
THE MERGERS & ACQUISITIONS REVIEW

SEVENTH EDITION

EDITORS

SIMON ROBINSON AND MARK ZERDIN

LAW BUSINESS RESEARCH

THE MERGERS & ACQUISITIONS REVIEW

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LAW BUSINESS RESEARCH LTD

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In presenting this seventh annual edition of *The Mergers & Acquisitions Review*, the publisher would like to extend warm and heartfelt thanks to editor Simon Robinson, who has recently retired from Slaughter and May. Simon has held the position of editor of *The Mergers & Acquisitions Review* since its inauguration seven years ago, and Simon and his partners at Slaughter and May have been instrumental in the success of The Law Reviews series. Thank you Simon.

The publisher would like to welcome Mark Zerdin, also a partner at Slaughter and May, as current and future editor of *The Mergers & Acquisitions Review*. We are delighted to have Mark on board, and we look forward to future editions in Mark's very capable editorial hands.

Gideon Robertson
Publisher, The Law Reviews
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EDITOR'S PREFACE

This past year has seen some surprising twists and turns, not only in the mergers and acquisitions markets but also in the economic and political environments. November saw the re-election of Barack Obama, although this had less of an impact on the markets than an announcement by Ben Bernanke in May that the US Federal Reserve would consider a slowdown in its programme of quantitative easing. On the other side of the Pacific, Xi Jinping has outlined a new communist doctrine – the ‘Chinese dream’. The doctrine reflects the changing economic outlook in China where growth will be increasingly consumer rather than investment-led. A new political rhetoric has also emerged in Japan as Shinzo Abe, elected in a landslide December victory, seeks to reinvigorate the Japanese economy. Both rebrandings flirt with nationalist sentiment and the attitude of these two countries towards one another will continue to bear on the region’s business environment.

In Europe, despite an awkward Cypriot bailout, the sovereign debt crisis showed signs of stability and government bond yields are falling. Europe also improved its attractiveness in the eyes of investors and remains the largest destination for foreign direct investment. However, there has yet to be a return to growth. Investors seem split fairly evenly between those who believe Europe will emerge from the crisis in the next three years, and those who believe it will take five years or more. In any event, a return to the boom years is unlikely in the near future, particularly as the emerging markets see a relative slowdown. The IMF data for 2012 shows that the combined growth rate of India and China is at its lowest in over 20 years while global growth fell below 2.5 per cent in the second half of 2012. This global slowdown continues to pull M&A figures down making 2012 the fifth consecutive year in which deal values fell globally.

There are reasons for optimism though, particularly in the US market which has seen some substantial deals (the acquisitions of Heinz and Virgin Media being particular highlights). These deals have been made possible by the return of debt financing where the right deal can attract very favourable terms. Equities have also performed much more strongly over the past year. In May 2013 both the Dow Jones and the FTSE 100 hit record highs – validating to some extent the aggressive monetary policies pursued in

the US and the UK. Whether political will can start to lift the markets more broadly still remains to be seen.

I would like to thank the contributors for their support in producing the seventh edition of *The Mergers & Acquisitions Review*. I hope that the commentary in the following chapters will provide a richer understanding of the shape of the global markets, together with the challenges and opportunities facing market participants.

Mark Zerdin

Slaughter and May

London

August 2013

Chapter 20

CYPRUS

*Nancy Ch Erotocritou*¹

I GENERAL INTRODUCTION TO THE LEGAL FRAMEWORK FOR M&A

Since Cyprus's accession to the EU, the legislation regulating M&A activity in Cyprus has been closely aligned with Europe-wide practices.

Prior to Cyprus's EU membership, the ability of Cyprus companies to merge was limited to domestic mergers and was governed by the general provisions of the Company Law on arrangements and reconstructions. In 2007 Cyprus enacted legislation harmonising its existing laws with Directive 2005/56 on cross-border mergers of limited liability companies opening the route for cross-border mergers between companies incorporated in Cyprus and companies in the EU.

A cross-border merger may take place by acquisition whereby one or more limited liability companies are wound up without going into liquidation and transfer all their assets and liabilities to an existing company or a newly established company. In exchange, the shareholders of the acquired company are issued shares and a settlement amount in cash payment not exceeding 10 per cent of the nominal value of shares or when the shares have no nominal value of the accounting par value.

What is envisaged is a cross-border merger of companies that have been incorporated in accordance to the laws of a Member State and have their registered office, central administration or main place of establishment within the EU under the condition that at least two of these companies are governed by the law of different Member States.

A cross-border merger may only take place between companies for which merger is permitted in accordance to the provisions of the national law of the Member State in which they are incorporated. In Cyprus any company may take part in a cross-border merger, except companies with limited liability by guarantee (that is to say, without

¹ Nancy Ch Erotocritou is a partner at Harneys Aristodemou Loizides Yiolitis LLC.

share capital) and companies under liquidation. Most structures involve either a merger between private limited liability companies by shares or in cases where the intended result of the merger is the formation of a European company, public limited liability companies by shares.

Notably the legislation provides for simplified procedures in the case of intra-group cross-border mergers, dispensing with requirements for expert reports, general meetings at dissolving company level and the need to include information on share exchange ratio and related issues in the cross-border merger plan; providing significant savings of both time and cost. Such simplification procedures have provided a stepping stone to international groups of companies, which have sought to restructure or consolidate their activities in the financial crisis taking full advantage of the Cypriot tax regime.

The acquisition of shares in private or public companies is governed by the provisions of the Company Law and the companies' articles of association. Where the shares of a public company are listed on the Cyprus Stock Exchange or on a regulated market outside Cyprus, special consideration must be given to the provisions of the Public Takeover for the Acquisition of Shares in a Company and Related Matters Law, which is complemented by directives issued by the Cyprus Securities and Exchange Commission. Other sources of legislation that should be considered are the Cyprus Stock Exchange Law and the Inside Information and Manipulation of Market Law. Special consideration must also be given to the disclosure requirements of the Transparency Legislation which may be triggered.

II DEVELOPMENTS IN CORPORATE AND TAKEOVER LAW AND THEIR IMPACT

On 29 April 2011 Cyprus enacted legislation amending the Criminal Code, effectively introducing an interest rate ceiling affecting loans granted by persons or entities that are not financial institutions. The interest rate ceiling is calculated using a formula based on half the average bank lending rate of the previous year (including commissions and other charges that banking institutions charge on consumer loans) plus a margin of between 5 and 10 percentage points, which varies according to various risk factors. This interest rate ceiling is calculated and published by the Central Bank of Cyprus quarterly and on 10 May 2013 was set at 12.26 per cent.

The interest rate ceiling applies to lenders that are not financial institutions and catches interest received or charged on granting of the loan, extension of repayment, prepayment and renewal. Breach of the provisions constitutes an offence and on conviction a person may be liable to up to five years' imprisonment or a fine capped at €30,000, or both.

The legislation was intended to target the increasing problem of loan sharking and profiteering but due to its impact on the structuring of intra-group loans, the following arrangements were carved out of the prohibition:

- a* a loan extended to a legal person, where the funds have originated directly or indirectly from sources outside Cyprus, provided that (1) the amount of the loan exceeds €1 million and (2) the minimum disbursement is €500,000;

- b* a loan extended to a legal person, which is disbursed abroad (i.e., outside Cyprus) and provided that (1) the amount of the loan exceeds €1 million and (2) the minimum disbursement is €500,000; and
- c* a loan where the borrower and the lender are legal persons and who are considered to be related or connected parties for the purpose of application of Section 33 of the Cyprus Income Tax Laws.

The carve-outs ensure that the legislation will not have a negative impact on the ability of group companies to enter into intra-group financing arrangements.

The Company Law prohibits a company from directly or indirectly providing financial assistance to a third party for the purpose of a purchase or subscription of its shares or shares in its holding company. A transaction that is considered to be financial assistance is void and therefore gives rise to serious consequences making this a fundamental issue to be considered by parties in structuring an acquisition. In 2009 the prohibition on financial assistance was relaxed so that the prohibition would not apply to private companies provided that the same was not a subsidiary of a public company and provided that the act was approved by a majority of shareholders holding more than 90 per cent of the votes of all the issued share capital of the company. The relaxation has assisted the structuring of the financing of acquisitions in private companies, which has proved another useful tool to groups navigating their way through the financial crisis.

III FOREIGN INVOLVEMENT IN M&A TRANSACTIONS

Last year saw a significant pick-up in restructuring aimed at strengthening financial positions and cleaning up portfolios. Cyprus is frequently used in corporate group structures, either as a means of structuring finance or as a pipeline through which business is conducted. Due to this, late 2011 and 2012 saw inbound investments of international business into Cyprus, whether by means of redomiciliation of head offices, moving of operations to Cyprus through cross-border mergers and other business combinations. Increasing interest has been seen from central and eastern Europe and Norway.

This year Cyprus has agreed with Troika the terms of a €10 billion bailout to restore the viability of the financial sector of Cyprus. To satisfy the criteria imposed by Eurogroup the Resolution of Credit and Other Institutions Law No. 17(I)/2013 has been passed, which has resulted in resolution measures imposed on Cyprus Popular Bank and Bank of Cyprus (including the controversial 'bail in' provisions). In addition to these there have been restrictions on capital and exchange controls imposed. The restrictive measures are intended to be of a temporary nature and aim at protecting the financial stability of Cyprus affecting the outflow of funds from Cyprus banks abroad (subject to exceptions). Importantly the measures that have been imposed have not affected the attractiveness of Cyprus as a vehicle through which international transactions may be structured and the drivers of such structures, being mainly taxation considerations, have been unaffected.

IV SIGNIFICANT TRANSACTIONS, KEY TRENDS AND HOT INDUSTRIES

In recent years Cyprus has taken great strides in its attempt to develop its hydrocarbon resources. In particular it has concluded a number of bilateral agreements with Egypt, Lebanon and Israel in order to delimit its Exclusive Economic Zone ('EEZ'). The Ministry of Commerce, Industry and Tourism of Cyprus held its first hydrocarbon licensing round, which closed on 16 August 2007, with Noble Energy International Ltd receiving an exploration licence for block 12 (there are 13 blocks in the Cyprus EEZ, but only 11 of the 13 blocks were contested in the first licensing round). In December 2011, Noble Energy announced the discovery of 7 trillion cubic feet of natural gas with additional appraisal drilling to follow prior to development. In 2012, Cyprus commenced a second licensing round. On 24 January 2013 Cyprus signed an agreement with ENI/KOGAS (Italian/Korean) for an estimated €150 million to grant authorisation for the exploration of blocks 2, 3 and 9. On 7 February 2013 Cyprus signed an agreement with TOTAL E&P Activities Petrolieres (France) for an estimated €24 million to grant authorisation for the exploration of blocks 10 and 11. The second licensing round has not yet been concluded and an extension of six months was given in February 2013.

Foreign investors have shown interest in the exploitation of natural gas in Cyprus and it is hoped that joint venture activity in this sector will provide Cyprus with the means to move past the problems caused by the global financial crisis and the Cyprus banking crisis.

In addition to exploitation of natural gas, on 17 May 2013 Aristo Developers and Venus Rock Estates Ltd, subsidiaries of real estate investment firm Dolphin Capital Investors, sold their interest in the Venus Rock Golf Resort project in Ha Potami to Hong Kong-based company 'China Glory National Investment' for €290 million. The project will include two golf courses, a five-star hotel, two community sports centres, a commercial and leisure component as well as luxury private homes. The transaction evidences increasing interest of foreign investors to invest in Cyprus real estate projects with particular focus from Chinese investors.

V FINANCING OF M&A: MAIN SOURCES AND DEVELOPMENTS

The financing of M&A varies depending on the structure of the proposed transaction and the ultimate objective. In recent years intra-group cross-border merger activity has increased with a view to restructuring group activities, the financing of which is mainly internal. On the acquisition side, projects have been structured as joint ventures, splitting the funding between two independent groups or have alternatively been funded through either equity deals with a comprehensive exit strategy or by way of syndicated debt finance or refinance.

The impact of the provisions on financial assistance and interest rate ceilings for intra-group loans discussed above is a consideration in the structuring of financing for M&A activity. As regards developments in Cyprus with respect to the financial crisis discussed above, these have not affected the advantages of structuring transactions through Cyprus and it is expected that Cyprus will continue to attract foreign investment.

VI EMPLOYMENT LAW

With unemployment levels having risen to 14.2 per cent in March 2013 (in contrast to 10.11 per cent in April of last year) according to Eurostat statistics, employee protection is of the utmost importance in the route to recovery from the financial crisis. Employee protection in Cyprus has been strengthened by the implementation of European legislation since Cyprus' accession to the EU. Specifically with respect to cross-border mergers and acquisitions or transfer of undertakings, legislation such as the preservation of employees' rights during the transfer of a business (Law 104(I)/2002), legislation regulating the requirement to consult with employees and provide information, the setting up of European council works and special negotiating bodies and provisions requiring the board of directors of a target company to consult with its employees immediately after an offer to buy it out has been announced and has provided an increasing role to employees in the process of mergers and acquisitions involving Cypriot companies.

VII TAX LAW

Cyprus continues to attract foreign investment through its favourable tax regime. Companies incorporated in Cyprus are often used in international tax structures as holding companies, trading companies and financing companies. Cyprus imposes a 12.5 per cent corporate tax rate and has a number of other beneficial tax treatments. Cyprus does not levy any withholding taxes on dividends and interest paid to non-Cypriot entities. Dividends received are fully exempt from tax unless such dividends derive from passive activities. In addition to this, group loss relief for a loss incurred in an income year is allowed between resident group companies that meet certain conditions and losses can be carried forward indefinitely.

Tax considerations ultimately depend on the structure of the business acquisition. There is no capital gains tax payable in Cyprus except on gains accruing from the disposal of immovable property or the disposal of shares in companies whose property consists of immovable property held in Cyprus. There is no income tax payable on profits realised from the disposal of securities, irrespective of the holding period, the number of shares held or trading nature of the gain. The term 'securities' has been classified to include, among other instruments, shares, bonds, debentures and founder shares.

Reorganisations such as mergers, share-for-share exchanges, contribution of assets in exchange for shares and divisions are exempt from income tax, capital gains tax and stamp duty, although tax clearance should be applied for from the Inland Revenue Department during the restructuring.

VIII COMPETITION LAW

Joint ventures and mergers and acquisitions involving Cypriot companies are types of business operations that may be caught under the Control of Concentrations Between Enterprises Law, which regulates merger control issues in Cyprus. The ultimate objective of the legislation is to prevent business restructurings that could negatively affect competition and harm or distort the internal structure of the market. In order

to be caught by the legislation there must be a concentration of enterprises and the concentration must be of major importance.

A concentration exists in any of the following circumstances: (1) the merger of two or more previously independent undertakings; (2) the acquisition of direct or indirect control (whether by the share capital or assets, or by contract or other arrangements) of the whole or parts of one or more other undertakings; or (3) the establishment of a joint venture fulfilling all the functions of an autonomous economic entity on a permanent basis.

A concentration is considered to be of major importance when: (1) the aggregate turnover achieved by at least two of the enterprises exceeds, in relation to each one of them, approximately €3,417,200; and one of those enterprises engages in commercial activities within the Republic of Cyprus; and (2) at least €3,417,200 of the aggregate turnover of all the participating enterprises concerns the disposal of goods or the supply of services within the Republic of Cyprus.

If the participating undertakings meet these thresholds a notification must be made to the Commission for the Protection of Competition (CPC). The notification may be followed by a number of proceedings after which the CPC submits its decision on the same. The CPC will grant either a conditional or an unconditional clearance of the notified concentration or declare that it is prohibited. If the concentration has a community dimension, the CPC has an obligation to refer it to the European Commission for examination at EU level.

IX OUTLOOK

As a result of the credit crisis and the distressed financial position of potential target companies there appears to be increased potential for M&A activity internationally. Despite the recent developments in Cyprus relating to the financial crisis and terms of the bailout, Cyprus continues to constitute an ideal jurisdiction for the purpose of structuring such deals and it is hoped that the coming years will see a return to the peak level of M&A activity experienced some years ago.

Appendix 1

ABOUT THE AUTHORS

NANCY CH EROTOCRITOU

Harneys Aristodemou Loizides Yiolitis LLC

Nancy Ch Erotocritou joined the Cyprus office in 2007 and became a partner in 2011. She practises in international banking and finance law, mergers and acquisitions and corporate law and advises multinational companies and leading international banking institutions on cross-border transactions.

Ms Erotocritou received her LLB with honours from Sheffield University, her LLM from University College London and her LPC from BPP London. She was admitted to the Cyprus Bar Association in 2007 and became partner in 2011. She is on the board of directors of Songa Offshore SE.

Ms Erotocritou was recommended by *Chambers Europe* and *Legal 500* in 2013, and has also been recognised in *IFLR*. She has contributed articles to a number of publications including the *Comparative Law Yearbook of International Business, Volume 32a*; *Getting the Deal Through: Mergers and Acquisitions* 2010, 2011 and 2012; and International Law Office's banking newsletter. She has also written a number of articles on cross-border mergers, *societas europaea* and banking law developments.

HARNEYS

Harneys Aristodemou Loizides
Yiolitis LLC
Omrana Centre
313 28th October Ave
3105 Limassol
Cyprus
Tel: +357 25 820020
Fax: +357 25 820021
nancy.erotocritou@harneys.com

www.harneys.com