Mergers & Acquisitions

Contributing editor
Alan M Klein

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GETTING THE DEAL THROUGH

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Malta

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1 Types of transaction

How may businesses combine?

Business combinations may be structured in a variety of ways under Maltese law, but the most common are the following:

- transfer of shares;
- subscription to a new issue of shares;
- merger by acquisition;
- merger by formation of a new company;
- joint venture agreements; and
- transfer of property upon the incorporation of a business.

A transfer of shares must on pain of nullity be made in writing and all the documentation has to be registered with the registrar of companies at the Malta Financial Services Authority (MFSA).

In a merger by acquisition, the acquiring company succeeds to all the assets, rights, liabilities and obligations of the companies being acquired, even with regard to third parties. In turn the shareholders of the companies being acquired become shareholders of the acquiring company, following which the companies being acquired cease to exist.

The nature of a merger by formation of a new company is similar to a merger by acquisition, with the main difference being that two or more companies merge to create a new company altogether which will hold all the assets, rights, liabilities and obligations of the merging companies.

2 Statutes and regulations

What are the main laws and regulations governing business combinations?

Business combinations are regulated under a number of legislative provisions including:

- the Maltese Companies Act (Chapter 386 of the Laws of Malta) and its subsidiary legislation, which are the main legislative instruments regulating companies in Malta;
- for companies with securities admitted to a regulated market, the Listing Rules, issued under the Financial Markets Act (Chapter 345 of the Laws of Malta); of particular importance is chapter 11 dealing with takeover bids;
- the Maltese Civil Code (Chapter 16 of the Laws of Malta), which provides the basis for the establishment of contractual relationships; and
- the Maltese Commercial Code (Chapter 13 of the Laws of Malta), which contains provisions dealing with general commercial transactions.

There are various other legislative provisions that may be applicable in specific situations, such as the Competition Act (Chapter 379 of the Laws of Malta), the Control of Concentration Regulations (LN294 of 2002) and the Employment and Industrial Relations Act (Chapter 452 of the Laws of Malta).

3 Governing law

What law typically governs the transaction agreements?

Maltese law generally governs the transactions between two Maltese parties or involving companies registered in Malta. However the parties, by agreement, are free to choose any other jurisdiction to govern their agreements if any foreign interest is involved.

4 Filings and fees

Which government or stock exchange filings are necessary in connection with a business combination? Are there stamp taxes or other government fees in connection with completing a business combination?

Any transfer of shares requires submitting the necessary and relevant forms with the registrar of companies, most notably a 'Form T'. No transfer of shares will be registered unless evidence is provided to the Registry of Companies that the necessary stamp duty has been paid.

Any change requiring an amendment to the memorandum and articles of association (such as an increase in authorised share capital) is not effective until the same is registered with the registrar of companies.

When combining through a merger, the directors of the acquiring company and of the companies being acquired are bound to prepare the draft terms of merger, which, once signed by at least one director and the company secretary of each of the companies, will then be submitted to the registrar of companies for registration. These draft terms in essence contain information regarding the company, its shares, dates for accounting purposes and shareholder rights. This is then examined by an independent expert approved by the registrar and a written report is drawn up for the shareholders.

A merger control filing might be required in case of deals exceeding certain market thresholds.

If a deal involves the acquisition of immoveable property, a public deed must be made in front of a notary public and enrolled in the public registry.

Taxation matters are dealt with separately and in more detail in question 18.

5 Information to be disclosed

What information needs to be made public in a business combination? Does this depend on what type of structure is used?

The information that needs to be published relates to the type of structure used.

There are no mandatory rules for disclosure in relation to transfer of shares in companies that are not listed.

With regard to mergers, the draft terms of a merger as indicated in question 4 are publicly available in the records held by the registrar of companies. When the draft terms of a merger are approved, a notice must be published in a newspaper.

For listed companies, the acquisition by a person or by persons acting in concert with such person of a controlling interest (deemed to be more than 50 per cent of the voting rights) triggers the mandatory bid provisions set forth by the takeover rules. When a person acquires a controlling interest, he or she is duty bound to make a takeover bid as a means of protecting the minority shareholding of that company. Such person (the offeror) must inform the listing authority and announce his or her decision to launch such bid within seven days of acquiring a controlling interest. An offer document is then drawn up and made public within 21 days of this announcement stating all relevant information to enable the holders of the offeree company's securities to reach a properly informed decision about the bid.

The offer document must include information regarding the terms of the bid; the identity of the offeror; the securities for which the bid is made; the consideration for each security; any compensation offered for restrictions on transfers and votes that could ensue; the maximum and minimum amount of securities that the offeror undertakes to acquire; the conditions to which the bid is subject; the offeror's intentions for the future of the business and how any changes might affect employees; the time allowed to accept the bid; information concerning any securities included in the offeror's consideration; information regarding the financing for the bid; the identity of persons acting in concert with the offeror or offeree company; and the national law that will govern the contracts concluded between the offeror and the holders of the offeree company's securities following the bid and the competent courts to settle any disputes.

The offeree company must also make public a document with its opinion of the bid and including its views on the effects of its implementation on the company's interests and on employment including its strategic plans.

Once a bid is concluded, the offeror and the offeree company must inform the listing authority and publish the necessary, relevant and complete results of a takeover within 10 days from the closing of the acceptance period. The announcement must contain the number of securities by type acquired by the offeror, the ratio of the different classes and types of securities included in the bid and separate calculations for the participation and voting rights acquired.

Listed companies are also duty-bound to make a company announcement in accordance with the provisions of the Listing Rules and the Prevention of Financial Markets Abuse Act.

6 Disclosure of substantial shareholdings

What are the disclosure requirements for owners of large shareholdings in a company? Are the requirements affected if the company is a party to a business combination?

For listed companies, the offer document in a takeover bid must, as a requirement, include details of any existing holdings the offeror or persons acting in concert with him or her may have in the offeree company.

Where a shareholder in a Maltese company acquires 5 per cent or more of the shares of a listed company (the issuer) to which voting rights are attached, the issuer is bound to immediately inform the shareholder of his obligation to notify the issuer and the listing authority of any changes in major holdings. A shareholder is so bound if as a result of the acquisition or disposal of shares, the proportion reaches, exceeds or falls below the thresholds of 5, 10, 15, 20, 25, 30, 50, 75 and 90 per cent, including when this occurs as a result of events changing the breakdown of voting rights. This information is also given in respect of all the shares that are in the same class and to which voting rights are attached.

This is an individual obligation incumbent upon each shareholder, or each natural person or legal entity, or both if the proportion of voting rights held by each party reaches, exceeds or falls below the above-mentioned thresholds. When the duty to make a notification lies with more than one natural person or legal entity, notification may be made by means of a single common notification but this does not release any of those persons from their responsibilities in relation to the notification.

The notification will include the following information:

- the resulting position in terms of voting rights;
- the chain of controlled undertakings through which voting rights 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, even if that person is not entitled to exercise voting rights; and
- for instruments with an exercise period:
- an indication of the date or time period where shares will or can be acquired, if applicable;
- the date of maturity or expiry of the instrument; and
- name of the underlying issuer.

Upon receipt of the notification by the shareholder as indicated above but by no later than three trading days thereafter, the issuer makes the notification available to the public and makes a company announcement including all the information contained in the notification.

Furthermore, when an issuer is advised or otherwise becomes aware of an impending share negotiation or transaction involving a substantial shareholding (defined as the entitlement to exercise or control the exercise of 10 per cent or more of the voting rights or the entitlement to appoint a majority of directors) it must promptly make a company announcement.

7 Duties of directors and controlling shareholders

What duties do the directors or managers of a company owe to the company's shareholders, creditors and other stakeholders in connection with a business combination? Do controlling shareholders have similar duties?

As a general rule, directors owe their duties to the company and not the individual shareholders. They are obliged to act in the company's best interests and promote its well-being. The Maltese Companies Act as originally enacted did not contain any general statement of directors' duties. These were then introduced through the 2003 amendments to the Companies Act, being thereby bound to act honestly and in good faith, exercise due care, diligence and skill and not engage in self-dealing and not misuse their powers.

The directors of the merging companies must prepare a detailed written report regarding the draft terms of the merger, the relevant legal and economic grounds and describing any special valuation difficulties which may have arisen. They must also inform their company's general meeting and the directors of the other companies that they must inform their shareholders at their own general meeting, of any material changes to the assets and liabilities of the company that may have occurred between the date of preparation of the draft terms and the date of the general meeting. However, in the case of acquiring a company in which the acquiring company has 90 per cent or more of the shares, this duty can be done away with.

The directors or experts drawing up the report on the draft terms of the merger may be liable for damages caused to any shareholder of the amalgamating companies if any wilful or negligent misconduct is found to have taken place. This liability does not apply when a company is acquired by another which holds 90 per cent or more of its shares since there is no requirement to draw up a report as mentioned.

Directors of merging companies are equally bound when forming a new company through merger.

The board of directors is also duty-bound to inform the employees' representatives or the employees themselves once a bid is announced and give them the offer document once it is published.

The board of directors cannot allow any action that might frustrate an offer or lead to denying the holders of securities of the target company any opportunity to decide on the merits of an offer upon receiving a takeover notice or if there is reason to believe that a bona fide offer is imminent.

8 Approval and appraisal rights

What approval rights do shareholders have over business combinations? Do shareholders have appraisal or similar rights in business combinations?

Listed companies

The Listing Rules applicable exclusively to listed companies require that acquisitions and realisations be classified in accordance with the following tests:

- gross assets test: calculated by dividing the gross assets the subject of the transaction by the gross assets of the issuer;
- profits test: calculated by dividing the profits attributable to the assets the subject of the transaction by the profits of the issuer; and
- consideration test: calculated by taking the consideration for the transaction as a percentage of the aggregate market value of all the ordinary shares of the issuer.

If any test amounts to more than 5 per cent but less than 35 per cent, such transaction is classified as a class 1 transaction. The listed company must make a company announcement as soon as possible after the terms of the transaction are agreed.

Where any of the tests amount to 35 per cent or more, apart from the company announcement, the company must send an explanatory circular to shareholders and obtain the shareholders' prior written approval in a general meeting.

It is important to note that the listing authority may, in certain circumstances, decide to aggregate acquisitions or realisations that have taken place since either the publication of the last accounts or the issue of the last circular (whichever is the later) during the 12 months prior to the date of the latest transaction.

Furthermore, the purchase price for securities that are the object of a mandatory bid must be equitable. The equitable price to be paid is the highest price determined by the following criteria:

- the price offered for the security should not be below the weighted average price of the security or the security transactions made on a regulated market in the preceding six months;
- the price offered for the security should not be below the highest price paid by the offeror or persons acting in concert with him in the preceding six months;
- the price offered for the security should not be below the weighted average price paid by the offeror or persons acting in concert with him in the preceding six months; and
- the price of the security should not be lower than 10 per cent below the weighted average price of the security of the preceding 10 trading days.

If after the bid is announced but before it closes for acceptance, the offeror or any person acting in concert with him purchases securities priced higher than the offer price, the offeror must increase his offer to match the highest price paid.

In addition to these criteria, to establish a fair price, the offeror must appoint an independent expert to draw up a report to determine which price for those securities would be considered of fair and reasonable value. The price must, however, be equivalent to or higher than the equitable price.

General rules

A merger by acquisition can only be approved by an extraordinary resolution which will include both the draft terms of merger and also any amendments to be made to the memorandum and articles of the company. If there are different classes of shares, a separate vote must be taken on such resolution by each class of shareholders which will be affected by it. The resolution needs to be adopted at least one month after the publication of the draft terms, but not later than three months afterwards. This also applies to a company acquiring another company in which it already has 90 per cent or more of the shares. Shareholders and holders of securities mentioned hereunder can also benefit from the rights mentioned above in the case of a merger.

9 Hostile transactions

What are the special considerations for unsolicited transactions?

For listed companies, as soon as a mandatory bid is placed and announced, the board of directors of the offeree company and the offeror are bound to inform the representatives of the employees thereof. The board must advise and give its views on the effects of the implementation of the bid on employment, conditions of employment and the locations of the company's places of business.

If the board proposes taking action that may frustrate the bid, it must issue a statement explaining the reasons behind this decision and the significance of such action.

The Listing Rules also include provisions regarding the defensive tactics that may be adopted. Thus if the company being taken over (target company) has received a takeover notice or has reason to believe that a bona fide offer is imminent, its board of directors must not take or permit any action that could affect the affairs of the company in such a way that the offer is frustrated or the holders of securities of the target company would be denied the opportunity to decide on the merits of the offer. Such action may only be permitted by the board of directors if:

- the action was approved by an ordinary resolution of the company;
- the action is taken or permitted under a contractual obligation or in implementing proposals approved by its board of directors, and the obligations were entered into, or the proposals approved before the target company received the takeover notice or became aware that the offer was imminent; or
- if the above two points do not apply, the action is taken or permitted for reasons unrelated to the offer with the listing authority's prior approval.

10 Break-up fees – frustration of additional bidders

Which types of break-up and reverse break-up fees are allowed? What are the limitations on a company's ability to protect deals from third-party bidders?

Though this matter is not yet subject to any definite case law, it could be argued that break-up fees agreements could be construed as a form of financial assistance given by the target.

The prohibition of financial assistance is further explained in question 13.

11 Government influence

Other than through relevant competition regulations, or in specific industries in which business combinations are regulated, may government agencies influence or restrict the completion of business combinations, including for reasons of national security?

The Cross-Border Mergers of Limited Liability Companies Regulations (SL386.12) stipulates that if there is a law empowering an authority to oppose a merger between companies registered in Malta on grounds of public interest, this should also apply to cross-border mergers.

For further information about provisions for specific industries, see question 17.

12 Conditional offers

What conditions to a tender offer, exchange offer or other form of business combination are allowed? In a cash acquisition, may the financing be conditional?

The offer document of a mandatory bid must include all information regarding the conditions to which the bid is subject.

For further information about financing see question 13.

13 Financing

If a buyer needs to obtain financing for a transaction, how is this dealt with in the transaction documents? What are the typical obligations of the seller to assist in the buyer's financing?

The consideration for a takeover bid may consist in securities, cash or a combination of both, but in all cases, a cash consideration must be offered. A bid must only be announced after the offeror ensures that he can fulfil in full any cash consideration and after taking all reasonable measures to secure the implementation of any type of consideration.

The offer document of a mandatory bid must include all information concerning the financing of the bid. A report is also drawn up by one or more experts who are independent of the offeror or offeree company and appended to the offer document; primarily it must confirm that the offeror has sufficient resources to meet the consideration to be provided on full acceptance of the offer and that debts incurred in connection with the offer can also be paid.

Maltese law prohibits, subject to limited exceptions, a Maltese public company in providing financial assistance.

Accordingly a public company is not allowed to subscribe for, hold, acquire or otherwise deal in shares in a company that is its parent company; or give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of an acquisition or subscription made or to be made by any person of or for any shares in the company or its parent company.

14 Minority squeeze-out

May minority stockholders be squeezed out? If so, what steps must be taken and what is the time frame for the process?

Listed companies

Squeeze-out rights are solely applicable to listed companies and come into play when the offeror holds securities, or after having a bid accepted, has acquired or is firmly contracted to acquire securities representing a minimum of 90 per cent of the capital carrying voting rights or the same amount of voting rights in the offeree company. The squeeze-out rights enable and allow the offeror to require all the holders of the remaining securities to sell him those securities at a fair price. An independent expert is appointed to establish such fair price, being equivalent to or higher than the equitable price.

The right of squeeze-out can only be exercised within three months allowed to accept the bid.

Conversely, the holders of the remaining securities in such a scenario may also require the offeror to buy their securities at a fair price. The same procedure whereby a report is drawn up by an independent expert is followed.

General application

A merger by acquisition may only be made if it has been approved by an extraordinary resolution of each of the merging companies. Each of such companies is required to redeem the shares held by the dissenting members, if they so request, on such terms as may be agreed or as the court, on a demand by either the company or the dissenting members, thinks fit to order.

15 Cross-border transactions

How are cross-border transactions structured? Do specific laws and regulations apply to cross-border transactions?

The Cross-border Mergers of Limited Liability Companies Regulations transposes Directive 68/151/EEC into Maltese law, which provides safeguards required by member states of companies (within the meaning of the second paragraph of article 58 of the Treaty establishing the European Economic Community) for the protection of the interests of members and others, with a view to making such safeguards equivalent throughout the European Union.

The regulations apply to mergers of companies whose registered office, central administration or principal place of business is within the EU, provided at least two of the companies are governed by the laws of different member states and that at least one is registered in Malta. They apply to cross-border mergers if the law of one member state allows the relevant cash payment to exceed 10 per cent of the nominal value or the accounting par value of the securities or shares which represent the capital of the new company following the merger.

The management or administrative organ of each of the merging companies is bound to draw up the common draft terms of cross-border merger. The Maltese merging company is then bound to deliver such draft to the registrar of companies for registration and a statement in this regard is then published. A report is drawn up by the board of directors of the Maltese merging company which is to be given to its shareholders to explain and justify the legal and economic aspects of the merger and explaining its implication. Independent experts are also appointed to examine the draft terms and draw up a written report. These reports are then taken into consideration at the general meeting of the Maltese company to decide on the approval of the draft terms by extraordinary resolution. Once approved this resolution is delivered to the registrar for registration and then published. Such registrations may also be contested by any interested party.

A Cross-Border Pre-Merger Certificate is issued to each Maltese merging company by the registrar to attest to the proper completion of the pre-merger acts and formalities. Once the registrar has performed all verifications that the cross-border merging company has complied with all relevant regulations and provisions, including the payment of applicable fees, it issues the Certificate of Completion of Cross-Border Merger as conclusive evidence thereof. From then on, all the assets, rights, liabilities and obligations of the company being acquired, are transferred to the acquiring company, the members of the company being acquired become members of the acquiring company, and ultimately the company being acquired ceases to exist.

16 Waiting or notification periods

Other than as set forth in the competition laws, what are the relevant waiting or notification periods for completing business combinations?

The main time periods relative to mandatory bids are the following:

(i) obligation to announce the decision to launch a bid within seven days of acquiring a controlling interest;

(ii) the obligation to draw up and make public the offer document within 21 calendar days from the announcement set forth in (i); and

(iii) the offer document of a mandatory bid must include the time allowed for acceptance of the bid. This time allowance however must be between four and 10 weeks from when the offer document was made available to the public. This time period is meant to ensure that the holders of the securities of an offeree company have sufficient time and information to reach a properly informed decision.

Where there are competing bids and the initial offer is not withdrawn, the period for acceptance of the initial bid is extended automatically to the time of acceptance of the competing bid, which in turn has an acceptance period between four and 10 weeks from becoming available to the public.

A bid may be revised to extend the time period for its acceptance, but this must not exceed the maximum period of 10 weeks. This revision may only be made not later than 14 calendar days before the end of the period for acceptance.

If the bid lapses (that is, if the offer was not successful) the offeror cannot make a new offer for the same company within one year of the lapsing. The necessary, relevant and complete results of the takeover must be made public and the listing authority is to be informed thereof within 10 calendar days of the closing of the acceptance period.

It is important to note that for the purpose of obtaining the prior authorisation of the shareholders, a general meeting can be convened at a shorter notice than that stipulated in the memorandum and articles of association provided that the meeting does not take place within two weeks of notification.

17 Sector-specific rules

Are companies in specific industries subject to additional regulations and statutes?

Numerous companies in Malta fall within the ambit of a specific regulatory authority depending on the nature of their business. While companies in general fall within the purview of the Companies Act and the regulations of the MFSA, other sector-specific obligations apply. In light of this, gaming companies are bound by the rules of the Lotteries and Gaming Authority, whereas insurance companies, financial and credit institutions are bound by the MFSA and other regulations apart from the Companies Act.

18 Tax issues

What are the basic tax issues involved in business combinations?

Transfer of shares is subject to income tax on capital gains by virtue of the Income Tax Act, and stamp duty by virtue of the Duty on Documents and Transfers Act.

Transfers of shares of a listed company are exempt from the payment of capital gains. It is important to note that this exemption does not apply with regard to those shares held before such company was listed.

Capital gains are added to the taxpayer's income for the year and tax is charged on the total amount (a company in Malta pays tax at a fixed rate of 35 per cent). Provisional tax is payable at the time of such transfers at the rate of 7 per cent of the consideration.

There is an exemption from capital gains tax in the case of transfers made between companies in the same group or companies controlled and beneficially owned directly or indirectly as to more than 50 per cent by the same shareholders. Moreover, there is an exemption from tax on capital gains accruing to persons not resident in Malta (where such persons are not owned and controlled by, directly or indirectly, nor acts on behalf of individuals who are ordinarily resident and domiciled in Malta) arising from the transfer of shares in a company which is not deemed to be a property company.

Stamp duty is chargeable, among other things, on immoveable property at the rate of 5 per cent of the transfer value and on the acquisition of marketable securities at the rate of 2 per cent. Where shares are held in a property company, duty is chargeable at 5 per cent (a company is a property company if the value of the immoveable property held is at least 75 per cent of the total value of all its assets, excluding current assets but including immoveable property).

19 Labour and employee benefits

What is the basic regulatory framework governing labour and employee benefits in a business combination?

The transfer of an undertaking that retains its identity as an organised group of resources having the objective of pursuing an economic activity must comply with the Transfer of Business (Protection of Employment) Regulations and shall not in itself constitute sufficient grounds for dismissal of the employees.

The transferor and the transferee must provide the employees and the director of employment with written information about the date of the transfer, the reasons behind it, the legal, economic and social implications of the transfer for the employees and the measures envisaged in relation to the employees. Failure to abide by such obligations may lead to a fine of not less than €1,164.69 for each employee affected by the transfer.

When a transfer comes into effect, the contract of employment of an employee employed by the transferor remains in effect as if it had been made with the transferee from the start. The transferor thereby transfers to the transferee all its rights, powers, obligations and liabilities under or in connection with its contracts of employment. The only exception is statutory bonuses and income supplements relating to the period of employment by the transferor but falling due following the merger.

Maltese law includes specific legislation regarding employee involvement in the case of cross-border mergers of limited liability companies (SL452.103). These regulations apply to the merger of companies within the European Union, provided at least two of these companies are governed by the law of different member states and at least one of the companies is registered in Malta.

The rights and obligations that arise from contracts of employment or employment relationships in such companies are transferred to the new company formed following the cross-border merger on the date on which such merger takes effect.

The new company must then follow the rules of employee participation of the member state where it has its registered office. This general rule does not apply if one of the merging companies had an average workforce of more than 500 employees under an employee participation system within the six months prior to the publication of the draft terms of merger; or the national law applicable to the new company does not provide for the same level of employee participation as for the merging companies; or the national law applicable to the new company does not provide the same participation rights to employees of a merging company which is situated in another member state in comparison to employees employed in the member state of the new company. This is all in line with EC Regulation No. 2157/2001 on the State for a European Company and in accordance with specific provisions of the Employee Involvement (European Company) Regulations. Failure to comply with such obligations may lead to a fine between €1,164.69 and €11,646.87.

20 Restructuring, bankruptcy or receivership

What are the special considerations for business combinations involving a target company that is in bankruptcy or receivership or engaged in a similar restructuring?

A person who fails to discharge an obligation that he or she contracted will, under the Maltese Civil Code, be liable for damages. One of the most prominent remedies available is the actio pauliana. Thus a creditor may bring an action in his own name to impeach an act of the debtor, commonly a contract with another party, seeking damages for fraud caused by such contract.

Two elements must be present for this action to subsist: first, there must be prejudice caused to the creditor by the debtor who by his acts has prejudiced his own financial status; and second, the intention of the debtor to do harm to the creditor and the participation of a third party in this intention.

The debtor in such cases may plead the benefit of discussion, in which case a list is made of the Maltese property held by the debtor, to show that it is sufficient to satisfy the claim of the creditor. Where the actio pauliana is raised regarding acts under an onerous title, the creditor must prove that there was fraud both on the part of the debtor and the other party with whom he contracted. Where on the other hand the acts are under a gratuitous title, it is enough for the creditor to prove fraud on the part of the debtor alone.

The action can only be exercised by a person who has a debt which is certain, liquidated and due. Who qualifies as a creditor in this sense is not interpreted restrictively and includes a person who has a financial credit that is ascertained.

Thus in the ambit of a bankrupt debtor, the creditor may be able to bring the actio pauliana in cases where it can be proved that such debtor, fraudulently acted so as to deprive the creditor of what is due to him. The credit due to the creditor must also precede the act impugned as a rule. Furthermore, the debtor's insolvency must be of a continuous nature; that is, if at any time during the proceedings until final judgment is delivered, the debtor recovers solvency, the action will stop. Thus, the creditor in such a scenario would need to prove that he obtained the status of creditor at a point in time preceding the fraud and that fraud subsequently subsisted due to the debtor's dealings with a third party (for instance, disposing of his assets prior to declaring bankruptcy when he knew that it was imminent).

21 Anti-corruption and sanctions

What are the anti-corruption, anti-bribery and economic sanctions considerations in connection with business combinations?

Corruption provisions apply to persons who are entrusted with or have functions relating to the administration of a statutory or other corporate body with its own distinct legal personality, being employed therein. They also apply to employees or other persons who direct or work in the capacity for and on behalf of a legal person operating in the private sector, who is knowingly, in the course of his or her business activities, directly or through an intermediary, in breach of his or her duties. The term 'breach of

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duty' includes any disloyal behaviour constituting a breach of a statutory duty, or a breach of professional regulations or instructions.

If the person found guilty of such charges is the director, manager, secretary or other principal officer of the company or a person who has the power of representation or the authority to take decisions on its behalf or to exercise control within that body and the offence of which that person is guilty was committed for the benefit, in part or in whole, of that company, he shall be liable to the payment of a fine of between €1,164.69 and €1,164,686.70.

A public officer or servant who, in connection with his office or employment, requests, receives or accepts for himself or for any other person, any reward or promise or offer of any reward in money or other valuable consideration or of any other advantage to which he is not entitled, would be liable to imprisonment. If through such conduct he is induced to do what he is duty-bound to do, the term is between six months and three years. If he is induced to refrain from doing something it is his duty to do, the term is between nine month and five years, whereas if he actually fails to do such duty, the term is between one and eight years.

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