

The International Comparative Legal Guide to: **Mergers and Acquisitions 2008**

A practical insight to cross-border Mergers and Acquisitions



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1 Relevant Authorities and Legislation

1.1 What regulates M&A?

The following legislation regulates M&As in the Republic of Cyprus:

- Public Offer Law 2007 (Law 41(I)/2007).
- Cyprus Securities and Stock Exchange Law 1995 as amended.
- Cyprus Securities and Stock Exchange (Public Offer for the Acquisition of Securities and Merger of Companies Listed on the Stock Exchange) Regulations of 1997 (the “Regulations”).
- Companies Law Cap 113 sections 198-201.
- Insider Dealing and Market Manipulation (Market Abuse) Law 2005 (116(I)/2005) (“Market Abuse Law”).

1.2 Are there different rules for different types of public company?

The Regulations regulate public offers for the acquisition of securities and the merger of companies of which some or all of their securities are listed on the Cyprus Stock Exchange, for the period of time during which such securities remain listed. The Council of the Cyprus Stock Exchange supervises and bears the responsibility for observing the legality of the procedure determined for the execution of public offers.

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?

Various consents and approvals are required when making a public offer, the most important being the approval of the Competition Committee (Cypriot competition authority). If the target company is an insurance company then approval from the Insurance Commissioner will be necessary. If the target company is a banking institution as defined in the Banking Law, the approval of the Central Bank of Cyprus will be required (see question 2.12).

1.5 What are the principal sources of liability?

If the provisions of the Regulations and legislation are not complied with, the bidder and the target board may risk enforcement action, as outlined in the Regulations and legislation. Market manipulation is prohibited and a person who is found to be engaging in market manipulation will be subject to enforcement action.

2 Mechanics of Acquisition

2.1 What alternative means of acquisition are there?

There are a number of ways of acquiring control of a local public company. If a public company is not listed on the Cyprus Stock Exchange, control of the same can be obtained by acquiring a majority of the issued share capital of the target company from its shareholders. No public offer is required.

Alternatively, if the company is listed on the Cyprus Stock Exchange, a bidder may acquire shares in the target company by making a public offer, the process of which is explained below.

A merger and/or division of a company under section 201 A-H of the Companies Law Cap 113 is where two companies divide or unite through one company acquiring a controlling holding of shares in another. A merger is the term used to describe a recommended takeover bid.

Another procedure available but not commonly used is a scheme of arrangement under sections 198-200 of the Companies Law Cap 113. This involves an application to the Court by a creditor or shareholder and is a Court supervised procedure.

2.2 What advisers do the parties need?

Generally, both the bidder and the target company will require the professional services of legal and financial advisors in such transactions. An example of when such advisors will be required is whilst the bidder prepares the public offer document (see question 2.3) and when the board of the target company make their recommendation on the offer to its shareholders (see question 3.4). In particular the recommendation document of the board must contain the report of an independent expert. The services of other professionals are sought when cash consideration is offered by the bidder, as in such instances the offer must be supported by a Bank guarantee or a guarantee from other persons with the necessary capital adequacy (see question 2.6 below).

2.3 How long does it take?

The Regulations detail the rules governing the timetable for making a bid. Once the bidder has decided to make the public offer, he must immediately announce this decision to the Council of the Cyprus Stock Exchange (“Council”), the Cyprus Securities and Exchange Commission (“Commission”) and the board of directors of the target company (“Board”). Within three days of announcing its intention to make a public offer, if shares are to be offered as part of the consideration, the bidder must convene a General Meeting of

its shareholders in order to approve the issuance of new shares. It is within this period also that all necessary applications and permits from regulatory bodies are submitted and obtained. Following this, the bidder then has 12 working days from announcing his decision to the above parties, to prepare the public offer document. Regulation 11 provides details as to what must be included within this offer document which essentially must be the best possible evaluation of the offer. Once prepared by the bidder and once shown to the above named parties, the Council must then approve the publication of the offer document. If the Council is of the opinion that the document does not fulfil the requirements as outlined in the Regulations, it has the power to prohibit its publication or direct the offeror to amend the same before it is published. Along with the document, the offeror must pay the Council a fee for examining the document, which is currently set at CYP 2,000. Once submitted, the Council has up to 7 working days to publish give its approval to the document.

When approval is obtained, the offeror must publish the document in at least two daily national newspapers as soon as possible and must post the offer to all shareholders.

The time limit for accepting the public offer is set by the offeror and will be contained within the public offer document. The acceptance period must not be less than 30 days and greater than 45 days from the day on which the document was made public. The result of the bid is announced by the offeror within two days of the expiration of the acceptance period and the compulsory acquisition procedure ('squeeze out') is used within three months of the expiration of the period.

2.4 What are the main hurdles?

There are a number of hurdles to be overcome which include the bidder securing the financial resources to enable him to proceed with making the public offer and obtaining all regulatory approvals which are required. The greatest concern of any bidder is to achieve a sufficient level of shareholder support in order for the bid to be successful (please see question 2.13). Depending upon the recommendation of the Board of the target company, shareholder support is easily obtained if the Board recommend that the shareholders accept the offer (see question 3.2).

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

The Regulations provide that all shareholders of the same category of securities must be treated equally and The Public Offer Law 2007 details the rules as to the form of consideration to be given (see question 2.6 below). The price offered in a bid must be the highest price paid or agreed to be paid during the last 12 months before the offer period for the shares in the target company.

If any natural or legal person acquires securities which give him greater than 30% of the voting rights of a company, he has an obligation to make a public offer to acquire an additional number of securities which when added to those already held give him a percentage greater than 50% of the voting rights of the company.

Any natural or legal person who acquires securities in any company which added to any already held by him, give a percentage of 75% or greater of the voting rights of a company, has an obligation to make a public offer to acquire all the securities of the company. Again the consideration offered must be at least equal to the highest price paid for the securities of the same category in the 12 months preceding the obligation to make a public offer. When the 70% threshold has been passed the company will cease to be a public company and will be delisted.

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

Under section 16 of the Public Offer Law 2007, a bidder can offer cash, shares or a combination of both. If the offer is for cash consideration, the bidder must support the offer with a guarantee from one or more banks or other organisations or persons with the necessary capital adequacy. Please note, however, that in certain circumstances, the bidder must offer a cash alternative as part of the consideration. These are:

- (1) When the consideration offered does not consist of shares in the Stock Exchange regarding which the Cyprus Securities and Exchange Commission (CYSEC) shall set the criteria to, and will decide as to whether such shares offered by the bidder are liquid.
- (2) Where the consideration offered comprises of securities the public offer document must contain financial information regarding the securities and in the case of securities which are listed in the Stock Exchange, the document must contain the listing particulars for the listing of the securities. A prospectus containing such information, along with information on the bidder and his financial position is required.
- (3) When a bidder has purchased shares in the target company within the last 12 months before the announcement of public offer has been made, which amount to 5% or more of the voting rights of the company, cash must be offered.
- (4) Lastly, a bidder must offer a cash alternative in the event of exercising a 'squeeze out' and 'sell out' right, or in the event of a mandatory offer.

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

Regulation 8 (PART III) of the Regulations provide that all holders of the same category of securities of the target company shall be treated equally in every public offer. Furthermore, adequate time and information shall be provided to the recipients of a public offer so they can form an opinion and reach the best possible evaluation and correct decision regarding the public offer.

2.8 Are there any limits on agreeing terms with employees?

Legislation provides that immediately after the offer has been made public, there is a general obligation for the Board of the target company to consult with its employees and/or their representatives. Please note that the protection of workers' rights of every company participating in a company reorganisation shall be regulated in accordance with the Law relating to the Maintenance and Safeguarding of Employees' Rights in the event of Transfer of Undertakings, Facilities or Parts of Businesses or Facilities of 2000.

2.9 What documentation is needed?

The following documentation will be required:

- press announcement confirming the bidder's intention to make an offer;
- public offer document, the contents of which must comply with the Regulations;
- a set form of acceptance for accepting the offer;
- a circular to the shareholders of the recommendation of the Board regarding the offer; and
- the Notice of General Meeting of the target company (in the case of arrangement under sections 198-201 of the Companies Law).

2.10 Are there any special accounting procedures?

The only accounting procedures would be those included within the public offer document summarising the financial information on the bidder, target company and regarding the bid generally. Audited financial information will be included in the document regarding which the services of an Auditor/Accountant will be sought. Where securities are offered as part of the consideration a prospectus is required (see question 2.6).

2.11 What are the key costs?

The key costs involved in a bid are the professional fees of the legal, financial and any other professional advisors, the cost of obtaining all approvals necessary, including the fee of CYP 2,000 which is payable to the Council for reviewing and examining the public offer document. Depending upon the financial status of the bidder, loan arranging and borrowing fees may also be payable. A corporate entity is subject to stock transfer fees of 1% on the sale proceeds of shares quoted on the Cyprus Stock Exchange.

2.12 What consents are needed?

Regulatory approvals and consents are required for a public offer. Such consent and approvals are: the approval of the Competition Committee (Cypriot competition authority); if the target company is an insurance company, approval from the Insurance Commissioner; in the case of the target company being a banking institution as defined in the Banking Law, the approval of the Central Bank of Cyprus.

Obtaining such consents from the competent authorities, if required, will normally be a condition of the public offer and must be applied for within 3 working days from the date of the announcement being made to the public.

2.13 What levels of approval or acceptance are needed?

The levels of approval required depend upon the type of transaction proceeding. Thus if the transaction proceeds by way of a scheme of arrangement under sections 198-201 of The Companies Law, it will be necessary for a majority of Shareholders present and voting at the General Meeting holding not less than 75% of the shares or class of shares to which the arrangement relates, to agree to the arrangement which must be sanctioned by the Court (having jurisdiction).

If the bidder is seeking to takeover by acquiring voting control of the target company, the bidder must acquire an amount of shares carrying not less than 50% of the capital of the company.

2.14 When is the consideration settled?

When a bid has been successful the public offer announcement is placed in two local newspapers on the next calendar day from the announcement. The last day for the payment of the consideration is 9 days from the date of the announcement publication.

3 Friendly or Hostile

3.1 Is there a choice?

Both friendly and hostile bids are possible. Hostile bids, although possible, are very rare. A public offer will become a hostile transaction if the Board of the target is resistant to the bid although

should the board recommend the offer the process will switch to that of a scheme arrangement.

3.2 How relevant is the target board?

Once a public offer has been made the Board must provide its recommendation regarding the offer to its shareholders. The view of the Board will be important; however the outcome of the offer is a matter solely to be decided upon by the shareholders. It is common for the Board to refer to its advisors, particularly its financial advisors, and indeed it must seek the advice of an independent expert where the proposed consideration includes securities not listed on the Stock Exchange before making its recommendation. The Board must provide its recommendation to the shareholders as soon as possible and no later than ten working days from receiving the public offer document. Although the Board must not attempt to cancel or hinder the public offer, if it has the approval of the General Meeting the target board may take action that could prevent or cancel the public offer.

3.3 Does the choice affect process?

A scheme arrangement will proceed in accordance with sections 198-201 of the Companies Law (Cap 113) and will require the target company to cooperate with the bidder to a certain level in order to achieve the outcome - the merger. A public offer once made will become a hostile transaction if the board of the target is resistant to the bid. The transaction will remain hostile whilst the board stands firm against the offer. Should the Board make a recommendation on the offer to its shareholders, the process method will effectively proceed by way of a scheme arrangement.

4 Information

4.1 What information is available to a buyer?

The buyer will want to carry out as thorough due diligence as possible. There are no rules governing the extent of the due diligence to be carried out and in particular if a bid is hostile, the information which will be available to any prospective buyer is that which is already in the public domain. This includes the Memorandum and Articles of Association of the target company, other corporate documents such as the details of the directors, shareholders including the authorised and issued share capital, registered office and corporate secretary.

Financial documents such as any published accounts along with related auditors' and directors' reports, will give prospective buyers an insight into the financial affairs of the target company. Any other information available will be in the form of market announcements and/or the past prospectus of the company.

In the case where a bid has been recommended, the buyer may want to carry out more extensive due diligence checks.

4.2 Is negotiation confidential?

Negotiations are confidential and persons who have knowledge and are in possession of information regarding negotiations are prohibited from disclosing such information or using the information to benefit their own account. Under the Insider Dealing and Market Manipulation (Market Abuse) Law 2005, section 10, the disclosure of inside information or the use of information to ones benefit is a

criminal offence punishable by imprisonment of up to ten years, as well as a fine which will also be imposed by the Commission.

When it has become generally known that a bidder is to proceed with a public offer, legislation provides that a bidder must announce his intention to proceed with a public offer before the announcement of a final decision to do so.

4.3 What will become public?

Once a decision to proceed with a public offer has been made, it will remain secret until a bid is announced. The press announcement of the public offer will inform the public of the offer. The Public Offer document itself will be prepared by the bidder and sent out to all shareholders of the target company. The final result of the bid will also be announced and made public.

4.4 What if the information is wrong or changes?

An offer which has been made public binds the offeror and cannot be revoked or declared annulled unless certain circumstances outlined in the Regulations occur such as the making of a competing public offer, the invalidity of an offer, the non-fulfilment of a condition mentioned in the public offer document, and in the case that the General Meeting of the offeror refuses the issuance of new securities where these are to be part of the consideration. The circumstances outlined in the regulations may sometimes, but not always, provide the offeror with a 'get out clause' should he wish to revoke the offer if information regarding the target company is incorrect.

If the information provided by the target Board is wrong, the offeror may seek to claim compensation from the company, although the outcome of such claim will depend on the terms of disclosure of such information provided.

Alternatively, if information is incorrect or changes, the offeror may seek to announce a reviewed offer and may do so at any time before the commencement of the last week before the expiration of the acceptance period. The Council, the Commission and the Board of the target company must be informed of the offeror's intention to review, which must be publicised. The Council has seven working days from submission to review the offer document.

5 Stakebuilding

5.1 Can shares be bought outside the offer process?

Shares can be bought outside the offer process and it is indeed very common for a bidder to build a stake in the target company before a bid is announced. Such purchases, however, may effect the terms offered and in particular whether a cash form of consideration must be offered to the shareholders (please see question 2.5) and the triggers for disclosure (please see question 5.2).

5.2 What are the disclosure triggers?

From the announcement of the public offer until the expiration of the period of acceptance, the offeror or any shareholder who holds a shareholding of 5% or more in the target company, the company of the offeror or other company whose securities are being offered by way of consideration, must disclose to the Council and the Commission every acquisition of securities of these companies. This applies, whether they are purchasing them on their own, with someone else, or whether the securities are being purchased by someone else on their behalf.

Furthermore, any person who obtains a percentage of 0.5% or more of the voting rights of the target company, the company of the offeror or the company whose securities are offered by way of consideration, must disclose this acquisition.

5.3 What are the limitations?

Limitations which apply to any bidder are that should he wish to make an offer for acquiring securities, which added to any which he may already hold give him a percentage greater than 30% of the voting rights of the company, he has an obligation to make a public offer to acquire an additional number of securities which shall give him a percentage greater than 50% of the voting rights. Furthermore, in such a case when the bidder acquires control there is an obligation on the bidder to take actions to amend the Articles of Association of the company so as to ensure that there is a proportional representation of the shareholders on the Board of the target company.

A bidder who intends to acquire 10% or more securities in one company within one year, which added to those already held by him give him at least a 20% shareholding, must make a public offer in order to acquire the additional 10%.

6 Deal Protection

6.1 Are break fees available?

Yes, although break fees are not regulated and there are no restrictions regarding the same, they remain uncommon on a recommended bid.

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

Whilst it is a general principle that the Board must not attempt to hinder a public offer, the board is under a duty to act in the best interests of its members. Provided it acts in accordance with this principle there is no restriction on the target agreeing that it will not shop the company. Concluding transactions involving material asset acquisitions or disposals once a public offer has been made will require the approval of the shareholders, which in effect denotes any question of whether such actions are in the best interests of the members as the members will have approved the same.

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

The target company can agree to issue securities or sell assets of the company, provided these actions are approved by the members at a General Meeting convened especially for this purpose during the time period for the acceptance of the offer (see question 8.2).

6.4 What commitments are available to tie up a deal?

A commitment can be made by way of a break fee whereby a target company agrees to pay a fee to a bidder if the pending deal is terminated (see question 6.1).

7 Bidder Protection

7.1 What deal conditions are permitted?

The Commission will approve the conditions which are to be stipulated in a public offer (see question 2.3). Conditions which are usually attached to a public offer are those which require the bidder to obtain the necessary permits and permissions which are necessary. A bidder is not permitted to include a general right to withdraw its offer within the public offer.

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

The bidder's control extends to the conditions of the offer and a target board should not be hindered in the exercising of its business activities for more than a reasonable period of time after the public offer is made. Certain limitations on the powers of the target board during the period of acceptance to take various action without the approval of the General Meeting, provide the bidder with a small degree of protection (see question 8.2).

7.3 When does control pass to the bidder?

If a scheme of arrangement is being followed, control will pass to the bidder when the scheme has been approved by the court. In a takeover public offer, control passes once the bidder holds 50% of the voting rights of the target company.

7.4 How can the bidder get 100% control?

Please see question 2.13.

8 Target Defences

8.1 Does the board of the target have to tell its shareholders if it gets an offer?

It is a general principle outlined by the Regulations that when faced with a public offer the board of a target company must always act in the best interests of all the holders of securities of the company, and must not attempt to cancel or hinder the public offer. The duty of the Board to disclose an offer to the shareholders arises when the bidder has reached a decision to make the public offer and announces this decision to the Council, Commission, and the target Board.

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

Although the Board must abstain from any action which may hinder the public offer, with the approval of the General Meeting the Board of the target company it may issue new shares, buy-back its own

shares, conclude transactions involving material asset acquisition or disposal. The shareholders will be aware of the offer proposal and will have the opportunity to choose between that and any action that the Board suggests should be taken which will have the effect of resisting the change of control. Any act that the Board carries out or resolves without the approval of the shareholders will be void unless ratified by the shareholders.

8.3 Is it a fair fight?

Although the target board may influence the shareholders with their recommendation, the shareholders will determine whether a bid is successful (see question 9.1 below). Therefore whether hostile or recommended, the outcome of the bid lies solely on the shareholders of the target. A fair fight is to some degree preserved by imposing restrictions on the acquisition of certain percentage holdings (see questions 2.5 and 5.2).

9 Other Useful Facts

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

One of the major influences in a successful acquisition will be the consideration amount offered to the shareholders. If the consideration offered is fair and at full value, a successful bid is almost certain. A successful bid is one in which at least 20% of the voting rights of the target company are obtained through the bid.

9.2 What happens if it fails?

A bidder who is unsuccessful in his attempt to acquire a target company, is forbidden for a period of 12 months to proceed with a new offer for the same target company, except with the approval of the CYSEC.

10 Updates

10.1 Please provide, in no more than 300 words, a summary of any new cases, trends and developments in M&A Law in Cyprus.

All new cases have already been covered in sections 1-9.



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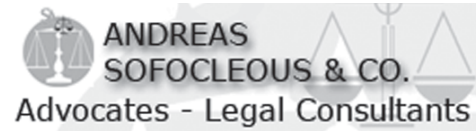
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Andreas Sofocleous & Co. was founded by Mr. Andreas Sofocleous in 1995. The firm nowadays is one of the most successful Corporate and Commercial law firm in Cyprus. Headquartered in Limassol and with offices in Eastern Europe and UK, the firm provides legal services for individuals and companies at national and multinational levels across a wide range of industries, dealing with mergers and acquisitions, cross-border transactions, joint ventures, intellectual property licensing, as well as company formation and management and other business arrangements.

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