

# Cyprus

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## MARKET AND REGULATION

### 1. Please give a brief overview of the public M&A market in your jurisdiction. (Has it been active? What were the big deals over the past year?)

Cyprus has a relatively small and new stock exchange, which accounts for the low number of public takeovers. However, 2006 and early 2007 saw the merger of Laiki Bank with Marfin Bank and Egnatia of Greece, which was by far the biggest merger in Cyprus. This merger had a major impact on the market, especially the banking sector, and triggered a hostile bid by Bank of Piraeus for the newly formed organisation headed by Marfin Bank. That bid was subsequently withdrawn.

Other major deals include the:

- Recommended public offer of 3E for the acquisition of Lanitis Brothers, the local Coca Cola bottling company.
- Recommended public offer for Aristo Developers by Dolpin.

### 2. What are the main means of obtaining control of a public company? (For example, public offer, legal merger, scheme of arrangement and so on.)

The main means of obtaining control of a public company are the following:

- For a public company not listed on the Cyprus Stock Exchange, the bidder can acquire the majority or any other stake of the shares of the target, directly from the shareholders without a public offer.
- Acquiring shares in the target by making a public offer.
- Through a scheme for arrangement under sections 198 to 200 of the Companies Law (*Cap. 113*) with the approval of the court. This procedure is not commonly used.
- Through the merger and/or division of public companies under sections 201(A) to 201(H) of the Companies Law (*Cap. 113*), which implemented Third Directive 78/855/EEC based on Article 54(3)(g) of the EC Treaty concerning mergers of public limited liability companies, and Sixth Directive 77/388/EEC on the harmonisation of the laws relating to turnover taxes.

### 3. Are hostile bids allowed? If so, are they common? If they are not common, why not?

Hostile bids are permitted, but are not common as majority control is maintained by the board of directors (board) in most public companies. This is because the majority of public companies were private companies, which were floated between 1999 and 2000. Majority control has remained with the original boards and with the founders of the company, who are unwilling to give away their controlling interest within a hostile procedure. The banking sector is the exception to this rule.

### 4. How are public takeovers and mergers regulated and by whom?

The main regulations governing public takeovers and mergers are as follows:

- **Public Offer Law 2007.** This is the main source of regulation of public takeovers and implements Directive 2004/25/EC on takeover bids (Takeover Directive). It only applies to offers for shares listed in the Cyprus Stock Exchange.
- **Companies Law (*Cap. 113*).** This includes several provisions governing the methods of acquisition, merger and the compulsory acquisitions of minority shareholdings. It also includes the required notifications to the Registrar of Companies.
- **Cyprus Stock Exchange Law (*Law 14(i)/93*).** This includes disclosure requirements of certain interests in shares (see *Question 8*).
- **The Inside Information and Manipulation of the Market (abuse of the market) Law 2005 (*116 I/2005*).** This statutory instrument provides the disclosure requirements for people with inside information and contains provisions that make certain dealings in securities based on inside information a criminal offence.

Cyprus' regulatory body is the Cyprus Securities and Exchange Commission (CYSEC) (see *box, The regulatory authority*).

## PRE-BID

### 5. What due diligence enquiries does a bidder generally make before making a recommended bid and a hostile bid? What information is in the public domain?

Due diligence before making a bid is limited, especially if the bid

is hostile. In cases where the bid is recommended, due diligence may be more extensive. However, there are no rules governing this and responsibility rests on the parties to determine the extent and method of any due diligence.

The bidder can obtain the following information, which is published in the public domain:

- The company's memorandum and articles of association.
- Other corporate documents including details of directors, issued and authorised share capital and shareholders.
- Published accounts and related directors' and auditor's reports.
- Any past listing particulars or prospectus, and any market announcements.

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**6. Are there any rules as to maintaining secrecy until the bid is made?**

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The Inside Information and Manipulation of the Market (abuse of the market) Law 2005 (116(I)/2005) imposes certain obligations in relation to the disclosure of information. For example, a decision to proceed with a public offer must remain secret until a bid is announced. Until then, any person holding this information cannot trade in the shares of the company. However, a bidder must announce its intention to proceed with a public offer before the announcement of his final decision to do so, where this information has, or may become, generally known (section 6(4), *Public Offer Law*) (see Question 12).

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**7. Is it common to obtain a memorandum of understanding or undertaking from key shareholders to sell their shares? If so, are there any disclosure requirements or other restrictions on the nature or terms of the agreement?**

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Although not regulated by the Public Offer Law, it is common for a bidder to obtain a memorandum of understanding or undertaking from key shareholders of the public company in order to secure the success of the bid. These understandings or undertakings must be announced and disclosed.

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**8. If the bidder decides to build a stake in the target before announcing the bid, what disclosure requirements, restrictions or timetables apply? Are there any circumstances in which shareholdings of associates could be aggregated for these purposes?**

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It is common for a bidder to build a stake in the target before announcing the bid. If the bidder acquires shares representing 5% of the voting rights, the bidder must offer cash as an alternative form of consideration in its bid (*Public Offer Law*).

Disclosure requirements can also be triggered under section 171 of the Cyprus Stock Exchange Law. A person who acquires shares in a company representing 5%, 10%, 15%, 20%, 25%, 30%, 50% and 75% of the voting rights must disclose this on the same or following day. A person failing to comply with this requirements is liable to a fine of £C5,000 (about US\$11,432) or two years' imprisonment.

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**9. If the board of the target company recommends a bid, is it common to have a formal agreement between the bidder and target? If so, what are the main issues that are likely to be covered in the agreement? To what extent can a target board agree not to solicit or recommend other offers?**

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It is not common to have a formal agreement between the bidder and the target company. However, formal merger agreements are becoming more common, especially in cross-border mergers. The offer document records the terms of the agreement.

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**10. Is it common on a recommended bid for the target to agree a break fee if the bid is not successful? If so, please explain the circumstances in which the fee is likely to be payable and any restrictions on the size of the payment.**

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It is not common on a recommended bid for the target to agree a break fee if the bid is not successful. However, there are no restrictions on break fees, as this matter is not regulated.

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**11. Is committed funding required before announcing an offer?**

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Where the bidder offers cash, there must be confirmation from a financial or banking institution that the amount of the offer is available and remains available until full acceptance of the offer. The CYSEC will not accept the offer document unless it is accompanied by this confirmation.

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## ANNOUNCING AND MAKING THE OFFER

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**12. Please explain how (and when) the bid is made public (highlighting any relevant regulatory requirements) and set out brief details of the offer timetable. (Consider both recommended and hostile bids.) Is the timetable altered if there is a competing bid?**

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An announcement of a firm intention should only be made when the bidder has every reason to believe that it will implement the offer. Immediately after the announcement, the bidder's board and the target company should inform their employee representatives. This obligation is imposed by the Public Offer Law and is an obligation to inform rather than to consult.

The bidder must make an immediate announcement of the public offer, before it announces a firm intention, when this intention becomes known or might become known to a larger number of people. Before such an early announcement, the bidder must negotiate with the CYSEC the timetable for announcing the firm intention.

**Key dates in the offer timetable**

The following are the key dates in the offer timetable:

- **Day 0.** The CYSEC determines the deadline for announcing a firm offer (no later than 60 days). The bidder must announce its firm offer on the expiration of the deadline.

- **Announcement day.** Issue intention to make a firm offer (Rule 6(I) announcement).
- **Within three days of announcing its intention to make a firm offer.** The bidder takes all necessary measures to:
  - convene a general meeting of shareholders (general meeting) to issue new shares;
  - submit all necessary applications;
  - obtain any required permits from regulatory bodies and effect due diligence.
- **Within 12 working days of the announcement of the firm offer.** The bidder must post the offer document to the CYSEC.
- **Between eight to 12 working days, after posting the offer document to the CYSEC (depending on the form of consideration).** The CYSEC must issue its decision. If further information is required, the bidder must provide this within five working days and the CYSEC must issue its decision within three working days of receipt of the additional information.
- **Within seven working days of the approval of the offer document.** The bidder posts the offer document to all shareholders.
- **Between 30 and 45 working days of sending the offer document.** This is the acceptance period (which can be extended if the bidder applies to the CYSEC and obtains approval two weeks before the expiration of the set acceptance period (see below)). The total acceptance period cannot exceed 70 days.
- **14 days before the expiration of the acceptance period.** The bidder can announce a reviewed offer.
- **Within four working days from the announcement of a reviewed offer.** The bidder must submit a reviewed offer document.
- **Within four working days from the submission of a reviewed offer.** The CYSEC must issue its decision and in the case of approval the acceptance period is extended for two weeks.
- **Within two days of the approval of a reviewed offer.** The reviewed document is available for the shareholders.
- **14 days before the expiration of the acceptance period.** This is the deadline for filing a competitive offer and the acceptance period for the original offer is automatically extended until the expiration of the acceptance period of the competitive offer (that is, 30 to 45 days from posting the competitive offer document).
- **Within 15 working days from the receipt of the offer document.** The board of the target must provide its recommendation and send this to the shareholders.
- **Within two days of the expiration of the acceptance period.** The bidder announces the results of the bid.
- **Within three months of the expiration of the acceptance period.** The squeeze-out procedure can be used.

**13. What conditions are usually attached to a takeover offer (in particular, is there a regulatory requirement that a certain percentage of the target's shares must be offered/bid)? Can an offer be made subject to the satisfaction of pre-conditions (and, if so, are there any restrictions on the content of these pre-conditions)?**

An offer can be made subject to the satisfaction of pre-conditions with the prior consent of the CYSEC. A bidder cannot include a general right to withdraw its offer.

The following conditions are usually attached to a public offer:

- Obtaining the necessary permit from the Competition Committee (see *Question 25*), if such a permit is required.
- Obtaining the necessary permit from other regulatory bodies (such as the Central Bank of Cyprus or the Insurance Commissioner) (see *Question 25*).

Partial public offers are not allowed except with the consent of the CYSEC. A bidder who seeks to obtain control of a company must apply for 100% of the issued share capital of the company. A public offer for the acquisition of 100% of the shares of the target is deemed successful if it acquires 50% of the voting rights of the target company (*Public Offer Law*).

**14. What documents do the target's shareholders receive on a recommended and hostile bid? (Please briefly describe their purpose and main terms, and which party has responsibility for each document.)**

The announcement of the intention to submit a public offer is published on the website of the Cyprus Stock Exchange. The following information is made available in a bid:

- The offer document, issued by the bidder and sent to all shareholders of the target.
- An acceptance form, issued by the bidder, which is sent to the shareholders.
- The recommendation of the target's board, which is posted to all shareholders.
- Any revised offered document, issued by the bidder and sent to all shareholders.
- Any new information announced to the shareholders, posted on the website of the Cyprus Stock Exchange.
- Notice of a general meeting of the target, in the case of a hostile bid, to determine and approve any defensive measures.
- The final result announced on the website of the Cyprus Stock Exchange and in two daily newspapers.

**15. Are there any requirements for a target's board to inform or consult its employees about the offer?**

The board must inform the employees or the representatives of

the employees immediately after the announcement of the public offer. A general obligation to consult with employees is imposed by Law 98(I) 2005, under which a fine of up to €5,000 (about US\$11,432) can be imposed.

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**16. Is there a requirement to make a mandatory offer? If so, when does it arise?**

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A mandatory public offer to obtain the whole share capital of the target must be made by any acquirer who obtains 30% or more of the voting rights of the target (*Public Offer Law*). This also applies to those already holding shares with between 30% and 50% of the target's voting rights and who acquire more shares in the target. The CYSEC can, at its absolute discretion, provide an exemption to this if the acquisition of the shares is made in certain circumstances (for example as a gift).

For a mandatory offer the consideration must be in cash or accompanied by a cash alternative.

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## CONSIDERATION

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**17. What form of consideration is commonly offered on a public takeover?**

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The bidder can usually offer securities or cash, or a combination of the two. However, the consideration must be accompanied by a cash alternative:

- When the consideration does not comprise liquid shares.
- When the bidder acquired shares in the target company for cash in the last 12 months before the announcement of its intention to make the public offer and the shares carry 5% or more of the voting rights of the company.
- In a mandatory offer.
- Where the bidder exercises a squeeze-out right.

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**18. Are there any regulations that provide for a minimum level of consideration? If so, please give details.**

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The bidder must offer the highest price paid, or agreed to be paid, for shares in the target company during the 12 months before the offer period.

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**19. Are there additional restrictions or requirements on the consideration that a foreign bidder can offer to shareholders? If so, please give details.**

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There are no restrictions or requirements on the consideration that a foreign bidder can offer to shareholders as opposed to a local or other EU bidder.

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## POST-BID

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**20. Can a bidder compulsorily purchase the shares of remaining minority shareholders? If so, please give details.**

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Where the bidder, following a takeover offer, acquired 90% of the voting rights of the target company it has a right to acquire the remaining minority shareholdings; however the bidder must exercise this right within two months of the expiration of the acceptance period. The consideration must be the same as for the public offer and must be accompanied by a cash alternative.

The bidder submits an application to the CYSEC. If accepted, the CYSEC issues a decision determining that the bidder must:

- Notify the minority shareholders in writing of the squeeze-out.
- Immediately pay the minority shareholders the offer consideration and effect all necessary steps for transferring the shares to its name.

Minority shareholders have the right to contest the value or form of consideration offered within six months of the announcement of the squeeze-out.

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**21. If a bidder fails to obtain control of the target, are there any restrictions on it launching a new offer or buying shares in the target?**

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If an offer is not successful, is withdrawn or becomes void, the bidder cannot proceed with a new offer for the same target company within 12 months of such a withdrawal or cancellation, except with the approval of the CYSEC. The CYSEC only grants its approval in exceptional circumstances, such as where the new offer is recommended by the target's board. However, such an exception is given only after three months from the withdrawal or cancellation of the original offer.

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**22. What action is required to de-list a company?**

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The de-listing of a company is regulated by the Board of the Cyprus Stock Exchange (Board) and the CYSEC. The Board can act in its own discretion to de-list a company or de-listing may be activated following an application of the company itself. However, the consent of the CYSEC is required.

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## TARGET'S RESPONSE

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**23. What actions can a target's board take to defend a hostile bid (pre- and post-bid)?**

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The target's board cannot take any action or measures which may prevent or cancel the public offer without the approval of the general meeting. Any act or resolution of the board to that effect is void unless ratified by the general meeting. Examples of frustrating actions include issuing new shares, entering into contracts that differentiate the assets or obligations of the company, and repurchasing its own shares.

The general meeting can choose to alter the voting rights attached to certain classes of shares; for example, shares carrying multiple voting rights may be altered.

## TAX

### 24. Are any transfer duties payable on the sale of shares in a company that is incorporated and/or listed in your jurisdiction? Can payment of transfer duties be avoided?

The sale of shares in a company listed on the Cyprus Stock Exchange carry the following transfer duties:

- 0.02% on the value of the transfer for transactions executed outside the exchange.
- A special duty of 0.15% on the value of the transfer (*Special Duties on Stock Exchange Transactions Law*).
- £C2,000 (about US\$4,573) when the consideration is cash and £C4,000 (about US\$9,146) when the consideration includes securities.
- 0.01% on the value of the bid is payable to the CYSEC.

## OTHER REGULATORY RESTRICTIONS

### 25. Are any other regulatory approvals required, such as merger control and banking? If so, what is the effect of obtaining these approvals on the public offer timetable (for example, do the approvals delay the bid process, at what point in the timetable are they sought and so on)?

The following regulatory approvals are required:

- Approval from the Competition Committee, Cyprus' competition authority.
- Approval from the Central Bank of Cyprus where the target company is a banking institution as defined in the Banking Law.
- Approval from the Insurance Commissioner, where the target company is an insurance company.

These approvals are best sought on the filing of the public offer. Both the Central Bank and the Insurance Commissioner must reply within 90 days. Practice has shown that all regulatory bodies respond within reasonable time without hindrance to the normal operation of the offer.

### 26. Are there restrictions on foreign ownership of shares (generally and/or in specific sectors)? If so, what approvals are required for foreign ownership and from whom are they obtained?

There are no restrictions on foreign ownership of shares.

## THE REGULATORY AUTHORITY

### Cyprus Securities and Exchange Commission (CYSEC)

**Head.** Georgios Charalambous (Chairman)

**Address.** Stasikratous 32  
4th Floor  
1065 Nicosia  
Cyprus  
**T** +357 22 875 475  
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**E** [info@cysec.gov.cy](mailto:info@cysec.gov.cy)  
**W** [www.cysec.gov.cy](http://www.cysec.gov.cy)

**Main area of responsibility.** The CYSEC supervises and controls the Cyprus stock exchange. It also grants operation licences to investment firms, including investment consultants, brokerage firms and brokers, and regulates all persons and organisations that fall under the provisions of the stock market legislation.

**Contact for queries.** See e-mail and website above.

**Obtaining information.** See website above.

### 27. Are there any restrictions on repatriation of profits or exchange control rules for foreign companies? If so, please give details.

There are no restrictions on repatriation of profits or exchange control rules for foreign companies.

### 28. Following the announcement of the offer, are there any restrictions or disclosure requirements imposed on persons (whether or not parties to the bid or their associates) who deal in securities of the parties to the bid?

Any transaction of shares of the target company by the bidder or any other person holding 5% of the voting rights of the target company must be immediately disclosed.

If a person acquires 0.5% of the share capital of the bidder or the target, he must immediately disclose that transaction and all previous transactions involving the relevant shares.

## REFORM

### 29. Please summarise any proposals for the reform of takeover regulation in your jurisdiction.

The Public Offer Law is new and has yet to be tested. It appears to be efficiently streamlining local legislation with the Takeover Directive. The success of the implementation of the Takeover Directive remains to be assessed in the future.