CORPORATE FINANCE/M&A - CYPRUS

M&A opportunities in Cyprus post-Brexit

27 February 2019 | Contributed by Patrikios Pavlou & Associates LLC

AUTHOR

Nikoleta Christofidi

Cyprus has reclaimed its status as a country with a developed and well-trusted economy, having overcome the challenges of recent years with a gross domestic product growth of 3.9% in 2018.(1) There has been a noticeable rise in foreign investments in the local market, with an upswing in mergers, acquisitions and joint ventures. This has been the result of various reforms and legislative amendments that have added legal certainty and contributed to the creation of a coherent statutory framework.

Legal framework

Mergers and acquisitions in Cyprus are governed by a number of legislative instruments. The main laws are:

- the Companies' Law, Cap 113, as amended (the Companies Law); and
- the Public Takeover Bids for the Acquisition of Securities of Companies and Related Matters Law (41(I)/2007), as amended (the Takeover Law).

The Companies Law regulates the merger and restructuring of private Cyprus companies and the merger and division of public companies. Following the repeal of the EU Cross-Border Mergers of Limited Liability Companies Directive (2005/56/EC) by EU Directive 2017/1132/EC, cross-border mergers of limited liability companies within the European Union are governed by Chapter II of the 2017 directive, which has a direct effect in Cyprus. EU Directive 2017/1132/EC allows for the merger of limited liability companies incorporated in accordance with the legislation of an EU member state that have their registered office, central administration or principal place of business in the European Union, provided that at least two of said companies are governed by the laws of different EU member states, without any adverse tax consequences.

By implementing the EU Takeover Directive (2004/25/EC) into domestic legislation, the Takeover Law regulates public company takeover bids where:

- the target's registered office is in Cyprus and its securities are traded on a Cyprus-regulated market; and
- the target's securities are not admitted to trading on a regulated market in the EU member state in which the target has its registered office, provided that certain conditions are met.

The Takeover Law also gives the Cyprus Securities and Exchange Commission authority to issue subsidiary legislation for further regulating such bids.

While less prominent, the following laws are still important and must be considered in M&A transactions:

- the Cyprus Securities and Stock Exchange Law (14(I)/1993), as amended, which provides for public mergers and acquisitions;
- the Transparency Requirements (Securities Admitted to Trading on a Regulated Market) Law (190(I)/2007), as amended;
- the Market Abuse Law (102(I)/2016), which implements the EU Market Abuse Regulation (596/2014) into domestic legislation;
- the Control of Concentrations between Undertakings Law (83(I)/2014), which regulates concentrations between undertakings and notification to and clearance by the Commission for the Protection of Competition;
- the Preservation and Safeguarding of Employees' Rights on the Transfer of Business, Facilities or Parts of Business or Facilities Law (104(I)/2000), as amended, which protects employee

rights on transfer of a business;
- the Business of Credit Institutions Law (66(I)/1997), as amended, which governs acquisitions in the banking sector, in conjunction with subsidiary legislation issued by the Central Bank of Cyprus; and
- the Income Tax Law (118(I)/2002), as amended.

M&A activity

Some of the most notable recent M&A cases include:

- Hellenic Bank of Cyprus's takeover of the healthy part of the Cyprus Cooperative Bank;
- Monaco Telecom's acquisition of 100% of MTN Cyprus for €260 million;
- British Galileo Global Education's acquisition of three Laureate Education Inc owned schools (including the European University of Cyprus) in a deal worth €225 million;
- Iron Mountain Incorporated's acquisition of Fileminders Ltd, a global leader in enterprise information management services;
- Leading Maltese quad play telecoms company GO PLC's acquisition of 25% of Cablenet Communications Systems Limited for €12 million; and
- the acquisition of Piraeus Bank by a group of Lebanese investors led by Holding M. Sehnaoui SAL, which then led to the creation of AstroBank.

Many international M&A agreements involving Cyprus entities are governed by English law and in this context, a memorandum of understanding has been agreed between the European Securities and Markets Authority and European securities regulators with the UK Financial Conduct Authority.(2) The aim is to ensure investor protection, orderly markets, financial stability in the European Union and the continuation of certain activities carried out by UK-based entities on behalf of counterparties based in the European Economic Area, such as fund manager outsourcing and delegation, even in the event of a no-deal Brexit.

Potential impact of Brexit

Cyprus's legal framework has always been particularly accommodating to English law-governed agreements since Cyprus is a common law jurisdiction. In addition, pursuant to Cap 10 of the Foreign Judgments (Reciprocal Enforcement) Law 1935, as amended, judgments obtained in the United Kingdom, British dominions, protectorates and mandated territories, as well as in foreign countries that accord reciprocal treatment to judgments given in Cyprus, are capable of being registered and enforced in Cyprus. Therefore, Cyprus is expected to continue to maintain close ties with the United Kingdom even in the event of a no-deal Brexit.

Further, the following factors suggest more M&A opportunities will arise in Cyprus in the near future:

- Cyprus's comprehensive and coherent legal framework;
- the fact that Cyprus is an EU member state with a strong fiscal performance;
- new large-scale projects, including property developments and golf resorts;
- the growing renewable energy sector; and
- the establishment of new casinos.

In addition, the uniform 12.5% corporate tax rate, numerous double tax treaties and the fact that reorganisations that take place in Cyprus may be exempted from taxation, underline Cyprus's favourable legal framework in terms of taxation. It is therefore not implausible to suggest that international investors might well consider these factors when assessing Cyprus as an attractive investment hub for future transactions in the M&A market in the post-Brexit era.

For further information on this topic please contact Nikoleta Christofidi at Patrikios Pavlou & Associates LLC by telephone (+357 25 87 15 99) or email (nchristofidi@pavlaw.com). The Patrikios Pavlou & Associates LLC website can be accessed at www.pavlaw.com.

Endnotes

(1) See here.

(2) See here.