

MALTA – A NEW HUB FOR M&A ACTIVITY

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The past ten years have witnessed the creation and consolidation of Malta's reputation as a centre for financial and international business. Underpinned by a regulatory framework aimed at attracting reputable players in the international market, and fuelled by the relentless commitment of regulator (the Malta Financial Services Authority) and practitioners alike to retain a quality service and high standards of business regulation – it is no surprise that the year 2007 has followed, and in certain areas outdone, the levels of business undertaken by international players in previous years.

The efforts of the regulator to keep the Maltese regulatory framework in sync with the changing demands of the industry and in line with the requirements laid out at EU level, have brought about further updates to the Maltese regulatory regime.

In addition, in certain areas Malta has now become a tried and tested ground for a number of operators relocating in Malta and either conducting international business transactions from Malta as their base (as in the case of numerous captive insurance units and hedge funds registered in Malta) or actually setting up shop in Malta (including aircraft servicing operators,

pharmaceutical firms and most emphatically, large players in the IT field).

The following are highlights of M&A activity in Malta for 2007 and of the initiatives being adopted with a view to updating and strengthening the regulatory infrastructure in Malta in accordance with the demands of international business.

M&A Activity

In the latter part of 2006 and throughout 2007, the level of M&A activity in Malta surpassed all expectations. Riding on the wave of favorable economic and market conditions prevalent for the best part of 2006 and 2007 - not least the relatively cheap and easy access to credit available on international markets - combined with the attractive corporate law and regulatory environment, Malta has seen the M&A market flourish in the last 18 months. This growth has been further sustained by the consolidation, in early 2007, of the attractive fiscal treatment of locally registered companies as vehicles for cross-border acquisitions.

The forceful stance on acquisitions taken by private equity funds throughout the last 12 to 18 months, together with the relative ease of access to increasingly available levels of leveraged lending in the market, has also left its mark on the Maltese market.

The increasing number of transactions involving the acquisition of Malta special purpose companies that own business interests in other jurisdictions, as well the increasing number of transactions involving the establishment of Malta companies for the purpose of effecting

acquisitions in multiple jurisdictions, has characterized the M&A market in Malta in the period under review. Although clearly on the rise, the precise number and extent of such transactions cannot be determined with much certainty.

International transactions of this nature, which are essentially tax-driven, typically involve the use of a Maltese holding structure for the purpose of acquiring a target entity. Some recent examples include: the acquisition of a Norwegian group of companies by one of the world's largest chemicals companies; the acquisition of a group of companies based in South America involved in the oil extraction industry; the acquisition of an Australian group of companies involved in the aluminium and bauxite extraction industry; and the acquisition by a Maltese subsidiary of a European based corporate of several companies operating poultry farms across three continents.

This wave of M&A transactions appears to be driven principally by the attractiveness of the tax rules in Malta, that allow not only favourable treatment of taxable profits distributed to shareholders from income arising to Maltese companies outside Malta, but that also allow bidders using a Malta vehicle to be able to set more attractive bids in an auction process in view of the minimal tax leakages that accrue to such vehicles.

As more international advisers perceive Malta as a stable and attractive base to undertake cross-border acquisitions, the activity in this sector is bound to grow further.

Implementation of MIFID

The implementation of MiFID shall take place through various measures, namely the amendment to principal legislation, *inter alia*, the Investment Services Act¹ and the Financial Markets Act², through the amendment of existing and implementation of new subsidiary legislation³ and through the issuance of regulations by the Malta Financial Services Authority. The amendment to principal legislation has taken place through the publication of Act XX of 2007 on the 3rd August 2007. This makes amendments to, *inter alia*, the Investment Services Act; the Financial Markets Act, the Banking Act⁴ and the Insurance Business Act⁵. Most of the said amendments have come into force on the same day whilst others, namely the amendments to the Investment Services Act and the Financial Market Act, came into force on the 1st November 2007.

The main amendments as resulting from Act XX of 2007 concern the Investment Services Act and principally affect the Schedules of the Act dealing with the Services and Instruments regulated by the Act, which are intended to clarify certain licensable activities under the Act and to ensure conformity with the terminology used by MIFID. In addition two new licensable activities have been added to the schedule, namely the operation of multi trading facilities and the placing of financial instruments without a firm commitment basis. The Malta Financial Services Authority has issued various

¹ Cap 370 of the laws of Malta

² Cap 345 of the laws of Malta

³ The legislation amending and enacting subsidiary legislation is due to be published within the coming weeks.

⁴ Cap 371 of the laws of Malta

⁵ Cap 403 of the laws of Malta

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consultative papers on the Investment Services Rules to transpose certain requirements of article 23 of the directive – in relation to the responsibility of tied agents, certain eligibility criteria and the responsibility of licence holders.

Through the amendments to the Financial Markets Act, Act XX of 2007 introduced new provisions dealing with the regulation of entities undertaking depositary functions and the conditions relative to their authorization. In addition, the Act further expands the areas of business that may be lawfully undertaken by licensed depositary institutions that will include custody of securities and back-office services.

The subsidiary legislation to the Investment Services Act being proposed mainly caters for the European passport rights applicable to investment firms licensed in terms of the Investment Services Directive and provides for a simplification of the notification procedure to enable such passporting. In addition, by virtue of such legislation, operators of multilateral trading floors will be provided with the necessary framework for the setting up and establishment of such trading floor in Malta.

The implementation of MiFID in Maltese legislation can be viewed on the website: http://ec.europa.eu/internal_market/securities/isd/mifid_implementation_en.htm

Company Law

The Companies Act⁶, together with our civil code provisions on contract, provide the legal mainstay for the M&A transactions.

Updating the Companies Act in the light of the constantly evolving demands of the industry is therefore fundamental for Malta to retain its competitive edge in this industry. For instance, through the enactment of Act XV of 2007 certain changes were effected to the Companies Act, *inter alia* addressing specific provisions relating to companies' share premium account, which provisions were uselessly hindering group corporate restructurings through Maltese companies. These hindrances have now been addressed through the introduction of the new section 114A in the Companies Act, which introduces group reconstruction relief and takeover relief measures similar to those set out in the UK Companies Act 2006.

This instance is not only a typical example of the fruitful co-operation between practitioners and the regulator intended to remove redundant obstacles within the legislative framework that could impede the development of the industry - above all, such kind of timely response of the regulator to the needs of the market is a manifestation of its awareness of changing market trends and its reactivity to the surfacing of such needs.

Other Updates

Other important updates in the area were made in the insurance sector through the enactment of the Insurance Intermediaries Act⁷; which makes provision for the regulation of insurance intermediaries such as insurance brokers, insurance agents and tied insurance intermediaries. This has also, for the first time, allowed credit and financial institutions to operate

⁶ Chapter 386 of the Laws of Malta

⁷ Chapter 487 of the Laws of Malta

as tied insurance intermediaries in a limited area of classes of general insurance.

The Companies Act (Investment Companies with Variable Share capital) regulations 1996, were also updated last year with a view to improving the regulation of open-ended investment fund structures taking the corporate form to be established as multi-class investment funds and retain a robust segregation of the assets and liabilities between each of their sub-funds. Within the context of funds, the Malta Financial Services Authority has also updated its rules regulating professional investor funds and have widened the scope of their use by, *inter alia*, providing separate legislation to sub-funds/funds selling their units to professional investors, known as extraordinary investors. Such investors are deemed to require the highest level of professionalism and expertise and therefore require a minimum level of regulatory intervention. The amendment to the said rules provides the platform for an ever increasing professional investor fund market in Malta.

Accession and Beyond...

Following accession to the European Union in May 2004, Malta has enjoyed a better perception in the international markets. The level of continued commitment to the financial services industry and the ability to react to market demands have rendered Malta better placed to adapt to the stringent demands of the M&A industry in which it is cementing its position further as a base through for international acquisitions and corporate restructuring.

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