

Corporate Finance/M&A - Malta

A brief guide to the legislative M&A framework

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Regulation of takeovers

Other applicable laws

M&A transactions in Malta are regulated largely by the Companies Act (Cap 386) and the Civil Code (Cap 16) - the latter being the law that provides the basis for the regulation of contractual relationships. Maltese companies are primarily regulated by the Companies Act and regulations enacted under its auspices, including matters such as cross-border mergers, the public offer of securities and the fundamental prospectus requirements for such public offers.⁽¹⁾

Regulation of takeovers

Takeover bids, when all or some of the securities of the offeree company are admitted to trading on a regulated market in Malta, are regulated by Chapter 11 (Takeover Bids) of the Listing Rules published by the Listing Authority.⁽²⁾ Chapter 11 aims to implement the relevant provisions of the EU Takeovers Directive (2004/25/EC) (excluding Article 10 of the directive, which is transposed in Chapter 5 of the Listing Rules, dealing with issuers' continuing obligations).

Chapter 11 provides that where a person acquires a controlling interest in a company as a result of the acquisition of shares, either directly or by persons acting in concert, that person must make a bid as a means of protecting the minority shareholders of that company. However, the obligation to launch a mandatory bid does not apply where control has been acquired following a voluntary bid made to all the holders of securities for all of their holdings. Chapter 11 also provides for instances in which, where an offeree is a regulated Maltese company, a person must obtain the written consent of the competent authority⁽³⁾ before proceeding with certain transactions.

The Financial Markets Act (Cap 345) is also relevant, insofar as it provides for the authorisation of regulated markets and central securities depositories and for orderly trading in transferable securities. The Prevention of Financial Markets Abuse Act (Cap 476) deals with protection against market abuse, covering instances ranging from market manipulation to insider dealing, and the mechanisms to address any such instances.

Other applicable laws

The competition aspects of M&A transactions fall within the scope of the Competition Act (Cap 379), including the Control of Concentration Regulations issued in terms of the aforementioned act.

From an employment perspective, the provisions of the Employment and Industrial Relation Act (Cap 425) should be noted in that, in the event that an undertaking is taken over (whether wholly or in part), an obligation is triggered compelling the transferee to retain all employees previously employed by the transferor. Of particular relevance are the Transfer of Business (Protection of Employment) Regulations,⁽⁴⁾ under which an employee may not be dismissed simply on account of a transfer of the business or undertaking unless the dismissal occurs for economic, technical or organisational reasons entailing changes to the workforce.

The provisions of the Securitisation Act (Cap 484) are also relevant, in that they provide for securitisation, rules on securitisation vehicles and the use thereof.

The Mergers, Divisions, Transfers of Assets and Exchanges of Shares Regulations provide that the EU Merger Directive (90/434/EEC, as amended by Directive 2005/19/EC) - which regulates the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different member states - will be effective in relation to the Income Tax Acts. The

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directive is aimed principally at providing for tax relief on cross-border mergers, divisions, exchange of shares and transfers of assets where the transaction involves companies from more than one EU member state.

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Endnotes

(1) EU Directive 2003/71/EC, as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements, as amended.

(2) Chapter 11 of the Listing Rules can be accessed at www.mfsa.com.mt. The Listing Authority forms part of the Financial Services Authority, Malta's consolidated financial services regulator and supervisor with respect to banking, insurance and securities.

(3) Namely, the Financial Services Authority.

(4) Promulgated in terms of the Employment and Industrial Relation Act.

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