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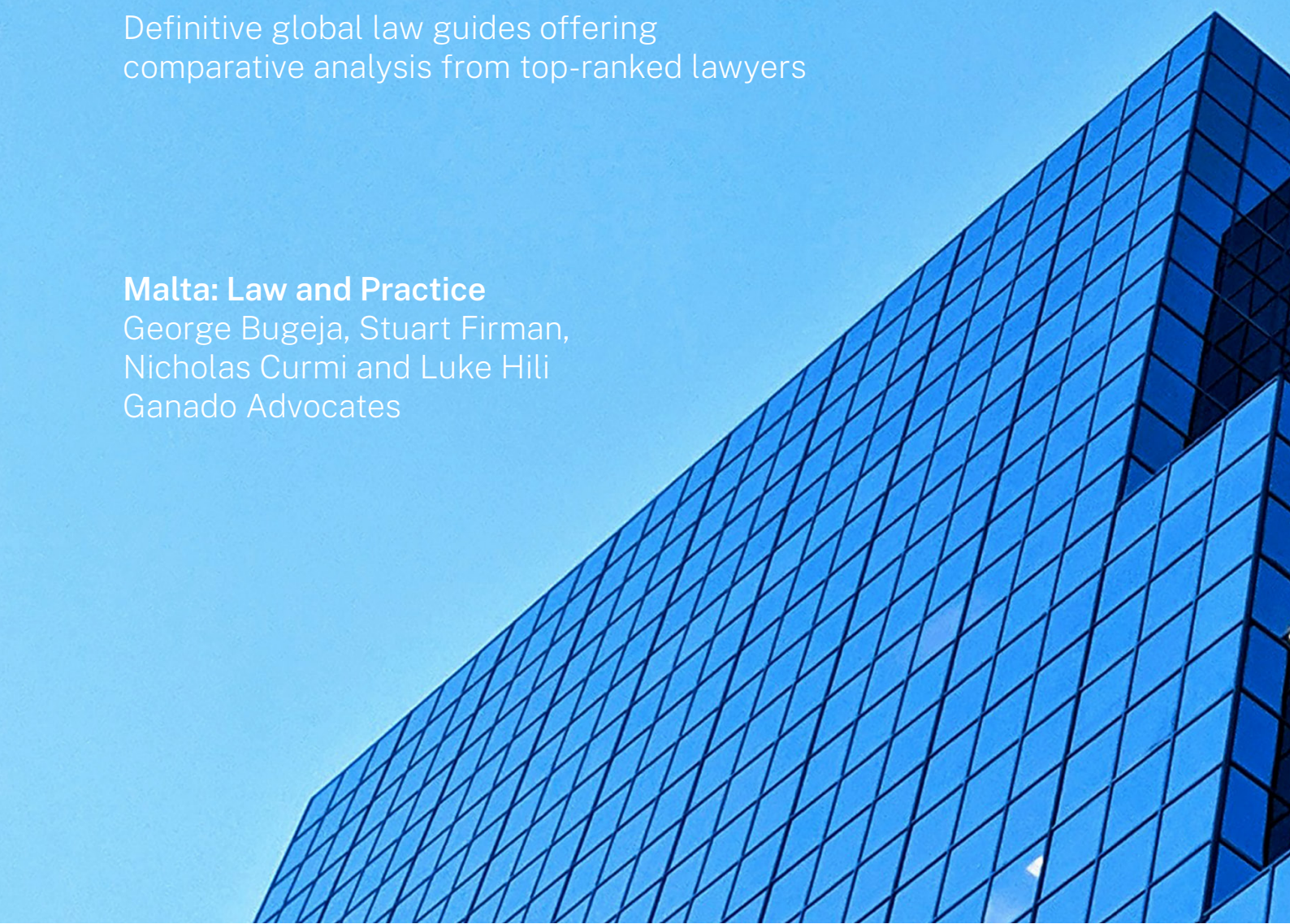

Malta: Law and Practice

George Bugeja, Stuart Firman, Nicholas Curmi and Luke Hili
Ganado Advocates

MALTA

Law and Practice

Contributed by:
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Contents

Ganado Advocates is a leading commercial law firm in Malta with over 100 lawyers and professionals. While based in Malta, Ganado offers a predominantly international practice. The firm focuses on the corporate, financial services and maritime/aviation sectors, predominantly advising international clients conducting business through Malta, as well as local clients carrying out international business. It is also active in complementary practice areas including tax, pensions, foreign direct investment, competition law, intellectual property, employment and dispute resolution. Ganado advises on the full spectrum of corporate, commercial and M&A activity, representing Malta-based operators in sale processes and assisting international investors with inbound acquisitions. Ganado also advises potential investors on structures they may use in Malta to complement their investment goals. The firm's experience extends to private equity transactions as well as strategic acquisitions across a range of industries, such as telecommunications, iGaming, pharmaceuticals, payment services and energy. In 2019, Ganado expanded by establishing its first overseas office in Luxembourg, which primarily focuses on investment services and funds work.

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1. Trends

1.1 M&A Market

Malta's M&A market has strengthened compared with 12 months ago, with noticeable growth in both deal activity and transaction values. 2024 and 2025 ushered in a wave of M&A deals across various sectors, reversing the slump seen in 2022–2023. Although only a relatively small number of deals were publicly announced, practitioners report significantly higher under-the-radar mid-market activity. Deal values are rising, with the market projected to continue to grow in 2026.

Private equity interest has increased, particularly in buyouts, while international strategic investors remain active in inbound acquisitions. It should be noted that as well as international transactions, purely domestic transactions continue to gain traction. Family-owned businesses are increasingly viewing M&A as a strategic tool for succession and growth. Financing conditions have become more favourable, with stabilising interest rates and active support from local banks which has funded acquisitions and refinanced M&A loans, and with capital markets continuing to be a financing option too.

Overall, Malta's M&A environment is now more dynamic, with increased risk appetite and improved access to funding for strategic deals.

1.2 Key Trends

Over the past 12 months, Malta's M&A market has become more active and sophisticated, with rising mid-market deal flow (particularly local) and increasing transaction values. Private equity interest has accelerated, particularly in buyouts, bolt-ons and portfolio expansion. Strategic investors remain highly engaged, targeting Malta-based operators for scale, technology and regulatory advantages. Gaming, iGaming and esports saw notable consolidation, driven by international buyers seeking operational licences, digital infrastructure and established platforms. Strong activity also continued in aviation, pharmaceuticals, healthcare, digital services and retail. Overall, Malta experienced a more dynamic, diversified and investor-driven M&A environment compared with a year ago.

1.3 Key Industries

Various industry reports indicate that the key industries involved in M&A activity in the past 12 months include Gaming, iGaming and esports, each of which experienced notable consolidation as international operators acquired Malta-licensed businesses to enhance technology, regulatory access and scale. Aviation also remained active, highlighted by strategic acquisitions and continued investment in maintenance and operations. Financial services and fintech attracted buyer interest, particularly in payment and regulated investment services. Pharmaceuticals, healthcare, retail and digital services also saw increased activity driven by strategic expansion and operational efficiencies. It should also be specifically noted that the Maltese banking sector saw two major transformative deals over 2024 and 2025, while the acquisition of a major telecommunications provider was also completed in 2025.

2. Overview of Regulatory Field

2.1 Acquiring a Company

The main legal methods for acquiring a company in Malta are through direct share purchases, asset purchases and, less commonly, mergers.

Share purchases – where the buyer acquires all or part of the company's issued shares – are the most common. Maltese law allows for great flexibility with regard to the design and eventual mechanics of share purchase agreements. Buyers may also acquire specific assets or an entire business as a going concern through an asset purchase. Mergers allow companies to combine via merger by acquisition or merger by formation of a new entity.

Other recognised mechanisms include share exchanges within group reorganisations and, for listed companies, formal takeover bids subject to Maltese capital markets regulation.

2.2 Primary Regulators

The primary regulators for M&A activity are the Malta Business Registry, the National Foreign Direct Investment Screening Office, the International and Corporate Tax Unit, and the Office for Competition within the Malta Competition and Consumer Affairs Authority ("Office for Competition").

Depending on the business of the target in Malta, other regulators may also need to be involved. These include the Malta Financial Services Authority (MFSA), the Malta Gaming Authority, the Malta Communications Authority, the Malta Medicines Authority and Malta Enterprise.

2.3 Restrictions on Foreign Investments

Malta introduced restrictions on foreign direct investment in 2020 following the introduction of European Union Regulation 2019/452 on screening of foreign direct investments in the European Union.

Screening is required for transactions involving foreign (non-EU) investors aiming to directly or indirectly establish or maintain links with an economic activity in Malta.

Not all investments are subject to screening – those investments which may need to be screened include those which enable effective participation in the management or control of a Maltese company, and where the economic activity concerned falls within those specified in the National Foreign Direct Investment Screening Office Act. The mechanism ensures oversight of investments that may affect Malta's national security or public order.

Generally, all other transactions should not require screening by the National Foreign Direct Investment Screening Office.

2.4 Antitrust Regulations

Depending on the nature of business undertaken by the acquirer and the business being acquired, transactions may need to be analysed in the context of the local Control of Concentration Regulations and the EC Regulation on Control of Concentrations Between Undertakings (EUMR). The Regulations prohibit concentrations that might lead to a substantial lessening of competition in the Maltese market or a part thereof.

A "concentration" within the meaning set out in the local Regulations is a transaction where two conditions are met, namely that (i) the transaction is a merger or an acquisition of control between two or more independent undertakings and (ii) the said independent undertakings satisfy the turnover thresholds stipulated in the Regulations.

If a transaction qualifies as a "concentration", a notification will need to be made to the Office for Competition prior to its implementation. The notification needs to be made by the undertaking acquiring control. Following the notification, a notice is published and subsequently a decision is taken by the Office for Competition. Depending on the type of investigation, the process can take weeks or months before a decision is issued.

The local Regulations also provide for a simplified procedure for concentrations that are considered as not raising serious doubts as to their legality.

In January 2026, the Office for Competition launched a public consultation which, among other things, proposes an upward revision of the current turnover thresholds and the provision of a call-in power to the Office for Competition for below-threshold concentrations that may have an impact on competition.

2.5 Labour Law Regulations

An acquirer of a Maltese company should ensure that employment laws applicable to the Maltese company's employees continue to be strictly followed and be aware that the directors of the Maltese company may be liable to fines and criminal liability in the event of certain breaches of employment laws.

If the acquisition takes the form of a transfer of business (an asset sale rather than an acquisition of the shares in the target), the Transfer of Business (Protection of Employment) Regulations (Subsidiary Legislation 452.85) will apply. These Regulations include a strict procedure for the transfer of employees as well as rules on the conditions of employment. The Transfer of Business (Protection of Employment) Regulations (Subsidiary Legislation 452.85) implement the European Union Directive on Transfer of Undertakings (TUPE) (Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses).

2.6 National Security Review

A review on the basis of national security interests is typically made of transactions that fall within the criteria that determine a relevant foreign direct investment (within the context of the National Foreign Direct Investment Screening Office Act, as already considered in **2.3 Restrictions on Foreign Investments**).

3. Recent Legal Developments

3.1 Significant Court Decisions or Legal Developments

Please refer to **2.4 Antitrust Regulations**.

The authors are not aware of any significant judgments relating to M&A that have been delivered by the Maltese courts over the past three years.

3.2 Significant Changes to Takeover Law

There have been no significant changes to the Maltese Capital Markets Rules (which transpose Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids (the "Takeover Directive") into Maltese law) in the past 12 months, nor is there currently any indication that any significant changes are being contemplated or may be introduced in the coming year.

4. Stakebuilding

4.1 Principal Stakebuilding Strategies

Stakebuilding strategies are not customary in Malta – particularly in view of market abuse considerations. Stakebuilding is expressly carved out from the safe harbour provided under Article 9 of the Market Abuse Regulation (MAR) (Regulation (EU) 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse) for the use of inside information obtained in the conduct of a public takeover or merger for the purpose of proceeding with that public takeover or merger.

4.2 Material Shareholding Disclosure Threshold

To the extent that both: (i) an issuer's securities are admitted to trading on a regulated market, and (ii) that issuer's home member state is Malta, the rules on the notification of the acquisition or disposal of major holdings as set out in the Maltese Capital Markets Rules shall apply. These rules reflect the local transposition of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (the "Transparency Directive"), and stipulate that any shareholder that acquires or disposes of shares to which voting rights are attached shall notify (i) the issuer and (ii) the MFSA of the proportion of voting rights of the issuer held by such shareholder as a result of the acquisition or disposal where that proportion reaches, exceeds or falls below the threshold of 5%, 10%, 15% 20%, 25%, 30%, 50%, 75% or 90%.

The notification to the issuer shall be effected promptly, but in no case later than four trading days following the date on which the shareholder learns of the acquisition or disposal or of the possibility of exercising voting rights, or on which (having regard to the

circumstances) the shareholder should have learned of same, regardless of the date on which the acquisition, disposal or possibility of exercising voting rights takes effect, or is otherwise informed about the event changing the breakdown of voting rights. A shareholder shall be deemed to have knowledge (ie, learned) of the acquisition or disposal, or of the possibility of exercising voting rights, no later than two trading days following the date of the transaction in question.

Within three trading days of having received the notification, the issuer shall also make the notification available to the public by means of a company announcement to this effect.

More generally, all Maltese companies are obliged to submit a notification to the Malta Business Registry every time a change in the shareholding of a company occurs (without limitation).

In addition, and subject to certain exclusions,the identity of any natural person who holds, directly or indirectly, more than 25% of the ownership or control or dominant influence over a Maltese company will need to be disclosed (and any changes to such individual or to the extent or nature of their holding notified as and when such changes occur).

4.3 Hurdles to Stakebuilding

The main hurdles to stakebuilding have already been addressed in **4.1 Principal Stakebuilding Strategies**.

It is technically possible to provide for additional reporting thresholds in a company's articles of association, although this is not expressly catered for in the Maltese Capital Markets Rules. This, however, cannot be to the exclusion of the statutory reporting thresholds described in **4.2 Material Shareholding Disclosure Threshold**.

4.4 Dealings in Derivatives

Dealings in derivatives are allowed in Malta subject to the disclosure obligations set out in **4.5 Filing/Reporting Obligations**.

4.5 Filing/Reporting Obligations

The Maltese Capital Markets Rules provide that a notification shall be made with respect to:

- financial instruments that, on maturity, give the holder, under a formal agreement, either the unconditional right to acquire or the discretion as to its right to acquire, shares to which voting rights are attached, already issued, of an issuer whose shares are admitted to trading on a regulated market; or
- financial instruments which are not included in the point above, but which are referenced to shares and which have an economic effect similar to the instruments referred to in the point above, whether or not they confer a right to physical settlement.

Indeed, the Maltese Capital Markets Rules expressly clarify that the above-mentioned financial instruments constitute "qualifying financial instruments" (which include transferable securities and options, futures, swaps, forward rate agreements, contracts for difference, any other contracts or agreements with similar economic effects which may be settled physically or in cash) which are to be considered when calculating the relevant disclosure thresholds as described in **4.2 Material Shareholding Disclosure Threshold**.

4.6 Transparency

In disclosing major holdings in accordance with the Transparency Directive, the acquirer need not make known to the public the underlying purpose of the acquisition. In the context of a takeover offer, however, an offeror will need to provide (as part of the offer document) information with respect to its intentions for the future business of the target company.

A major holdings disclosure pursuant to the Transparency Directive (as transposed in the Maltese Capital Markets Rules) shall comprise the following elements:

- the resulting position in terms of voting rights;
- the chain of undertakings through which voting rights and/or financial instruments are effectively held, if applicable;
- the date on which the threshold was reached or crossed;
- the identity of the person entitled to exercise voting rights; and
- for instruments with an exercise period – (i) an indication of the date or time period where shares can or will be acquired, if applicable, (ii) the date of

maturity or expiration of the instrument, and (iii) the name of the underlying issuer.

In addition, to the extent that financial instruments as referred to in **4.5 Filing/Reporting Obligations** are concerned, the relevant voting rights relating to those instruments will need to be set out separately within the same disclosure form.

5. Negotiation Phase

5.1 Requirement to Disclose a Deal

Assuming that the transaction involves the acquisition/disposal of financial instruments which fall within the scope of the MAR, the general rule is that a transaction must be disclosed to the public as soon as it is deemed to constitute "inside information" as set out in Article 7 of the MAR, provided that the disclosure of such information can be delayed if the conditions set out in Article 17 of the MAR are met. In other words, negotiations may (and typically do) remain confidential until such time as disclosure is required pursuant to the MAR.

It should be noted that the Maltese Capital Markets Rules also require an issuer to promptly make an announcement in the event that the board of directors of the issuer is advised or otherwise becomes aware that a purchaser is being sought for a "substantial shareholding" (ie, 10% or more) in the issuer, is advised or becomes aware of a firm intention to acquire or dispose of a substantial shareholding, or is advised or otherwise becomes aware that an offer has been made to acquire or dispose of a substantial shareholding. However, given the conflict between this requirement and the rules relating to disclosure of information in terms of the MAR, the authors are of the view that the MAR rules should apply irrespective of the local (home-grown) disclosure requirements. In other words, there is an argument that disclosure should not be required where the information in question is not considered to be inside information or, where it is considered to be inside information, where disclosure is being delayed in terms of the relevant provisions of the MAR.

However, in the event of a takeover offer as regulated under Chapter 11 of the Maltese Capital Markets Rules on takeover bids, a potential offeror shall inform the MFSA of a bid and announce its decision to launch it within seven days of acquiring a "controlling interest" (as defined in **6.2 Mandatory Offer Threshold**) in the target company.

With respect to private entities, there are no such requirements.

5.2 Market Practice on Timing

Market practice on the timing of disclosures is typically aligned with the legal requirements, specifically those set out under the Transparency Directive and the Takeover Directive (as transposed into the Maltese Capital Markets Rules) and as described in **5.1 Requirement to Disclose a Deal**.

5.3 Scope of Due Diligence

In a negotiated business combination in Malta, buyers typically conduct full-scope due diligence across legal, financial, tax, regulatory and operational areas. Legal due diligence covers corporate structure, key contracts, litigation, employment, data protection, IP and compliance matters. The legal due diligence process would include both a review of publicly available information (through searches in different registers maintained by public registries including the courts of law) and a review of information/documentation uploaded in a virtual data room.

Financial reviews typically assess historical performance, liabilities, cash flow and working capital. Tax due diligence evaluates tax positions, exposures, incentives and compliance. Regulatory reviews are essential in licensed sectors such as financial services, telecoms and gaming. Depending on the business, buyers may also undertake commercial, IT, cybersecurity, environmental and technical due diligence.

5.4 Standstills or Exclusivity

Parties to a transaction are generally free to negotiate contractual provisions and safeguards pursuant to the principle of sanctity of contract. Exclusivity provisions are very common and are typically agreed upon at the very outset of a potential transaction, including (in the context of a takeover offer) as part of any memoranda

of understanding entered into between the offeror and the major shareholders of the target on or around the date of disclosure of the offer to the public. These provisions would primarily seek to remove or restrict the target's ability to solicit competing proposals. Standstill provisions, on the other hand, are not as commonly sought.

The negotiation of any such clauses and/or agreements shall, however, at all times be subject to the principle of equal treatment of all shareholders of the target (including those which are not necessarily a party to a memorandum of understanding as referred to above, for instance), as provided under Article 3 of the Takeover Directive (as transposed in the Maltese Capital Markets Rules).

It is common for acquirers of Maltese private target companies to request exclusivity on a transaction. This exclusivity (when given) is typically for a restricted period of time (generally extendable) and occasionally against a fee.

It is also common for a seller of a Maltese private target company to restrict access to information on the private target company, especially when a pool of acquirers is interested in the acquisition. These practices are generally adopted to protect the business of the private target company.

5.5 Definitive Agreements

Offer terms and conditions between the parties (in the context of a private M&A transaction) are typically set out and agreed upon in a letter of intent or memorandum of understanding where the intention to carry out the proposed acquisition is recorded.

In the context of a takeover bid carried out in accordance with the Maltese Capital Markets Rules, the offeror will also be expected to draw up and publish an offer document that includes the terms and conditions of the offer, as described in further detail in **6.1 Length of Process for Acquisition/Sale**.

Definitive agreements (generally irrevocable commitment undertakings) are typically entered into with major shareholders prior to a tender offer being published, although the terms and conditions offered to major shareholders would also need to match those eventually offered to all shareholders and thus reflected in the eventual tender offer.

6. Structuring

6.1 Length of Process for Acquisition/Sale

The length of an M&A transaction varies depending on a number of factors, including the nature of the buyer (private equity transactions tend to get concluded faster), the complexity and/or protracted nature of negotiations, the general structure of the proposed transaction and any regulatory approvals required (including foreign direct investment notifications, merger control clearances and change-in-control notifications).

In the case of a takeover offer made in accordance with the Maltese Capital Markets Rules, a number of additional hurdles need to be cleared. These include, but are not limited to:

- the obligation to announce a bid within seven days of having acquired a "controlling interest" in the target (as defined in **6.2 Mandatory Offer Threshold**);
- the obligation to draw up and publish an offer document not later than 21 calendar days from the announcement of the bid;
- the granting of a three-to-ten-week period (from the date of publication of the offer document) for the target's shareholders to properly consider the merits of the bid; and
- the consideration of any competing bids lodged in the interim period.

6.2 Mandatory Offer Threshold

The Maltese Capital Markets Rules (in transposing the relevant provisions of the Takeover Directive) provide that, subject to certain exemptions which may be granted by the MFSA, a mandatory bid shall be lodged where a person acquires a "controlling interest" – ie, a holding which, when added to any pre-existing holdings, directly or indirectly gives a person, or persons acting in concert with them, 50%+1 of the voting rights of a company.

6.3 Consideration

In Malta, acquisitions of private target companies are typically completed for cash consideration. That said, alternative structures – such as earn-out mechanisms and equity rollovers – are increasingly common, particularly in private equity-driven or founder-led transactions where alignment on future performance is key.

In the context of a takeover offer carried out pursuant to the Maltese Capital Markets Rules, an offeror may offer cash or shares, or a combination of both, but it may only offer shares subject to the requirement to offer cash consideration as an alternative in all cases. All-cash offers are more common, however.

An independent expert's report (containing an evaluation of the consideration being offered) must also be provided in all cases. Additionally, while the consideration offered for a voluntary bid may be freely determined by the offeror (subject to the overarching requirement to offer cash as an alternative in all cases), the consideration offered in the context of a mandatory bid must be "equitable" and calculated from the date of announcement of the mandatory bid in accordance with set criteria provided in the Maltese Capital Markets Rules (which, among other criteria, generally link the setting of the price to the historical weighted average price of the shares or the price actually paid the offeror (or persons acting in concert) for shares in the six months preceding the offer).

In a recent transaction relating to a prospective takeover of one of Malta's largest banks, the MFSA (being the competent authority for the purposes of the Takeover Directive) granted a derogation from the requirement that the equitable price be calculated as from the date of announcement of the offer in the context of a potential mandatory bid, thereby allowing the bidder to fix the price of the mandatory bid months prior to launch of the bid itself. Maltese law does not allow the acceptance period of a bid to extend beyond ten weeks (and any cash consideration must be paid within 30 days of the closing of the acceptance period), and banking regulatory approvals were expected to take many months to obtain, meaning that a takeover bid could not be launched subject to regulatory approval. The deal was therefore structured as an irrevocable commitment from the majority shareholder to sell its shares for a specified price upon regulatory approval eventually being obtained, which acquisition would in turn trigger the mandatory bid requirement. The allowance from the regulator in this case afforded the bidder certainty in advance on the price that would be eventually offered to the minority shareholders following the mandatory bid. It further afforded the minority shareholders the protection of the equitable price methodology and appears to have steered the bidder away from the voluntary bid option (which would have allowed the bidder to retain control/certainty over pricing but without the same price "control" protection), ensuring transparency to the market at an early stage and market stability for the duration of the interim period until regulatory approval is obtained.

6.4 Common Conditions for a Takeover Offer

Common conditions for a takeover offer include, but are not limited to, the granting of any antitrust and/or regulatory approvals necessary for the transaction to go through (provided that it is possible in practice to obtain the relevant approvals within the maximum ten-week acceptance period for the offer under local rules; if not, alternative structuring options would need to be considered), and the non-occurrence of material adverse events which could have an impact on the target's financial position and/or operations.

The MFSA does not typically restrict the use of conditions in the context of a takeover offer, except in so far as these might run counter to the requirements of the Maltese Capital Markets Rules.

6.5 Minimum Acceptance Conditions

Offers are typically conditional on a minimum acceptance threshold of 90% of the voting rights of a company, as this would enable the offeror to initiate a squeeze-out of the minority shareholders (subject to the issue raised in **6.10 Squeeze-Out Mechanisms**).

6.6 Requirement to Obtain Financing

Parties to a transaction involving a private/public target company in Malta are at liberty to subject an acquisition to conditions, including, among others, the condition of obtaining financing.

In the context of a takeover bid for a publicly listed company, there is no express prohibition upon the takeover being conditional on the bidder obtaining financing, although there is a requirement for the expert's report (to be appended to the offer document) to confirm that the bidder has sufficient resources to meet its obligations on full acceptance of the offer, which in practice means that any financing must be obtained in advance of the offer.

6.7 Types of Deal Security Measures

Typical deal security measures employed in M&A transactions involving a Maltese target include entry into non-disclosure agreements, non-compete provisions and (in the context of a takeover offer) the negotiation of conditional irrevocable undertakings from the key shareholders of the target company to accept the offer if certain predetermined conditions to the deal are met.

Break fees may also be agreed to, although due care will need to be taken when drafting the language/mechanics of the relevant clause(s). In the context of a takeover involving a Maltese target that is listed in another jurisdiction, regard should also be had to how such break fees (and other deal security measures) may be viewed in the context of the relevant rules governing offers in that jurisdiction and how the relevant takeover authority/panel would view this.

In the context of a Maltese target with an EU cross-border listing, an analysis of both the Maltese rules as well as the rules of the jurisdiction in which the target is listed should always be undertaken, whether in relation to deal security measures or otherwise. Apart from the fact that each market (trading venue) will have its own rules that may be relevant to the transaction, the Takeover Directive expressly provides (in the context of a listing on an EU "regulated market") that rules of the EU member state where the securities are listed will apply to certain matters, while the rules of the member states where the company is registered will apply to certain others. Indeed, in cases where the Maltese target is listed on a regulated market situated in another member state, matters relating to the consideration offered in the case of a bid, in particular the price, and matters relating to the bid procedure, in particular the information on the offeror's decision to make a bid, the contents of the offer document and the disclosure of the bid, shall be dealt with in accordance with the rules of the member state where the regulated market is situated (and the information contained in this practice guide should be considered with this in mind).

Bidders in a transaction involving a private target company in Malta are at liberty to negotiate and agree any deal security measures, provided that such measures are not inconsistent with Maltese law. Non-solicitation provisions are generally standard in any Maltese acquisition deal.

6.8 Additional Governance Rights

Subject to the obligation to launch a mandatory bid upon the acquisition of a "controlling interest" as described in **6.2 Mandatory Offer Threshold**, a bidder that does not seek to own 100% of the voting rights within the target (which is not typically the case) would generally look to negotiate additional governance rights as part of a separate shareholders' agreement to this effect, or otherwise via the introduction of tailored control rights (connected to the holding of a specified percentage of voting rights) in the target's memorandum and articles of association.

It is common for such acquirer to seek (i) the right to appoint one or more directors on the board of directors, (ii) the inclusion of reserved matters requiring the shareholder's (whether minority or not) approval, (iii) higher quotas for certain board decisions, (iv) anti-dilution rights and (v) restrictions on transfers of the other shareholders' ownership.

Bidders in a transaction involving a private target company in Malta are free to negotiate similar rights to those set out above.

6.9 Voting by Proxy

A shareholder of a Maltese company is, by law, entitled to appoint another person as its proxy to attend and vote instead of it at a general meeting of the company. This is true notwithstanding anything contained in the memorandum and articles of association of the company.

6.10 Squeeze-Out Mechanisms

In the context of a Maltese target whose shares are listed on an EU "regulated market", an offeror may invoke a statutory squeeze-out right where, following a bid made for all of the target company's shares, it has acquired not less than 90% of the share capital carrying voting rights and 90% of the voting rights in the target company, at which stage it may require all of the remaining shareholders to sell their shares to it for cash. Where the target company's shares are divided into different classes, the offeror may exercise its right of squeeze-out per class of shares subject to reaching the required threshold in that class.

Any and all squeeze-out rights must be invoked by the offeror within three months from the expiration of the acceptance period of the offer. Where the offeror has not announced that it will be exercising its squeeze-out rights, the remaining shareholders will be able to exercise their sell-out rights to require the offeror to buy their shares for a fair price for cash.

In cases where the Maltese target is not listed on an EU "regulated market" and no statutory squeeze-out right applies (as well as in cases where additional certainty might be sought by an offeror), it is increasingly common for tender offers to be conditional on the amendment of that target's memorandum and articles of association to introduce squeeze-out provisions that substantively reflect the provisions of the Takeover Directive.

6.11 Irrevocable Commitments

It is common for an offeror to enter into conditional irrevocable commitments (prior to the announcement of a bid) with a target company's key shareholders in order to obtain additional comfort/certainty that a planned acquisition will go through (subject to certain conditions being met). The nature/extent of the irrevocable commitments procured by the offeror varies on a case-by-case basis depending on the particularities of the transaction in question, but they typically require the shareholders to accept the offeror's bid within a set time period from its launch (subject to certain conditions being met) and to refrain from doing anything which may frustrate the bid.

7. Disclosure

7.1 Making a Bid Public

In accordance with the Maltese Capital Markets Rules, an offeror shall disclose a bid to the public within seven days of acquiring a "controlling interest" (as defined in **6.2 Mandatory Offer Threshold**) in the target company, having first ensured that it can fulfil, in full, any cash consideration (if this is being offered) and after taking all reasonable measures to secure the implementation of any other type of consideration.

Despite the above, the requirement for a public announcement will be triggered immediately in the event that the target company's share price becomes subject to undue price movements due to rumour, possible speculation or the suspicion of a leak in confidential information, or where it is desirable to make an announcement in order to prevent possible market abuse.

7.2 Type of Disclosure Required

In the event of an issuance of shares as part of a business combination, an assessment will need to be made in terms of whether the issuance of shares would constitute an offer of securities to the public which would in turn require the publication of a prospectus pursuant to Regulation (EU) 2017/1129 (the "Prospectus Regulation"). The Prospectus Regulation does, however, provide for an exemption from the requirement to publish a prospectus in so far as shares are being offered in connection with a takeover by means of an exchange offer, or otherwise as part of a merger or division – provided, in each case, that a document is made available to the public describing the transaction and its impact on the issuer entity.

7.3 Producing Financial Statements

The offeror of a bid disclosed in accordance with the Maltese Capital Markets Rules is not required to produce financial statements as part of the offer document.

7.4 Transaction Documents

Transaction documents do not need to be disclosed in full or included in an offer document prepared in accordance with the Maltese Capital Markets Rules. A "fairness opinion" prepared by an independent expert

(including an evaluation of the consideration being offered against the background of the offer made) must be appended to the offer and, separately, an opinion of the board of directors of the target company on the offer (including the effects of implementation of the offer on all the company's interests and specifically, employment) must also be made available to the public.

8. Duties of Directors

8.1 Principal Directors' Duties

A director of a Maltese company has a general duty to act honestly and in good faith and in the best interest of the company. Maltese law recognises that such duties are owed to the company as a whole rather than to the shareholders.

The Maltese Companies Act sets out the directors' general duties. These include (i) the duty to remain within and not misuse their powers, (ii) the duty to avoid conflicts of interest and conflicts of duty, (iii) the duty to exercise care and skill, (iv) the no-profit rule, (v) the duty not to compete with the company, and (vi) the duty not to benefit from third parties at the expense of the company. These general duties play a significant part in the manner in which directors navigate a transaction in the company in which they sit as directors, particularly in a management buyout scenario.

Additionally, directors are also subject to general principles of fiduciary obligations as set out in the Civil Code of Malta.

8.2 Special or Ad Hoc Committees

It is common for Maltese target companies to establish special or ad hoc committees, typically composed of members of the management team of the company. Such committees are generally set up prior to the acquisition and allow for a more efficient process.

In the case of management buyouts (or similar arrangements), the committees are generally composed of non-conflicted directors.

8.3 Business Judgement Rule

There is currently no precedent in Malta with respect to the Maltese courts' deference (or otherwise) to the judgement of the board of directors in the context of a takeover scenario. This said, given that Maltese company law is heavily modelled on the UK equivalent, it is expected that a Maltese court asked to adjudicate a dispute would, in line with UK jurisprudence, decline to examine the merits of a business decision taken by a company's directors – except in so far as it is outright fraudulent or in flagrant breach of the directors' fiduciary duties in relation to the company. In the context of a takeover offer, the Maltese Capital Markets Rules emphasise (by virtue of guidelines to this effect) that when directors of a target company make recommendations in relation to a bid, they are bound to act honestly and in good faith in the best interests of the company, and shall at all times take into account the collective interests of their shareholders prior to and during any bid process.

8.4 Independent Outside Advice

The use of independent outside advice varies from transaction to transaction and can range from advice given with respect to due process from a corporate governance perspective to minority shareholder rights.

8.5 Conflicts of Interest

Over the years, there have been a number of landmark judgments on conflict of interest of directors, managers and advisers. These cases are closely tied to breaches of fiduciary obligations which directors, managers or advisers may owe to a company.

9. Defensive Measures

9.1 Hostile Tender Offers

Hostile (or competing) bids are permissible in Malta but are not common.

9.2 Directors' Use of Defensive Measures

Where a target company has received a takeover notice, or has reason to believe that a bona fide offer is imminent, the directors of the target company must not take or permit any action in relation to the affairs of the company that could effectively result in the offer being frustrated or the shareholders being denied

the opportunity to decide on the merits of the offer – except in so far as:

- the action has been approved by an ordinary resolution of the shareholders themselves;
- the action is taken or permitted under a contractual obligation entered into by the target, or in the implementation of proposals approved by the directors of the target, prior to its receipt of the takeover notice or its having become aware that the offer was imminent; or
- in all other cases, where the action is taken or permitted for reasons unrelated to the offer, with the prior approval of the MFSA.

9.3 Common Defensive Measures

Defensive measures are not typically adopted in Malta, particularly in view of the fact that the board of directors has its hands tied once it is aware that a bona fide offer is imminent (as set out in **9.2 Directors' Use of Defensive Measures**). Pre-offer defensive measures (prior even to the target board becoming aware of an imminent offer) such as "poison pills" and staggered boards can be used but are not common.

The key takeaway remains the fact that decisions on the control and ownership of a company should fall within the shareholders' remit, and that as a result, directors should proceed with caution when considering action that has the potential to frustrate an offer.

9.4 Directors' Duties

The directors must, at all times, honour their fiduciary duties to the company when enacting defensive measures (or otherwise making recommendations in relation to takeover offers). These include, in particular, their duty to act honestly and in good faith in the best interests of the company, and to promote its wellbeing.

9.5 Directors' Ability to "Just Say No"

Any recommendation made by the directors as to the acceptance (or otherwise) of an offer shall be properly justified in view of their duty to act in the collective interest of the shareholders throughout the duration of the bid process. The directors should also ensure that sufficient information and advice is contained in the published offer document to enable shareholders to reach an informed decision, and are obliged not only to circulate their views on the offer, but also to explain to the shareholders the substance of any advice prepared by the independent expert engaged to report on the consideration being offered. All that being said, the board of directors of a target does not have the ability (also keeping in mind the restriction on the board taking any independent action that might potentially frustrate the offer) to reject an offer on behalf of the shareholders or take any action that prevents it from taking place, although the outright support of the directors (in terms of their opinion on the offer or on entering into certain commitments with the offeror) or lack thereof will always be an important factor in the likelihood of success of an offer.

The Maltese Companies Act requires a private company to include certain restrictions on the transfer of shares in its memorandum and articles of association. Consequently, shares in a private company cannot be transferred freely. It is common for one such restriction to take the form of a requirement for approval by the board of directors, and discretion is afforded to the directors over whether to register or decline to register the transfer in the company. If a transfer is not registered, the transfer will be incomplete and title over the shares will not be transferred. In these instances, the board of directors is usually given absolute discretion over whether to register or otherwise. That said, the decision of the directors would still need to follow the fundamental principle that a director of a company is bound to act honestly and in good faith in the best interest of the company. It is customary for completion of a business combination to be made conditional upon obtaining board approval.

10. Litigation

10.1 Frequency of Litigation

In both asset and share acquisitions in Malta, parties generally opt to have any disputes finally resolved by means of arbitration (in either a foreign or local seat). Arbitration provides both parties with a private forum within which to litigate their disputes. In contracts, lawsuits before the Maltese law courts are public and are generally avoided by the parties.

Information on arbitration awards would, understandably, not be available to the public and therefore an accurate picture on the frequency of litigation is not possible.

That said, based on the experience of the authors, litigation in M&A matters is uncommon and typically disputes are amicably and commercially resolved between the parties.

10.2 Stage of Deal

Based on the experience of the authors, litigation (which is rare) is brought post-completion.

10.3 "Broken-Deal" Disputes

The authors are not aware of any publicly available information on local broken-deal disputes.

11. Activism

11.1 Shareholder Activism

Malta has traditionally lacked a shareholder activist culture, probably owing to the limited size and liquidity of the Maltese capital markets, as well as it being largely composed of retail investors – with the market not necessarily appealing to large funds and/or strategic investors which (unlike retail investors) have the will and the resources to support such activism.

11.2 Aims of Activists

Given the general lack of shareholder activism in Malta, it is, accordingly, not common for activist shareholders to encourage companies to enter into M&A transactions, spin-offs or major divestitures. This said, a recently increased focus on investor education, coupled with the steadily increasing sophistication of the Maltese market, provides some hope that shareholders will be better placed to pose meaningful and well-founded questions/challenges to their respective boards.

11.3 Interference With Completion

Activists do not seek to interfere with the completion of announced transactions in Malta.

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