or enter into arrangements which involve the trading in securities of the target company; or (iv) enter into arrangements which involve acceptance of a bid, on conditions more favourable than those offered to target shareholders.

The fairness principle also extends to the value and form of the consideration being offered. In terms of the value of the consideration, section 18(1) of the Takeover Bids Law provides that 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 bidder or by persons acting in concert with the bidder, during the 12 months preceding the announcement of the bid. In the case of a voluntary bid, the CySEC may allow for a lower bid price; however, this decision is purely discretionary.

The consideration for the bid may take the form of securities, cash, or a combination of the two, save in certain circumstances where the bidder is obliged to offer a cash alternative as follows:

- where the consideration offered by the offeror does not consist of liquid securities admitted to trading on a regulated market;
- where the offeror or persons acting in concert with it have purchased cash securities carrying 5% or more of the voting rights in the offeree company (over a period of 12 months preceding the announcement of the bid up to and including the date when the offer acceptance period closes);
- in the case of a “squeeze-out” or “sell-out”; or
- in the case of a mandatory bid.

2.6 What differences are there between offering cash and other consideration?

See questions 2.5 and 2.16.

Where the consideration offered to recipients of the bid includes the exchange of new securities in the offeror, the offeror may, with CySEC approval, revoke or withdraw the announcement of the bid where its shareholders refuse to approve the issue or allotment of the new securities.

2.7 Do the same terms have to be offered to all shareholders?

See question 2.5.

2.8 Are there obligations to purchase other classes of target securities?

There are no provisions which require a bidder to purchase other classes of target securities. Where the target has different classes of shares in issue and/or has issued transferable securities that are convertible into shares, the offeror must make: (i) separate bids for each class of shares, each being on identical terms with the other; and (ii) separate bids, one for each class of transferable securities that can be converted into shares, again on equally identical terms with the bid or bids made for the securities.

2.9 Are there any limits on agreeing terms with employees?

Target employees do not have any right to negotiate or approve the terms of the bid or to impose conditions.

Following the announcement of the bid, however, the boards of the target company and the offeror are obliged to inform the representatives of their respective employees or, where there are no such representatives, the employees themselves, of their views on the effects of implementation of the bid on employment.

In terms of the public bid document itself, the Content of the Offer Document Directive DI41-2007-03 of 2012 issued by the CySEC obliges the offeror to disclose, amongst other things, its intentions with regard to the safeguarding of the jobs of its employees and management, including any material change in the conditions of employment, its strategic plans for the two companies and the likely repercussions on employment and the locations of the companies' places of business.

Any false or misleading information or the concealment of material information from the public offer document is an administrative violation as well as a criminal offence.

2.10 What role do employees, pension trustees and other stakeholders play?

Despite the fact that employees' rights are safeguarded by various laws which deal with disclosure of information and the consultation of employees and their representatives generally, which are all relevant on the disposal or substantial change of any business, they do not give employees an independent right to challenge or oppose a particular transaction. The role of the employees, unless they are also shareholders in the target, can therefore be said to be relatively passive insofar as their influence over bid terms and conditions is concerned.

2.11 What documentation is needed?

The following principal documents are required in order to effect a takeover bid in accordance with the Takeover Bids Law:

- the announcement confirming the offerors' intention to proceed with the offer and setting out the terms of the bid in summary form, the preconditions to which it is subject and the consideration proposed to be offered;
- a “certain-funds” declaration (where cash consideration is being offered);
- the public offer document;
- the opinion from the target board and the independent expert's report which is sent to target shareholders; and
- an acceptance and transfer letter in the prescribed form.

2.12 Are there any special disclosure requirements?

The CySEC Directive on the Content of the Offer Document Directive DI41-2007-03 of 2012 contains full details of the disclosures required to be made in the offer document. By way of example, in a securities exchange offer, the offer document must include information on such securities, of which the information is equivalent, in terms of content, to a prospectus in accordance with the provisions of the Public Offer and Prospectus Law and Regulation 809/2004.

2.13 What are the key costs?

The key costs are professional legal, financial and other advisory fees.

Stamp duty fees should also be taken into account, as well as CySEC examination fees pursuant to CySEC Directive DI41-2007-02(A) of 2012–2014.

Examination fees vary according to the form of consideration being offered. In the case of a cash consideration, the offer document examination fees are €3,417 plus 0.01% of the total value of the public offer, and in the case of securities, the fees are €6,835 plus 0.01% of the value of the takeover bid.

2.14 What consents are needed?

Aside from target shareholder approvals (see question 2.15 below), regulatory approvals are also required (see question 1.4).

2.15 What levels of approval or acceptance are needed?

Any person directly or indirectly acquiring (whether solely or together with persons acting in concert with him) securities of a company which, added to his existing holdings and those of persons acting in concert with him, give him 30% or more of voting rights in that company, is obliged to make a bid for the outstanding securities at a fair price.

The bid is addressed immediately to all of the remaining shareholders to acquire all of their securities. The mandatory public bid provisions will be triggered where an offeror which previously held less than 30% of the voting rights in a company acquires 30% or more of the voting rights in such a company, or where a holder of between 30% and 50% of the voting rights in a company wishes to increase its holding.

See question 2.15 for percentages required to effect a squeeze-out.

The approval of a scheme of arrangement under the Companies Laws requires a majority in number represented by three-fourths in value of the creditors or class of creditors or members or class of members, present and voting either in person or by proxy at the meeting, and if sanctioned by the Court, such an arrangement is binding on all the creditors or the class of creditors, or on the members or class of members.

2.16 When does cash consideration need to be committed and available?

The cash consideration must be available before the offeror announces his intention to make a bid. In every cash bid, the offeror must accompany its offer with a confirmation from one or more credit institutions that the offeror has the necessary cash available, and that it will remain available until such time that the offer expires and the consideration is paid out to shareholders. The cash consideration must be sufficient to satisfy all due cash consideration, should the offer be accepted by all target shareholders.

3 Friendly or Hostile

3.1 Is there a choice?

A potential bidder may choose to proceed with a friendly or hostile bid. A bid may therefore proceed even under circumstances where the target board does not specifically recommend it to the bid recipients. That said, the target board must act in the interests of the company as a whole and must not deny the holders of securities the opportunity to decide on the merits of the bid or act in a manner which discourages the successful outcome of a bid (unless with shareholder approval).

3.2 Are there rules about an approach to the target?

No, although the bidder will typically approach the target's key management in writing by setting out the general terms of the bid.

3.3 How relevant is the target board?

See question 3.1 above.

Once an announcement to proceed with a public bid has been made, the target board is under an obligation to promptly and accurately relay information to its shareholders and employees, to give its views on the effects of implementation of the bid, and to make recommendations to its shareholders. The target board's views can prove salient to the successful outcome of a bid.

3.4 Does the choice affect process?

A transaction cannot proceed as a scheme of arrangement under the Companies Laws without the approval of the target board. If the support of the target board is not forthcoming, a takeover transaction is likely to proceed as a hostile one.

4 Information

4.1 What information is available to a buyer?

There is no legal requirement for due diligence to be carried out on the target. If the bid is hostile, only information which is publicly available will be available to a bidder.

Even if the transaction is recommended by the target board, the latter may still wish to limit the information which they are willing to pass on to a potential bidder. Even where the bid is recommended by the target board, the provision of information to a particular bidder may result in the disclosure of the same information to other interested bidders, which may include competitors owing to the fact that all bidders must be treated equally under the Takeover Bids Law.

4.2 Is negotiation confidential and is access restricted?

Yes, negotiations may be conducted in private. However, if there is a fear of leakage, a bidder is obliged to announce its intention to proceed with a public offer before the announcement of his final decision or firm intention to do so (please see question 2.3 above).

4.3 When is an announcement required and what will become public?

See question 2.3 above in relation to announcements.

All announcements, as well as information contained in the public offer document pursuant to the CySEC Directive on the Content of the Offer Document, Directive DI41-2007-03 of 2012, will become public.

4.4 What if the information is wrong or changes?

The board members of the offeror are liable for the accuracy, completeness and correctness of the offer document. In signing the offer document, they are attesting that the information contained in the offer document is true and complete, without any omissions.

that may alter the content of the offer document and mislead the recipients. The board members of the offeror are liable to recipients for every damage sustained for any inaccuracies in the offer document (see question 1.5 above).

The offer document may be revised at any time up to 14 days before the expiry of the acceptance period with the CySEC's prior approval (see question 2.3).

5 Stakebuilding

5.1 Can shares be bought outside the offer process?

Shares may be bought outside the bid process; please note, however, the response to question 2.5 above, and the disclosure requirements in question 5.3 below.

5.2 Can derivatives be bought outside the offer process?

Yes, dealings in derivatives referenced to shares (derivatives being considered interests in shares) are treated in the same manner as shares, and may be bought outside the offer process.

5.3 What are the disclosure triggers for shares and derivatives stakebuilding before the offer and during the offer period?

Any transaction during the takeover bid period involving shares of the target by the bidder or any other person holding 5% of the target's voting rights must be disclosed immediately. Any person who acquires 0.5% of the share capital of the bidder or the target must immediately disclose that transaction and all previous transactions involving such shares.

Disclosure requirements are also triggered under article 171 of the Cyprus Stock Exchange Law in relation to securities listed in the Cyprus Stock Exchange. A person who acquires or disposes of the shares of a company carrying voting rights which fall below, meet or exceed the thresholds of 5%, 10%, 15%, 20%, 25%, 30%, 50% and 75% must disclose such a fact to the target, the CySEC and the Cyprus Stock Exchange by the following day at the latest.

Similarly, under the Transparency Law, a shareholder who acquires or disposes of shares of a Cypriot issuer whose shares are admitted to trading on a regulated market, and to which voting rights are attached, must notify the issuer of the proportion of voting rights held by him or her as a result of the acquisition or disposal where that proportion reaches or exceeds the "major holding" minimum threshold of 5%, and thereafter at increments above or below 10%, 15%, 20%, 25%, 30%, 50% and 75%.

5.4 What are the limitations and consequences?

The mandatory bid provisions of the Takeover Bids Law oblige any person who, as a result of his own acquisitions or the acquisition by persons acting in concert with him, holds securities of a company which, added to his existing holdings and those of persons acting in concert with him, directly or indirectly give him 30% or more of voting rights in that company, to make a bid for the outstanding securities. Such a bid must be addressed immediately to all of the remaining shareholders for all their securities at a fair price. See also question 5.1 above.

6 Deal Protection

6.1 Are break fees available?

Break fees received from the target or the target's shareholders are not specifically regulated under Cyprus law.

6.2 Can the target agree not to shop the company or its assets?

There is nothing which prohibits this under Cyprus law, although the directors should always pay regard to their common law fiduciary duty to act in the company's best interests, as well as in accordance with the general principles applicable to takeover bids.

6.3 Can the target agree to issue shares or sell assets?

Yes; however, the target board must act with caution, given that such actions may be construed as attempts by the board to frustrate the bid which, if they are so regarded, are specifically prohibited except with shareholder prior approval.

6.4 What commitments are available to tie up a deal?

See questions 2.4, 2.5 and 3.2.

7 Bidder Protection

7.1 What deal conditions are permitted and is their invocation restricted?

See questions 2.4, 2.5, 2.13 and 4.4.

7.2 What control does the bidder have over the target during the process?

The bidder has control over the target during the bid process to the extent that the specific terms and conditions have been agreed between the various parties to the bid.

7.3 When does control pass to the bidder?

Control passes once the offer has been declared unconditional and upon the announcement of the success of the bid. The consideration must be paid to the relevant target shareholders and the transfer validly effected through the Cyprus Stock Exchange.

In the case of a scheme of arrangement under the Companies Laws, control will pass once the scheme is sanctioned by the court.

7.4 How can the bidder get 100% control?

The bidder can get 100% control by invoking the squeeze-out provisions under the Takeover Bids Law.

Minority shareholders may be squeezed out: (a) where the offeror holds securities in the offeree company representing no less than 90% of the capital carrying voting rights and no less than 90% of the voting rights in the offeree company; and (b) where the offeror holds, or has irrevocably agreed to acquire, following the acceptance of a takeover bid, securities in the offeree company representing no

less than 90% of the capital carrying voting rights and no less than 90% of the voting rights included in the takeover bid.

The above right may be exercised on application to the CySEC within three months following expiration of the offer acceptance period. Once the CySEC confirms that the requisite level of approvals have been gained in order to successfully invoke the provision, it issues a decision. The steps outlined in question 7.3 above are repeated.

8 Target Defences

8.1 Does the board of the target have to publicise discussions?

No. See question 3.2. Discussions are usually carried on in private.

8.2 What can the target do to resist change of control?

See question 3.3 above.

8.3 Is it a fair fight?

This is a matter to be determined to a large extent by the shareholders of the target company, who will make their own decision following recommendations received from the target board.



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Marinella has over 10 years of post-qualification experience in her chosen practice areas. Marinella started her career in the thriving corporate and commercial department of one of the largest law firms in Cyprus. During her career, she has had the opportunity to advise extensively on a number of high-profile blue-chip transactions for a vast range of multinationals and Magic Circle law firms.

Marinella specialises in cross-border mergers & acquisitions, joint ventures and corporate restructurings, corporate governance, banking and finance, financial services regulatory matters and equity capital markets, where her experience has included advising both issuers and underwriters on IPOs as well as private placements.

9 Other Useful Facts

9.1 What are the major influences on the success of an acquisition?

Usually, this comes down to whether the price of the bid is considered to be a fair one, as well as the competency, experience and knowledge of the parties' professional advisers.

9.2 What happens if it fails?

An unsuccessful bidder cannot make a repeat bid within a period of 12 months from the date on which the original bid was withdrawn or had lapsed except with the prior consent of the CySEC.

10 Updates

10.1 Please provide a summary of any relevant new law or practices in M&A in your jurisdiction.

There have been no significant legislative developments or practices in the domestic M&A arena over the last few months.



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George focuses on tax, intellectual property, immigration and corporate and commercial law. He graduated from the University of Westminster and after completing his Bachelor's degree, he joined the audit and tax practice of a major Cyprus-based accountancy firm. He was later admitted to the Cyprus Bar Association and is currently a partner with E & G Economides LLC. He is a member of the Individual Tax and Private Client Committee of the International Bar Association. In addition, George is involved in the firm's business development and marketing activities.



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ADVOCATES & LEGAL CONSULTANTS

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The firm maintains a diverse client base and is regularly instructed by high-net-worth individuals, entrepreneurs, multinational corporations and tax firms, as well as global banking and credit institutions and both domestic and international transactions.

Our clients' interests often have a global focus, and we are therefore frequently mandated to co-operate with international law firms on multijurisdictional projects and other cross-border engagements. Such assignments have been pivotal in yielding a globally-minded perspective and have brought the firm into close co-operation with international law firms.

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