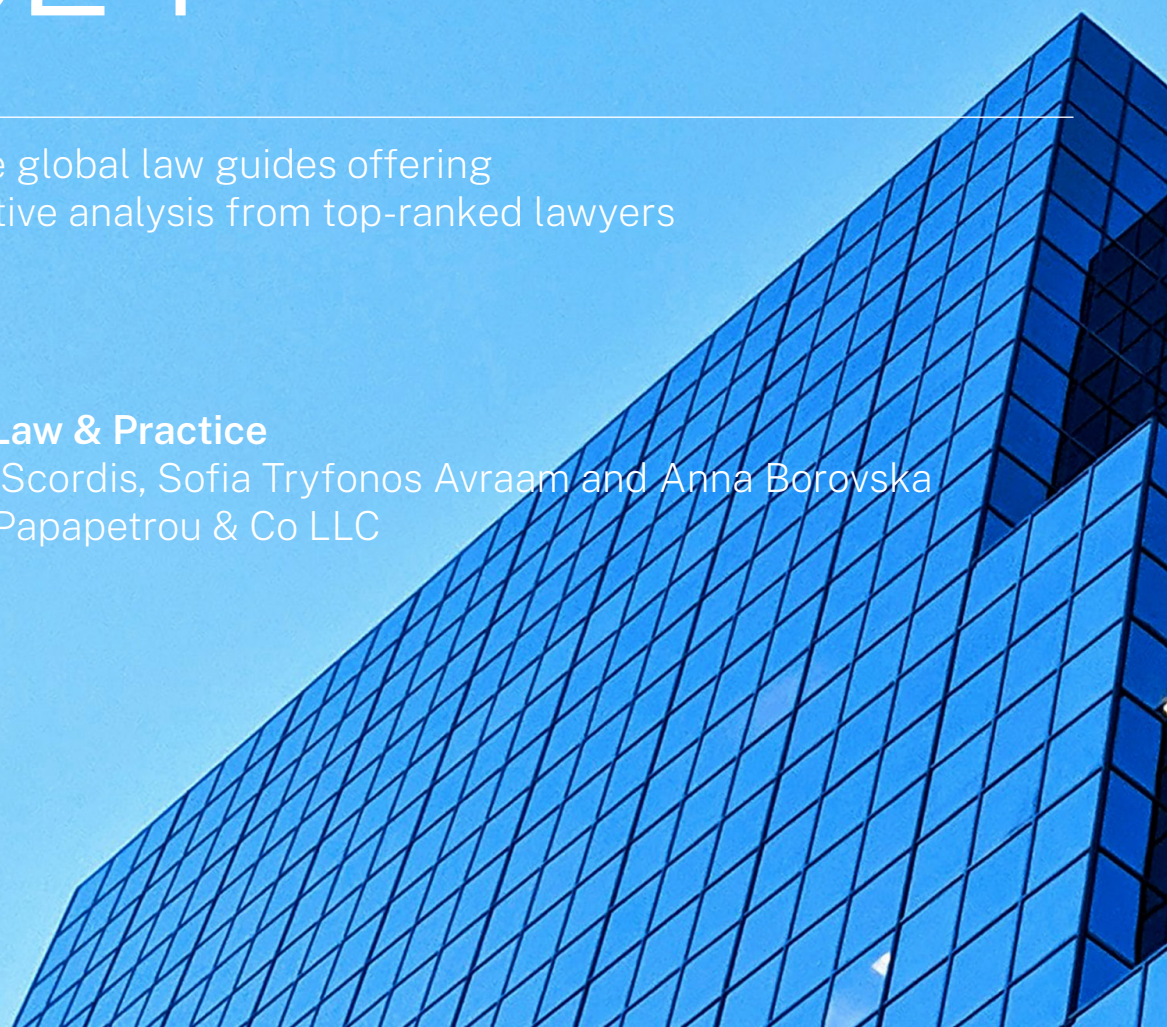
Chambers AND PARTNERS

CHAMBERS GLOBAL PRACTICE GUIDES

Corporate M&A 2024

Definitive global law guides offering comparative analysis from top-ranked lawyers



Cyprus: Law & Practice

Kyriacos Scordis, Sofia Tryfonos Avraam and Anna Borovska
Scordis, Papapetrou & Co LLC

CYPRUS

Law and Practice

Contributed by:
Kyriacos Scordis, Sofia Tryfonos Avraam and Anna Borovska
Scordis, Papapetrou & Co LLC

Contents

Scordis, Papapetrou & Co LLC is a leading and dynamic Cyprus law firm whose roots date from the practice established by the late Andreas Michaelides in 1922 in Famagusta and later the respective practices of Andis Scordis, Michalis Papapetrou and Adamos Adamides. Today, the firm offers, together with its affiliates and subsidiaries, in addition to other traditional services of a law firm, a wide range of services, such as international litigation, arbitration and dispute resolution, corporate and commercial, M&A, estate and tax planning and trusts, company/fund formation and administration, fiduciary and trustee services, accounting and tax advisory and financial services. The group has offices in Nicosia, Limassol, Athens and Valletta.

Authors

Kyriacos Scordis is the managing partner of Scordis, Papapetrou & Co LLC, who focuses on public and private M&A, group reorganisations, banking and finance, general company law and corporate governance matters, international cross-border matters and other corporate transactions. He is a member of Lincoln's Inn, Inns of Court (Barrister at Law), the Cyprus Bar Association, the International Tax Planning Association, the International Association of Young Lawyers (AIJA) and the International Bar Association.

Sofia Tryfonos Avraam is a partner of Scordis, Papapetrou & Co LLC with numerous years of experience. She is active in M&A, banking and finance, general company law and other corporate and commercial transactions. Sofia is a practising solicitor of the Supreme Court of Justice of England and Wales, a member of the Law Society and a member of the Cyprus Bar Association.

Anna Borovska is currently a junior associate of Scordis, Papapetrou & Co LLC, who officially joined the team after the successful completion of her pupillage at the firm's offices. Having completed her LPC studies, she progressed in becoming a member of the Cyprus Bar. Anna is part of the corporate and commercial department and is involved in various transactional projects supporting the lead partners of the department.

Scordis, Papapetrou & Co LLC

30, Karpenisi Street
1077 Nicosia
Cyprus

Tel: +357 22 843 000
Fax: +357 22 843 444
Email: info@scordispapapetrou.com
Web: www.scordispapapetrou.com

1. Trends

1.1 M&A Market

Following the COVID-19 pandemic, which dealt a severe blow to most world economies including that of Cyprus, M&A deals rebounded in Cyprus in late 2021 and early 2022 with significant activity, attracting both international and local investment. However, the war in Ukraine in February 2022 and resulting world sanctions led to the global decline and upheaval of markets and the standstill, amongst others, of numerous commercial transactions involving Russian entities and individuals. As would be expected, and in line with diminished activity with Russian or Ukrainian interests in the US, UK and Europe, M&A activity in Cyprus was also initially significantly impacted.

While the deal-making pace of M&A activity both globally and in Cyprus had slowed down as a result of the war in Ukraine, Cyprus's economy has been resilient to the effects of the war and it is anticipated that a strong M&A growth in the market is underway. In Cyprus, there are certain sectors that continue to expand despite the current economic climate: amongst these are specific construction and real estate segments, while M&A in relation to tourism, financial services and the health services sector has continued to grow at an increased pace as buyers with long-term plans look for relevant opportunities. Investments in the energy sector received a new impetus due to the shift by Europe and other countries away from Russian energy to alternative energy suppliers (or potential energy suppliers). As a result, the existing fields of hydrocarbons in the exclusive economic zone of Cyprus come under the spotlight, and, together with the ongoing exploration efforts by ExxonMobil, Total and ENI, significant international M&A opportunities are likely to emerge in the future.

1.2 Key Trends

Top M&A activities in 2023 continued to revolve around banks, the tourist industry, real estate, renewable energy, telecommunications, technology and the health sector.

The introduction of the new Long-Term Strategy for the Sustainable Development of Cyprus, prepared by the Economy and Competitiveness Council with EU funding, proposes a new development model until 2035 which will render Cyprus as "one of the best places in the world to live, work and be active". A green and digital

transition is at the heart of the strategy, while the goal is to shape the economy in such a way that it is strong enough to absorb external shocks in the future and to strengthen emerging sectors, in which Cyprus has a comparative advantage and which to date have probably not been taken full advantage of, such as information and communication technology, higher education, the primary sector with agro-technology, sustainable tourism, health and agri-tourism, professional services, renewable energy and small-scale industry. However, it is anticipated that, until the aforementioned strategy comes into fruition, the key trends in M&A activities in 2024 shall remain as stated in **1.1 M&A Market**.

1.3 Key Industries

Key industries for M&A activities continue to be those stated in **1.1 M&A Market**. It is also anticipated that there will be an increase in investments and a growth in M&As involving technology and digitalisation following the adoption by Cyprus of The Digital Strategy for Cyprus 2020–2025. Its aim is for Cyprus to become a fit-for-the-future society and knowledge-based economy enabled by digital and emerging technologies that will drive sustainable economic growth, social prosperity and international competitiveness.

2. Overview of Regulatory Field

2.1 Acquiring a Company

A company may be acquired in a variety of manners:

- by the purchase of a company's shares from an existing shareholder via a share sale and purchase agreement;
- by way of subscription to a new share issue (whether private or public);
- a restructuring (such as a merger); or
- court-sanctioned schemes of arrangement.

Acquisitions

It is fairly common for a company to be acquired through the acquisition of its business and/or assets. The key legislation that governs mergers and restructuring of private and public companies is the Companies Law Cap 113 as amended (the "Companies Law"), regulating, inter alia, mergers, divisions, partial divisions, transfers of assets and exchange of shares in two or more companies that intend to merge together, mergers of public companies in accordance with EU practices, and cross-border mergers between Cyprus companies and companies incorporated in other member states of the European Union.

Cross-Border M&As

The Companies Law also regulates cross-border mergers and acquisitions following the transposition of the EU Cross-Border Mergers of Limited Companies Directive (2005/56/EC) into the Companies Law (the "Cross-Border Mergers Directive"). In the case of public listed companies, acquisition takes place by way of a takeover via a public offer. If the public company is not listed, its shares may be acquired without making a public offer.

The acquisition of public companies is regulated by the Cyprus Stock Exchange under the Public Takeover Bids for the Acquisition of Securities of Companies and Related Matters Law 41(I)2007 as amended (the "Takeover Bids Law").

Schemes of Arrangement

The Companies Law also provides for court–sanctioned schemes of arrangement, thus allowing for a company and its creditors to reach a compromise and/or arrangement which will be binding on all creditors and even on the liquidator should a liquidation procedure ensue.

In recent years there has been a rise in cross-border mergers following the transposition of the Cross-Border Mergers Directive into the Companies Law, allowing for:

- a merger by acquisition where one or more companies registered in an EU member state are acquired by another company registered in another EU member state, with the acquired companies transferring their assets and liabilities to the company acquiring them and then being dissolved without going into liquidation;
- a merger by a newly incorporated company where the acquired companies transfer their assets and liabilities to such newly incorporated company in exchange for new shares in such companies and eventually being dissolved without going into liquidation; and
- absorption of a subsidiary by its parent company.

Other Laws

Other relevant laws regulating M&A transactions in Cyprus, aside from the Companies Law, Cross-Border Mergers Directive and Takeover Bids Law as discussed above, are:

- the Cyprus Securities and Stock Exchange Law (14(I)/1993) as amended (the "Cyprus Securities and Stock Exchange Law"), which is relevant to public mergers and acquisitions;
- the Transparency Requirements (Securities Admitted on a Regulated Market) Law (190(I)/2007), as amended (the "Transparency Law");
- the Market Abuse Law (102(I)/2016) (the "Market Abuse Law");
- the Preservation and Safeguarding of Employees' Rights in the Event of the Transfer of Undertakings, Business or Parts Thereof Law (104(I)/2000), as amended, which protects the rights of employees on the transfer of a business;
- the Control of Concentrations between Undertakings Law (83(I)/2014) regulating undertaking concentrations and requiring clearance by the Cyprus Competition Commission (CPC); and
- the Corporate Governance Code (5th Edition) January 2019 (the "Code"), issued by the Cyprus Stock Exchange (CSE) and directed towards listed companies, its purpose being primarily to promote greater transparency and sufficiently safeguard the independence of the board of directors in decision making.

2.2 Primary Regulators

The primary regulators for M&A activity are:

- the Cyprus Stock Exchange (for listed entities or M&A affecting/relating to such entities);
- the Cyprus Securities and Exchange Commission (CySEC), in relation to, inter alia, public takeover bids under the Takeover Bids Law, the Market Abuse Law or entities involved in the provision of financial services; and
- the CPC, in relation to competition (anti-monopoly) law matters.

To the extent M&A activity has an impact on creditors (eg, in the case of a merger), the courts also play an important role.

In addition, the Cyprus Registrar of Companies and official receiver (RoC) is a relevant body as it keeps records of the information relating to both private and public companies and partnerships including changes in shareholdings and officers. Its function is not regulatory as such. It examines and stores company information and changes relating to the company delivered under

the Companies Law and related legislation; and makes this information available to the public.

2.3 Restrictions on Foreign Investments

Restrictions exist in certain sectors such as banking, insurance and investment, where the approval of the relevant regulatory public authority may be required.

2.4 Antitrust Regulations

Applicable antitrust regulations are the Protection of Competition Law (Law 13(I)/2022), as amended, repealing the former Protection of Competition Laws of 2008 and 2014. The Protection of Competition Law of 2022 transposes Directive (EU) 2019/1 into Cyprus law, and thus grants additional powers to the Commission for Protection of Competition (CPC). The objective of the transposition is to empower the CPC to be a more effective enforcer and to ensure the proper functioning of the internal market.

The Claim of Damages Law for Breach of Competition Law Matters (Law 113(I)/2017) sets rules whereupon any injured physical or natural person or public authority that has suffered damage caused by an infringement of competition law by an undertaking or concentration of undertakings can effectively seek damages against the wrongdoers.

2.5 Labour Law Regulations

The Preservation and Safeguarding of Employees' Rights in the Event of the Transfer of Undertakings, Business or Parts Thereof Law (104(I)/2000), as amended, applies to both private and public companies during an acquisition. The law applies to any transfer of undertakings or businesses or parts of undertakings or businesses to another employer as a result of a legal transfer or a merger.

The law sets out the seller company's rights and obligations arising from a contract of employment or from an employment relationship existing on the date of a transfer which, by reason of the transfer, shall be transferred to the purchaser company.

Following the transfer, the purchaser company shall continue to observe the agreed terms and conditions of any collective agreement, on the same terms as previously applicable under such an agreement, until the date of its termination or expiry or until the entry into force or application of another collective agreement for a minimum period of one year. Furthermore, the transfer of an undertaking, business or part of undertakings or business shall not of itself constitute grounds for the dismissal of an employee by any of the contracting parties.

If a termination or a dismissal of an employee occurs and the relevant provisions of the aforementioned law are not upheld during a transfer, then employees may seek compensation under the Termination of Employment Law (24/1967), as amended. Each case depends on its own particular characteristics and, therefore, the relevant legislation must be carefully applied to each individual case.

2.6 National Security Review

There is no specific legislation to act as a national security review of acquisitions. However, the Prevention and Suppression of Money Laundering and Terrorist Financing Law (188(I)/2007), as amended, can be said to be the most relevant legislation encompassing all transactions whereby money laundering may be involved or any kind of illegal activity and/or terrorist financing. Also, the EU Market Abuse Regulation EU 596/2014 is fully applicable in Cyprus and has

been implemented in the legislation through the Market Abuse Law.

All the authorities acting within the ambit of the aforementioned legislation can be said to be caught with a duty of reviewing transactions for national security reasons, such as:

- the Unit for Combating Money Laundering;
- the Cyprus Police;
- the Attorney General's office;
- the Ministry of Justice and Public Order;
- the Central Bank of Cyprus; and
- all other supervisory authorities of the financial sector.

3. Recent Legal Developments

3.1 Significant Court Decisions or Legal Developments

Even though there have not been any significant changes or legal developments which have a direct impact on M&A transactions, the following legal developments in Cyprus over the last few years and more recently in 2024 may have an indirect effect on such transactions.

- Public access to the register of ultimate beneficial owners (UBOs) was reinstated in 2023 (after its suspension as a result of the decision of the Court of Justice of the European Union (CJEU) in joined cases C-37/20 and C-601/20 on 22 November 2022). In November 2023, the Registrar of Companies announced the implementation of the final version of the electronic system of the UBO registry, obliging all Cyprus-registered entities to comply in accordance with the Prevention and Suppression of Money Laundering and Terrorist Financing Law of 2021. The deadline for the submission of the UBO details in the final version was extended to the end of March 2024.
- With effect as of 2024, Cyprus has abolished the EUR350 annual company levy. This significant move will enhance Cyprus's appeal as a leading international business destination by lowering operational costs for businesses and fostering economic development.
- Law 13(I)/2022 referred to in **2.4 Antitrust Regulations** (concerning competition law matters).
- The Markets in Financial Instruments Directive No II (MiFID II), which was transposed into Cyprus national law in 2018 (introducing new corporate governance requirements in the domestic legislation and regulating trading in a manner leading to greater transparency).
- The Markets in Financial Instruments Regulation (MiFIR), which was also transposed into Cyprus national law in 2018 (aligned with MiFID II by introducing obligatory transaction reporting requirements for monitoring and market abuse purposes, with the overall aim of strengthening investor protection and ensuring safer and fairer markets).

3.2 Significant Changes to Takeover Law

There are no significant changes in legislation or practices in the M&A sector. This area of law has been aligned with EU directives and offers a coherent statutory framework to regulate and facilitate M&A activity.

4. Stakebuilding

4.1 Principal Stakebuilding Strategies

Most M&A activity in Cyprus is in the form of direct offers/bids (whether by existing shareholders or third parties) or purchase of distressed assets. Stakebuilding exercises are rare,

especially in view of the small size of the Cypriot economy and the relevant market.

4.2 Material Shareholding Disclosure Threshold

Disclosure requirements are triggered under of the Cyprus Securities and Stock Exchange Law in relation to securities listed in the Cyprus Stock Exchange at thresholds of 5%, 10%, 15%, 20%, 25%, 30%, 50% and 75%. A person must disclose acquisitions or disposals to the issuer of the securities concerned, CySEC and CSE no later than the day following the acquisition, when the percentage of the person's voting rights reach, surpass or fall below the above-mentioned thresholds.

Similarly, in accordance with the Transparency Law, a person whose shareholding following an acquisition or disposal of listed shares with attached voting rights (either listed in the Cypriot Stock Exchange or in any regulated market of any other EU member state) has a shareholding which either reaches, surpasses or falls below thresholds of 5%, 10%, 15%, 20%, 25%, 30%, 50% and 75% of the total voting rights in the issuing company must notify the issuer, CySEC and CSE of such a transaction.

Additionally, in accordance with the Takeover Bids Law, any acquisition which takes place during a takeover bid period by a bidder who holds 5% or more of the voting rights of the target company or the bidder must disclose details of the acquisition transaction to the target company's employees, its board, CSE, CySEC and make relevant announcement. Anyone acquiring 0.5% of the voting rights of the target company or the bidder must announce the acquisition and all subsequent acquisitions and their details.

4.3 Hurdles to Stakebuilding

The main hurdles to stakebuilding are obtaining shareholder approvals from the target to accept the bid, securing the necessary financing before announcing the bid and obtaining the necessary regulatory sector or activity-specific approvals. The minimum reporting thresholds specified under the applicable legislation must always be met.

4.4 Dealings in Derivatives

Dealings in derivatives are allowed in Cyprus, as long as the traders in such derivatives are licensed and authorised by CySEC, as well as in compliance with the relevant European and national legislation, EU regulations and the appropriate guidelines and recommendations by the European Securities and Markets Authority and the European Banking Authority which are adopted by CySEC.

4.5 Filing/Reporting Obligations

Cyprus transposed the provisions of the Markets in Financial Instruments Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 and amending Directive 2002/92/EC and Directive 2011/61/EU (recast) (as amended) (MiFID), with the Provision of Investment Services, Exercise of Investment Activities, Operation of Regulated Markets and other Regulated Markets Law (87(I)/2017); the Markets in Financial Instruments Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 (MiFIR), has direct applicability, with technical standards taking effect on implementation.

Pursuant to the MiFIR rules, there is an obligation for market operations and licensed investment firms operating a trading venue to publicise the prices and depth of trading interests of derivatives traded, on a continuous basis during

normal trading hours, with transparency requirements being calibrated on the basis of the trading systems. Post-trade, market operators and investment firms publicise the price, volume and time of execution of the transactions as close to real-time as permitted by technical standards.

Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (EMIR) is also applicable. Accordingly, licensed investment firms under the above-mentioned law are required to report the details of any derivative contract concluded (including any modifications or terminations thereof) to a registered trade repository, or to ESMA when there is no trade repository available to record the derivative contract details, not later than the working day following the conclusion (or modification, or termination) of the contract. Details include the parties to the derivative contract and main characteristics (such as the type, underlying maturity, notional value, price and settlement date). Exemptions apply subject to meeting certain criteria and a relevant notification to CySEC of the intention of the counterparties to apply the exemption.

4.6 Transparency

Shareholders do not need to make known the purpose of their acquisition in private or public companies; however, if a bidder is making a takeover bid, the bidder must draw up an offer document in accordance with the provisions of the Directive of CySEC on the Content of the Offer Document (the "CySEC 2012 Directive"), which must include amongst other information the bidder's intention with regard to the future business of the target.

5. Negotiation Phase

5.1 Requirement to Disclose a Deal

There are no express provisions requiring disclosure of M&A transactions under the Companies Law until completion of the procedure, where the relevant filings will need to be made with the Companies Registrar, in respect of the change of shareholder in the company.

Generally, Cyprus public M&A transactions are disclosed following either a possible or actual "leak" or upon a bidder definitively deciding to make an offer. According to the Takeover Bids Law, it is the bidder who has the obligation to announce its decision when it is final and it has every reason to believe that it will be implemented or upon the acquisition of securities which give rise to an obligation to make a bid under the Takeover Bids Law; see **7.1 Making a Bid Public**.

More specifically, within 12 days following the bidder announcing its intention to make a bid, it must deliver to CySEC and the target company the public offer document. Once CySEC has reached its decision, the bidder must then:

- declare and publish at the soonest, in at least two daily newspapers, CySEC approval or its reasons for rejection of the offer document;
- address, at the soonest, the offer document to the target company and to the bidder's employee representatives or, where there are no representatives, to the employees themselves; and
- within seven days of announcing the approval of the offer, send by post a copy of the offer document to the relevant holders of securities subject to the bid, list the document to its website (if one exists) and forward the relevant documentation to the regulated market

where the securities are listed, in order to list the document on its website.

5.2 Market Practice on Timing

Generally, market practice on timing of disclosure does not differ from the legal requirements, as specific time requirements when specified in the law must be strictly adhered to.

5.3 Scope of Due Diligence

Besides the legal due diligence which is carried out by the bidder's/buyer's lawyers, tax, financial and commercial due diligence are also areas which are examined by the bidder's/buyer's financial advisers and accountants.

The scope of the legal due diligence usually includes:

- the corporate documents of the company such as its memorandum and articles of association, the corporate registers of the company (which provide information of the company's members, directors, secretaries, registered offices), and any relevant transfers and charges;
- receipt of the latest certificates issued by the Registrar with regards to the incorporation, the company's name and share capital and a confirmation of "no winding up";
- collection and review of any existing mortgages/encumbrances/floating charges or other obligations as registered with the Registrar of Companies and/or relating to assets owned by the company;
- review of annual returns and board resolutions;
- the organisation chart of the group, shareholding agreements, intra-group and financial agreements, etc;
- verification of payment of the annual levy, along with a confirmation of any current lawsuits or pending litigation and/or disputes which the company is involved with; and
- depending on the type of company, key commercial agreements (including service/employment agreements and related).

As stated, subject to the specific business of the company, due diligence may be exercised in relation to any regulated activities of that company as well as in relation to any industry-specific agreement and/or commercial arrangement that may be in place.

Due to the continuing war in Ukraine, business operations generally come under a stricter scrutiny both from a sanctions perspective but also from an Anti-Money Laundering (AML), and Environmental, Social and Governance (ESG) perspective. As a result, this increases the robustness of corporate and commercial due diligence processes, which is more likely to result in timeline extensions.

5.4 Standstills or Exclusivity

Cyprus shadows the United Kingdom's legal system and international market practices. Generally, parties are free to negotiate between them and decide what documents and agreements are necessary and appropriate to safeguard each party's interests. In this respect, it is not uncommon to see parties entering into standstill, exclusivity or lock-out agreements.

5.5 Definitive Agreements

The terms and conditions of any public takeover will be stated in a bidder's offer document, which must contain prescribed information as specified by the CySEC 2012 Directive. Such an offer document is subject to the approval of CySEC. After the approval of the offer document by CySEC is announced, the parties to the bid

may announce material changes to previously announced or published information.

In the case of private companies, offers take a much less formal format and depend on whether a detailed due diligence is required before the transaction can take shape or not. It is a matter of commercial sense with respect to the particular transaction as to whether to enter into a binding or non-binding MOU or definitive agreement at the stage of making an offer.

6. Structuring

6.1 Length of Process for Acquisition/Sale

The acquisition process can vary from transaction to transaction, depending on the complexity of the deal and the businesses involved. There is no specific timetable or any time restrictions, especially when it involves private companies.

Public companies' acquisitions, however, are given a time-guideline concerning the period of acquiring or selling a company, deriving from the Takeover Bids Law 2007. Public companies that have been presented with a public takeover offer generally require at least four to six months, subject to such an offer composed of cash consideration and conditional to any applicable squeeze-out provisions.

In addition, the implementation of Regulation (EU) No 910/2014 on electronic identification and trust services for electronic transactions in the internal market (the "Electronic Identification Regulation"), which was incorporated into Cypriot law as the Electronic Identification and Trust Services for Electronic Transactions in the Internal Market Law 55(I)/2018 (the "Electronic Identification Law"), has facilitated the application and acceptance of electronic signatures at a time when remote-working and restrictions in movement were mandated.

6.2 Mandatory Offer Threshold

Private companies in Cyprus do not have any mandatory offer threshold. According to the provisions of the Takeover Bids Law, the proposed consideration for the acquisition of a public company must be at least equivalent to the highest price paid or agreed to be paid for the respective securities by the bidder or by the persons acting on behalf of the bidder, during the 12 months prior to announcing the bid (the "Equitable Price"). In the circumstance where a bid is voluntary, CySEC may allow for a lower bid price, something which is entirely discretionary.

6.3 Consideration

Consideration in M&A transactions can be either in the form of cash, in kind, or both. Private companies are free to decide the type of consideration, during negotiations. In contrast to that, the Takeover Bids Law states that a bidder can offer cash, shares or a combination of both.

If, however, the bid involves cash consideration, the offer must be accompanied by a bank guarantee from a credit institution that the funds are and will remain available until the expiration of the bid. The law explicitly provides for situations when the bidder must provide cash alternatives as part of the consideration offered by the bidder, for example:

- when the consideration offered does not include any liquid securities admitted to trading on a regulated market;
- when a bidder has acquired shares in the target company within the last 12 months prior to the declaration that a public offer has been

made, which amounts to 5% or more of the voting rights of the company; and
- when a bidder is exercising a "squeeze-out" and "sell-out" right, or in the case of a "mandatory offer".

In the case of public companies, shares cannot be issued below nominal value.

6.4 Common Conditions for a Takeover Offer

A public takeover offer will be subject to the acceptance conditions specified in **6.5 Minimum Acceptance Conditions** (see also **6.3 Consideration**) and the requisite regulatory shareholder and antitrust approvals.

Additionally, regulatory conditions are imposed in the Takeover Bids Law whereby during the period preceding the announcement of the bid and including the expiration of the acceptance period, the bidder and any people acting on the bidder's behalf may not:

- make any arrangements with the target's shareholders;
- enter into any arrangements with people who, even though not members of the target, have voting rights in the target;
- deal or enter into any arrangements involving trading in securities of the target company; and
- enter into arrangements involving acceptance of a bid on more favourable terms than those offered to the target's shareholders.

6.5 Minimum Acceptance Conditions

The following are some of the regulatory conditions which are imposed for the making of a public offer under the Takeover Bids Law.

- An offer document must be published by the bidder and approved by CySEC.
- The bid must be made for the total of the target securities, unless approval has been received from CySEC to make a submission of a partial takeover bid. The minimum and maximum number of securities that the bidder will be bound to accept must be specified, otherwise approval will not be granted. CySEC will not permit the submission of a partial takeover bid:
  (a) if the bidder has acquired interest in shares in the target during 12 months before or at any time after the application for CySEC's consent;
  (b) if the bidder aims to acquire 30–50% of the voting rights of a company; and
  (c) unless the considerations conditions as specified in **6.3 Consideration** are met.
- The equitable price, as referred to in **6.3 Consideration**, is met; in case of a voluntary bid, it is in CySEC's discretion to allow a lower price.
- A public bid for the acquisition of the target's securities will be considered successful if the total of the bidder's voting rights after the bid give it 50% or more of the voting rights in the company.
- Squeeze-out rights will be triggered when the bidder acquires 90% of the voting rights in the target company via a public offer.
- All holders of the same class of shares of the target company must be treated equally and must have adequate information so that they can reach a properly informed decision.
- Mandatory bid provisions will be triggered when any person, as a result of their own acquisition or the acquisition of persons acting in concert with them, acquires 30% or more of voting rights in that company either directly or indirectly, and such person is obliged to make a bid for the outstand-

ing securities at a fair price, at its earliest opportunity, to all the holders of the remaining securities. The mandatory public bid provisions are in effect triggered when a bidder, who prior to the bid held less than 30% of the voting rights in a company, acquires more than 30% of the voting rights in such a company, or where a holder of between 30% and 50% of the voting rights wishes to increase its shareholding within the company.

6.6 Requirement to Obtain Financing

Buyers in M&A transactions may require third-party financing to acquire shares in a target company. It is not uncommon in the case of a private company that the parties do agree that the transaction will close only once the buyer has secured the necessary financing.

However, if the acquisition involves a publicly listed company, it is a statutory requirement that the bidder has the necessary financial capability and that financing has been secured by a credit institution or organisation and will remain secure until the day of payment.

The announcement of the intention to make a public offer must include a report on the actions taken to ensure payment of the consideration price, where this is to be paid wholly or partly in cash.

Following the impact of the war in Ukraine, it has become more challenging for parties to an M&A deal to obtain financing for additional funding in view of the increased compliance requirements with regards to both due diligence and sanctions.

6.7 Types of Deal Security Measures

There are no express restrictions that would prevent a target from agreeing to any security measures. In relation to fees (whether coined as commissions or break fees), special care should be taken by the directors of the company to act in the best interests of the company and not to act in contravention of provisions concerning the provision of commissions (there is a statutory upper limit of 10% and other conditions) and the provisions on financial assistance.

It is very common to include exclusivity and confidentiality provisions as well as non-solicitation clauses. In addition, it is not unusual for M&A agreements to contain lock-in or exclusivity clauses.

6.8 Additional Governance Rights

Depending on the type of company, a bidder interested in enhancing corporate governance or seeking to secure additional governance rights has a variety of options available.

For example, in the case of private companies, such a bidder may include such rights in either a shareholders' agreement or by way of an amendment to the articles of association of the company in question. Possible options include enhanced voting thresholds, weighted voting rights, classes of shares, lock-in periods, board representation thresholds or restrictions, shareholder reserved matters, tag-along, drag-along rights, call and put options, etc.

With regards to public companies, shareholders' agreements are not generally an option, but a number of the aforementioned options (enhanced governance rights) may be included in the company's articles of association.

6.9 Voting by Proxy

This is a matter regulated by the articles of association of a company. The customary practice is to allow a proxy to be appointed to attend and

vote at a general meeting of a company. The permission given to a proxy need not be the same for all the shares in relation to which the proxy is appointed.

6.10 Squeeze-Out Mechanisms

In the absence of a shareholders' agreement, there are no squeeze-out mechanisms in relation to private companies, albeit capital increase and the corresponding dilution (carried out in good faith) may have a substantially similar effect. Similarly, a merger is a matter of relative voting rights and court sanction.

In the case of public companies, squeeze-out provisions are contained in the Takeover Bids Law. The squeeze-out is triggered when the bidder has no less than 90% of the capital carrying voting rights and no less than 90% of the voting rights in the offeree company or the bidder has obtained or agreed to acquire securities that would bring its participation no less than 90% of the capital carrying voting rights and no less than 90% of the voting rights.

The application to trigger the squeeze-out is made by the bidder to CySEC. If CySEC is satisfied that the relevant conditions are met, it issues a decision authorising the offeror to proceed with the squeeze-out procedure in order to acquire the balance of the securities.

6.11 Irrevocable Commitments

A bidder may seek irrevocable undertakings from the principal shareholders of the target company to vote in favour of accepting its offer. Such irrevocable undertakings are subject to relevant regulatory conditions being met as referred to in **6.3 Consideration**, **6.4 Common Conditions for a Takeover Offer** and **6.5 Minimum Acceptance Conditions**.

Furthermore, reservations may be made that if a higher offer is received the undertaking will not be effective. Alternatively, the principal shareholders may prefer to provide a non-binding letter confirming intent to support the bid.

In practice, irrevocable commitments can be provided depending on their relevance in the particular transaction, the target's market positioning and the anticipated benefit to the target.

7. Disclosure

7.1 Making a Bid Public

A bid is made public through a public announcement by the person intending to make the bid. The bid process starts when the announcement is made either when the bidder has a firm intention to make a bid or once they have acquired securities which trigger the making of a mandatory bid; obliging them, pursuant to the provisions of the law, to make an announcement where there is a leak or speculation of a proposed transaction.

The announcement must be simultaneously made to the following:

- the CSE;
- CySEC;
- the website of the person making the announcement;
- if the announcement is made by the bidder, to its employees or their representative and the board of the target company; and
- if the announcement is made by the target company, to its employees or their representatives and the board of the bidder.

In the event that any announcement will take the form of a press release, the person making

the announcement must notify it to the CSE and to CySEC so that the official announcement is made as soon as possible and precedes publication of the information in the media.

Within two days from the end of the time allowed for acceptance of the bid, the bidder is required to announce the result of the bid and publish it the next day following the announcement, in two daily national newspapers. The announcement must state the percentage of the securities accepted in the target by the bidder.

7.2 Type of Disclosure Required

All Cyprus companies are subject to notification and disclosure requirements as specified in the Companies Law. Companies must, for example, notify the RoC of any share capital increases or changes to their capital structure. In addition, shareholder changes for private and public companies are notified to the RoC, whereas public (listed) companies need to comply with the regulations of the relevant stock exchange and any sector-specific requirements. All companies have an obligation to submit annual returns, setting out key corporate details including the issuance of shares. Such information is open to the public to inspect for a nominal fee.

Directors of listed companies must report all relevant transactions to the CSE and CySEC and publish the transactions on the company's website. Additionally, aside from sector-specific requirements, the companies may be obliged to make disclosures in accordance with the requirements of good corporate governance under the Market Abuse Law and the Transparency Law. More specifically, the Market Abuse Law imposes disclosure obligations regarding inside information and inside dealings by acquiring or disposing of, for their own benefit, securities to which inside information relates.

The Code reinforces corporate governance practices requiring transparency and timely disclosure of information in acquisitions in order to protect the rights of all shareholders in all categories.

Conflicts of Interest and Transparency

The Companies Law provides that the board of directors generally (and not only with regards to disclosure of issue of shares) need to disclose conflicts of interest where these exist; see **5.1 Requirement to Disclose a Deal** and **7.1 Making a Bid Public**.

The Transparency Law imposes requirements on public listed companies and their shareholders regarding disclosure triggers once a shareholding reaches a certain threshold; see **4.2 Material Shareholding Disclosure Threshold**.

7.3 Producing Financial Statements

A bidder intending to make a takeover bid is not required to produce financial statements in either its announcement of intention to bid, or its offer document. However, it is required to include in the bid reports on the steps to be taken to ensure a cash payment or the value of the consideration offered, and in the offer document information concerning the bid financing and the proposed consideration, when the consideration is composed of securities and the offer includes a profit forecast, a certification by independent accountants or auditors is required to the extent that such forecast was prepared on the basis of stated assumptions, and basic accounting principles applied by the offeror.

Companies are required under the Companies Law to produce and submit to the RoC audited annual financial statements. Financial statements must comply with the International Financial Reporting Standards (IFRS) and be audited

in accordance with International Standards on Auditing (ISAs). As they are submitted annually to the RoC, they are a public record document.

Furthermore, with regards to public listed companies on regulated markets, the Transparency Law contains provisions on requirements of listed transferable securities including requiring every company to disclose its annual financial report and annual financial statements and make these available to the public for a period of at least five years.

7.4 Transaction Documents

There are no particular requirements or obligation to disclose transaction documents in part or in full in respect of private companies, whereas, in M&As involving a public offer in listed companies, the following documents are disclosed to the holders of securities:

- the press announcement confirming the bidder's intention to make a public offer;
- intention to make a public offer and summarising the terms of the bid;
- the preconditions attached and the consideration proposed;
- the public offer document, the report of the board of the target with an independent expert's report, which is sent to the holders of securities;
- an acceptance and transfer in the prescribed form; and
- a confirmation of funds (bank guarantee) where there is cash consideration.

8. Duties of Directors

8.1 Principal Directors' Duties

Directors are deemed to be company representatives, and as such they have a fiduciary duty towards the company to act in good faith and to make decisions in the best interests of the company. In exercising their powers, directors need to act with reasonable care, skill and diligence and avoid conflicts of interests.

With regards to the latter, the Companies Law contains a duty for a director to disclose an interest in a contract or proposed contract, at a meeting for the board of directors, as well as for the company to lay before the shareholders in general meeting the amounts of any loans made to the officers of the company (including directors) by the company, or a subsidiary, or by any other person under a guarantee.

Duties are owed towards the company and the shareholders and as such the company as an entity under the "proper plaintiff rule" and, in limited situations, the shareholders on their own behalf may take action against a director for failing to fulfil or breaching their fiduciary duties. Cases where a person having an indirect interest in the company (ie, not a shareholder) claims to suffer a loss due to the actions of a director are not common.

With respect to public companies, there are certain corporate governance obligations that need to be complied with as part of the Stock Exchange Law and the Code. These include the exercise of independent and unbiased judgement in the exercise of their duties, dedicating the time and attention which is needed to carry out their duties towards the company in due performance, while non-executive directors need to be sufficiently independent with respect to business, personal or family ties; further, the board is subject to accountability in the preparation of financial statements and reports and is bound to treat shareholders equally.

8.2 Special or Ad Hoc Committees

It is common for the articles of association of a company to provide that the directors may delegate any of their powers to committees, which shall be comprised of members of the board of directors, to act under such mandate as shall be prescribed under any regulations that may be imposed by the directors. Public companies are more likely to establish committees of directors, either to deal with day-to day matters or more specialised or specific items.

The Companies Law provides that a director having an interest in a contract or proposed contract shall disclose the same in a meeting of the directors, and therefore it is not necessary, nor common, for a separate committee to be established for the purposes of the matter at hand.

The articles of association of a company will contain provisions that either prohibit such director from voting on such contract or restrict the conditions under which such director may vote, with the shareholders having powers to review such prohibition or restriction at general meeting.

Public companies may be subject to an additional requirement under the Code, to set-up a Remuneration Committee consisting of non-executive (independent) directors to make recommendations to the board to determine the remuneration and benefits of executive directors.

8.3 Business Judgement Rule

Cyprus courts do not typically engage in reviewing the judgement of the directors or the fairness of the terms of a bid relating to a takeover. Their judgement would not ordinarily be challenged by the courts unless specific action is brought against directors for breach of their fiduciary duties in M&A transactions. This is very rarely encountered.

8.4 Independent Outside Advice

It is relatively common (and, of course, advisable) for the directors to obtain independent legal advice before agreeing to or entering a business combination. Also, subcommittees are sometimes assigned to make recommendations to the directors in relation to business combinations. Although it is relatively rare, directors may sometimes seek advice from independent consultants.

8.5 Conflicts of Interest

The Companies Law provides that directors have the duty to avoid conflict of interest. Unless the directors are allowed to have a personal profit due to the constitution of the company or due to the fact that it has been approved at a general meeting, they must account to the company for the profit they receive if there is a conflict between their interests and the company's interests.

Under the Law in Cyprus, the directors can be sued for breach of this duty and may be found personally liable to the company for damages. If the director made a profit out of the business transaction, then they will be liable to pay that profit to the company. In general, however, a conflict of interest of directors has rarely been the subject of judicial scrutiny in Cyprus.

9. Defensive Measures

9.1 Hostile Tender Offers

Hostile tender offers are permitted in Cyprus and a bid may be accepted even when the board of the target company does not recommend it. However, the directors must always act in the

best interests of the company as a whole and present the holders of the securities with information in order to decide on the merits of the bid and provide their views on the effects of accepting the bid.

9.2 Directors' Use of Defensive Measures

Directors in Cyprus can use defensive measures only if they obtain the authorisation of the general meeting of shareholders. Until such approval, the directors are not entitled to take measures to obstruct or prevent a bid, with the exception of seeking alternative bids.

9.3 Common Defensive Measures

Some of the defensive measures are described in the Takeover Bids Law in the context of anti-abuse provisions. Generally, such measures include:

- issuance of shares;
- suspension of transfer restrictions;
- suspension of voting restrictions or enhanced voting rights;
- granting of enhanced voting rights;
- entering into agreements with third parties or making offers (bids);
- board appointments coupled with restrictions on other appointments; and
- seeking alternative bids.

9.4 Directors' Duties

Irrespective of any decisions at general meeting (approving defensive measures), the directors' fiduciary duty to the company remains unchanged. This means that any defensive measure pursued must be in the best interests of the company. In addition, they must not put themselves in the position where their personal interest and the interest of the company and shareholders is likely to conflict.

9.5 Directors' Ability to "Just Say No"

In terms of a hostile tender offer or generally an offer for the acquisition of shares in a public company, the short answer is no, the directors are not at liberty to object to the offer as it is addressed to the shareholders. On the contrary, their actions to frustrate or delay (defensive actions) are regulated and require shareholder consent; and they are obliged to draw up and publicly release a document as soon as possible and in no more than 15 working days from receiving the offer, reporting their view of the bid, the possible effects of the implementation of the bid on the company's interests and the reasons on which these are based. They must be ready to explain their opinion of the offer at all times, if asked for.

In the case of other business combinations, such as a merger offer, the directors are able to "just say no", provided they are always acting in the best interests of the company, without putting the issue to the shareholders of the company.

10. Litigation

10.1 Frequency of Litigation

As one may expect, seasoned businesspeople seek to resolve disputes amicably but, from time to time, disputes do end up before a judge or a tribunal, either for breach of conditions/representations/warranties, enforcement of rights or even the unwinding of an arrangement or other relief.

10.2 Stage of Deal

There is no hard and fast rule as regards the stage of the deal at which litigation is commonly brought; each case depends on its particular circumstances.

10.3 "Broken-Deal" Disputes

The business community in Cyprus has been impacted more due to the diminished activity of companies with Russian or Ukrainian interests as a result of the sanctions imposed by the US, UK and Europe following the war in Ukraine in February 2022, as opposed to seeking redress in court over pending, delayed or frustrated transactions.

The necessity to ensure that sanction risks are adequately addressed from the outset of the M&A process and beyond is now of paramount importance, as is the inclusion of representations, warranties and covenants in the relevant agreements to cover regulatory compliance in relation to imposed sanctions.

11. Activism

11.1 Shareholder Activism

Shareholder activism is not an established notion, nor is it particularly exercised in Cyprus, not least due to the size of the market, which is of no interest to large funds or strategic investors who would have the capability and resources to support and carry out such activism. Having said that, since 2013 (which saw the collapse of the banking sector and thus destruction of shareholder value in relation to one public entity, creation of unwilling shareholders in another) and general changes in a number of public companies with the break-up of the dominance of existing shareholding interests, there have been increased instances of shareholder activism.

Overall, in Cyprus, the legislative framework of M&As provides for a greater degree of transparency and accountability from the board of directors in relation to corporate governance of the company but also the Companies Law provides shareholders with certain powers and rights to fair treatment, allowing them to initiate certain actions to protect themselves, such as the following:

- to call meetings;
- to pose questions at a general meeting;
- to put items on the agenda of the general meeting and table draft resolutions;
- to vote against resolutions;
- to remove a director; and
- to file a court petition for the protection of minority shareholder rights.

11.2 Aims of Activists

Even though shareholder activism is a growing trend in Cyprus, it is still not very common for activists to encourage companies to enter into M&A transactions, spin-offs or major divestitures.

11.3 Interference With Completion

As activist interference with completion is not a common practice, it is difficult to comment. Having said that, it is more likely than not for activists to seek to interfere with the completion of announced transactions in Cyprus rather than other matters relating to a company.

CHAMBERS GLOBAL PRACTICE GUIDES

Chambers Global Practice Guides bring you up-to-date, expert legal commentary on the main practice areas from around the globe. Focusing on the practical legal issues affecting businesses, the guides enable readers to compare legislation and procedure and read trend forecasts from legal experts from across key jurisdictions.

To find out more information about how we select contributors, email Katie.Burrington@chambers.com