International Comparative Legal Guides

Mergers & Acquisitions 2021

A practical cross-border insight into mergers and acquisitions

15th Edition

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1 Relevant Authorities and Legislation

1.1 What regulates M&A?

In Mauritius, mergers (known as amalgamations) and acquisitions (known as takeovers) are principally governed by the Companies Act 2001, the Securities Act 2005, the Competition Act 2007, the Securities (Public Offers) Rules 2007, the Securities (Purchase of own shares) Rules 2008 and the Securities (Takeover) Rules 2010. The relevant regulatory bodies are the Registrar of Companies, the Financial Services Commission, the Stock Exchange of Mauritius Ltd and the Competition Commission.

1.2 Are there different rules for different types of company?

Different rules would apply depending on whether the target company is a public or private company, holds any licences issued by the Financial Services Commission, or qualifies as a "*Reporting Issuer*" under the Securities Act 2005.

A Reporting Issuer means an issuer:

(a) who, by way of a prospectus, has made an offer of securities either before or after the commencement of this Act;
(b) who has made a takeover offer by way of an exchange of securities or similar procedure;
(c) whose securities are listed on a securities exchange in Mauritius; or
(d) who has not less than 100 shareholders.

Listed companies are, in addition, subject to special rules issued by the Stock Exchange of Mauritius Ltd.

1.3 Are there special rules for foreign buyers?

When the target company holds immovable properties in Mauritius, authorisation from the Prime Minister's Office is required before the acquisition or merger involving foreign buyers.

1.4 Are there any special sector-related rules?

In some sectors such as banking, insurance, financial services and real estate, there are special rules that would apply. For instance, companies having financial business activities, such as assets management, distribution of financial products, etc. should seek the approval of the Financial Services Commission before proceeding with a change of control.

In addition, a merger situation shall be subject to review by the Competition Commission where:

(a) all the parties to the merger, supply or acquire goods or services of any description, and will following the merger, together supply or acquire 30 per cent or more of all those goods or services on the market;
(b) one of the parties to the merger alone supplies or acquires prior to the merger, 30 per cent or more of goods or services of any description on the market; and
(c) the Commission has reasonable grounds to believe that the creation of the merger situation has resulted in, or is likely to result in, a substantial lessening of competition within any market for goods or services.

1.5 What are the principal sources of liability?

Liabilities of the parties may arise out of a breach of the acquisition or amalgamation agreement, including any indemnity clauses provided therein. Such claims are governed by the general law of contract catered for in the Mauritian Civil Code.

Compliance-related liabilities can arise from the failure to seek approvals where required, and failure to make proper disclosures in breach of the Securities Act 2005.

In M&A involving listed companies, administrative penalties may be imposed by the Financial Services Commission, and civil liabilities and even criminal liabilities would arise for any defective prospectuses, insider trading, false trading in securities, market rigging or other illegal activities.

2 Mechanics of Acquisition

2.1 What alternative means of acquisition are there?

The alternative means of acquisition are as follows:

(a) a contractual offer;
(b) a takeover;

(c) an amalgamation/merger; or
(d) a Scheme of Arrangement.

Contractual offers
Acquisition of private companies can be on a strictly contractual basis in the form of a Share Purchase Agreement. Where the target company is a Reporting Issuer, a bidder should make an offer directly to the shareholders of the target company.

Takeovers
A takeover is defined in section 94 of the Securities Act 2005 as an offer made by or on behalf of a person to acquire such securities of the target that will result in the offeror acquiring more than 30 per cent of the rights attached to the voting shares of the target, either at one time or over a period of time.

Amalgamations and mergers
Two or more companies may amalgamate, and continue as one company, which may be one of the amalgamating companies, or may be a new company.

Arrangement
A scheme of arrangement includes a reorganisation of the share capital of a company by the consolidation of shares of different classes, or by the division of shares into shares of different classes, or by both those methods.

2.2 What advisers do the parties need?

Legal advisers are needed to offer advice on the legal matters, draft the legal documents and carry out the due diligence. Financial advisers are also needed to evaluate the financial risks of the transaction, advise on the value of the target company, etc. Tax advisers and auditors are also needed for financial and tax due diligence.

Depending on the complexity of the transaction, the parties may need more advisers to provide specialised advice in the relevant sector of activities.

2.3 How long does it take?

There is no prescribed timeframe for the completion of the transaction. However, an offer shall be open for at least 35 days and shall not exceed 60 days following the date of communication of the offer document to the shareholders of the target.

In general, the process can take from a couple of weeks to a couple of months depending on the complexity of the transaction.

The factors that determine the complexity of a transaction, and which will impact on the timeframe, include:

1. whether the buyer is a foreign company or individual;
2. the number of shareholders of the target company, whether those shareholders are individuals or entities, the nationality of those individuals if the shareholders are individuals and whether the entities are domestic or foreign if the shareholders are entities;
3. any secured creditors that the target company may have;
4. whether the target company has subsidiaries;
5. the number and the nature of assets that the target company holds (for example, if the target company holds immovable property, registration duty must be paid on the transfer of shares);
6. any requirement for contractual pre-completion approvals from any third parties; and
7. dealing with regulatory bodies (for instance, any difficulties encountered in dealing with the Registrar-General, the SEM or the Financial Services Commission).

Commercial negotiations may also impact on the timeframe, especially when there are many competing bidders.

2.4 What are the main hurdles?

M&A processes in Mauritius are generally easy and straightforward.

Dealing with regulatory bodies
Transfer of shares, amalgamations and mergers are regulated by the Registrar of Companies. Takeovers are regulated by the Financial Services Commission. When the target company holds immovable property, registration duty must be paid to the Registrar-General. According to the listing rules of the Stock Exchange of Mauritius Ltd, where the target company is a listed company, copies of any documents issued in connection with takeovers, mergers should be submitted to the Stock Exchange of Mauritius Ltd for review and approval before they are issued. Further, where the target company belongs to a specific sector, or carries out regulated activities, notification to and the approval of different regulators may be required.

Other hurdles
Hurdles may also be encountered if the Competition Commission determines that a merger situation, the creation of a merger situation has resulted, or is likely to result, in a substantial lessening of competition within any market or markets for goods and services. In that case, the Competition Commission may investigate the matter, which may result in entry and search, the convening of hearings and, eventually, restrictive directions.

2.5 How much flexibility is there over deal terms and price?

Price
Contractual acquisition, amalgamation or merger
In case of a contractual acquisition, an amalgamation or a merger, the price and the deal terms can be freely negotiated between the parties.
Takeover
For a takeover, section 14 of the Securities (Takeover) Rules 2010 provides that the offeror shall determine the offer price. Where the target company is listed on a securities exchange, the offer price shall be the sum of any premium and the highest of:

(a) the price paid by the offeror or a person acting in concert for any acquisition, including by way of allotment in a public issue, if any, during the six-month period prior to the date of public announcement;
(b) the price paid by the offeror under a preferential allotment made to him or to a person acting in concert at any time during the 12-month period up to the date of closure of the offer; or
(c) the average of the weekly high and low of the closing prices of the shares of the offeree as listed on the securities exchange where the shares of the offeree are most frequently traded during the six months preceding the date of public announcement.

Where the offeree is not listed on a securities exchange, the offer document shall contain information as to the means by which the offeror has reached the offer price, which shall be fair and reasonable.

Court mandated scheme of arrangement or amalgamation
In case of a scheme of arrangement or amalgamation mandated by the Court under Part XVIII of the Companies Act, the Court may make orders as to the price.

Deal terms
In case of a contractual acquisition, an amalgamation or merger, or a takeover, deal terms can be freely negotiated between the parties.

Deal terms may be subject to directions given by the Competition Commission if, after investigation, the Competition Commission determines that a merger is likely to result in a substantial lessening of competition in a market for goods and services.

Other
In addition to the restrictions listed above, prices and deal terms may also be subject to reviews and recommendations made by any sector-specific regulators. For example, where the target company is a financial institution (a bank, a non-bank deposit taking institution or cash dealer licensed by the Bank of Mauritius), the consent of the Bank of Mauritius is required for any acquisition of significant interest in that target company or in case of a merger with another financial institution. The Bank of Mauritius can withhold its consent unless some specific deal terms are agreed.

2.6 What differences are there between offering cash and other consideration?

As per section 57 of the Companies Act 2001, in case of a transaction for non-cash consideration, the Board of the target should determine the cash value of the consideration and should ensure that the cash value of the consideration is (i) fair and reasonable to the target company and to all the existing shareholders, and (ii) not less than the amount to be credited in respect of the shares.

According to the first schedule of the Securities (Takeover) Rules 2010, where the offer is in cash, or includes an element of cash, the offer document shall include a confirmation by an adviser that the resources available to the offeror are sufficient to satisfy full acceptance of the offer.

2.7 Do the same terms have to be offered to all shareholders?

According to section 4 of the Securities (Takeover) Rules 2010, the offeror shall provide equal and fair treatment to all shareholders of the same class of the target company, whether in relation to the consideration to be paid for their shares, the information to be supplied to them, or otherwise.

2.8 Are there obligations to purchase other classes of target securities?

Section 41 of the Securities (Takeover) Rules 2010 provides that where the offeror, by virtue of acceptances of the offer, has acquired or contracted to acquire not less than 90 per cent of the rights attached to voting shares to which the offer relates, any dissenting shareholder may require the offeror to acquire his shares, within 28 days from the day after which the dissenting shareholder has been informed of the offer.

2.9 Are there any limits on agreeing terms with employees?

The Securities (Takeover) Rules 2010 provide that an offer shall include the offeror's intention with regard to the continued employment of the employees of the target and of its subsidiaries.

In addition, our labour law, namely the Workers' Rights Act 2019, includes protection against unjustified termination of employment in case of takeovers and caters for the compensation of employees.

2.10 What role do employees, pension trustees and other stakeholders play?

Our law is silent as to the requirement for the target company or the acquiring company to obtain the approval of the employees of the target company or other stakeholders with respect to a potential offer or merger.

In general, the surviving entity will remain liable for and subject to all contracts, obligations, claims debts and liabilities of each of the constituent companies.

2.11 What documentation is needed?

Amalgamation/merger
An amalgamation or a merger involves an amalgamation proposal containing information as prescribed under the Companies Act 2001. Further, the directors in favour of the amalgamation must sign a certificate stating that, in their opinion, the amalgamation is in the best interests of the company, and that the amalgamated company shall, immediately after the merger becomes effective, satisfy the solvency test. A public notice must also be given.

Takeover
In case of a takeover, the documentation will include an offer, an acceptance of that offer, and a notice to dissenting shareholders, if there are any.

Listed companies
For a "substantial transaction" or "disclosable transaction", the target company must deliver to the Stock Exchange of Mauritius Ltd a circular containing information in relation to the transaction prescribed under the listing rules (such as brief details of the general nature of the transaction, brief details of the basis upon which the consideration was determined, etc.). Further, the target company must publish in at least two daily newspapers of wide circulation a summary of the transaction and details of where copies are available for consultation.

2.12 Are there any special disclosure requirements?

Merger
In case of a merger, a public notice must be given not less than 28 days before the merger is proposed to take effect.

Takeover
For a takeover, a public announcement must also be published in two newspapers of wide circulation when a firm intention is made. The offer should also be communicated to the Financial Services Commission and to the Stock Exchange of Mauritius Ltd.

Furthermore, the offeror shall forthwith inform the Commission and the securities exchange when an offer: (a) has been revised or extended; or (b) has expired, and shall, within five days, make a public announcement to that effect in at least two daily newspapers of wide circulation in Mauritius.

Where the board of the target company has appointed an independent adviser, it shall, within four days of such appointment, notify the Financial Services Commission.

Listed company

According to section 11.21 of the listing rules of the Stock Exchange of Mauritius Ltd, where the target company is a listed company, copies of any documents issued in connection with takeovers, mergers should be submitted to the Stock Exchange of Mauritius Ltd for review and approval before they are issued.

When the transaction falls under the category of "substantial transaction" or "disclosable transaction" under the listing rules, the target company must inform the Stock Exchange of Mauritius Ltd of the transaction and deliver to the Stock Exchange of Mauritius Ltd a circular containing information prescribed under the listing rules in relation to the transaction (such as brief details of the general nature of the transaction, brief details of the basis upon which the consideration was determined, etc.). Further, the target company must also publish in at least two daily newspapers of wide circulation a summary of the transaction and details of where, in Port Louis, copies are available for up to 14 days from that date.

2.13 What are the key costs?

The key costs will include service provider fees (financial advisers, corporate brokers, lawyers, accountants and other advisers).

Filing fees are generally minimal and no registration duty will be payable unless the target holds, directly or indirectly, any immovable property in Mauritius.

In case of a takeover, fees equivalent to 0.25 per cent of the value of the offer, subject to a maximum of approximately USD 9,000, shall be paid to the Financial Services Commission when filing any offer.

2.14 What consents are needed?

Necessary corporate approvals at board and shareholder levels shall be obtained.

Save in relation to an entity to which special sector-related rules applies, there are generally no requirements for the consent or approval of any governmental authority or agency in connection with M&A transactions.

Where the target company carries out activities regulated by the Financial Services Commission, the prior approval of the Financial Services Commission.

Further, when the target company holds immovable properties in Mauritius, consent from the Prime Minister's Office is required before an acquisition, an amalgamation, a merger or a takeover.

According to section 11.21 of the listing rules of the Stock Exchange of Mauritius Ltd, where the target company is a listed company, copies of any documents issued in connection with takeovers or mergers should be submitted to the Stock Exchange of Mauritius Ltd for review and approval before they are issued.

2.15 What levels of approval or acceptance are needed?

Where the target company is listed, consent of the Stock Exchange of Mauritius Ltd is required for any documents issued in connection with takeovers or mergers.

In case of a takeover, the law does not provide for any minimum level of approval by the shareholders of the bidder before the submission of the offer. There is only a requirement to file the offer document to the Financial Services Commission.

Where the target company is regulated by specific sector-related rules, M&A transactions may require consent or notification to the relevant regulator.

2.16 When does cash consideration need to be committed and available?

Where the offeree is listed on a securities exchange, consideration for the shares shall be paid in accordance with any enactment, the Listing Rules and the rules of the relevant clearing and settlement facility.

Where the offeree is not listed on a securities exchange, transfer of the shares shall be made in accordance with the provisions of any enactment and consideration for the shares shall be paid within three days from the receipt of the duly signed acceptance and transfer form.

3 Friendly or Hostile

3.1 Is there a choice?

There is no specific law against hostile takeovers in Mauritius.

3.2 Are there rules about an approach to the target?

If the target qualified as a Reporting Issuer (listed companies for example), the approach to the target is regulated by the Securities (Takeover) Rules 2010.

The offeror shall communicate its firm intention to make an offer to the board of the target, to the Financial Services Commission and to the relevant securities exchange (Stock Exchange of Mauritius Ltd), as the case may be.

A firm intention shall contain:

(a) the proposed terms of the offer;
(b) the identity of the offeror or any person acting in concert;
(c) a confirmation by the board of the offeror that sufficient financial resources are available to satisfy the acceptance of the offer and where the offer includes non-cash consideration, that all reasonable measures have been taken to secure full payment of the shares acquired;
(d) details of any existing holding of shares by the offeror in the target, including:
    (i) shares that are owned or controlled by the offeror; or
    (ii) shares that are owned or controlled by any person acting in concert;
(e) details of any agreement that exists between the offeree and the offeror or any person acting in concert in relation to the relevant shares, irrespective of whether or not any dealings have taken place; and
(f) all conditions that relate to the acceptances to which the offer is to be subject.

An offeror shall provide equal and fair treatment to all shareholders of the same class of the target, whether in relation to the consideration to be paid for their shares, the information to be supplied to them pursuant to these rules, or otherwise. Information about companies involved in an offer shall be made available to all shareholders at the same time and in the same manner. Shareholders shall be given full, complete and timely information to enable them to make an informed decision concerning the merits or demerits of an offer.

3.3 How relevant is the target board?

The target board shall, at all times when advising or informing the shareholders about a takeover:

(a) act only in their capacity as directors without regard to any personal or family interests;
(b) have regard only to the interests of the shareholders, employees and creditors; and
(c) act in good faith.

All documents issued in connection with a takeover of the target shall contain a statement signed by all the directors and confirming that they jointly and severally accept full responsibility for the accuracy of the information contained in the documents and that, having made all reasonable inquiries and to the best of their knowledge, the opinions expressed in the document have been arrived at after due and careful consideration and that there are no other facts omitted from the document where such omission would make any statement in the document misleading.

The target board shall make a recommendation in good faith to the shareholders as to whether the offer is fair and reasonable. Where there is a divergence of views among the directors of the target board as to the merits of an offer, a statement of the divergent views shall be attached to the reply document.

3.4 Does the choice affect process?

The same laws and regulations govern both hostile and friendly takeovers. However, in case of a hostile takeover, the due diligence may be impeded by the refusal of the target board to hand over the necessary documents and information related to the target.

4 Information

4.1 What information is available to a buyer?

The following general information is available about all types of companies, other than a Global Business Company (previously known as Global Business Companies Category 1) and an Authorised Company (previously known as Global Business Companies Category 2):

(i) the category of the company (e.g. domestic);
(ii) the type of company (e.g. limited by shares);
(iii) the date of incorporation;
(iv) the nature of the company (e.g. private);
(v) the registered office address;
(vi) the business registration number;
(vii) the stated capital;
(viii) the names, addresses and dates of appointment of office bearers; and
(ix) the names of the shareholders, the number of shares held by them, the types of shares held by them;

Other information such as the dates of annual return and the balance sheet of the company may be available too.

The following information is available for a Global Business Company:

(i) the category of the company (e.g. domestic);
(ii) the type of company (e.g. limited by shares);
(iii) the date of incorporation;
(iv) the nature of the company (e.g. private);
(v) the registered office address; and
(vi) the business registration number; the names, addresses and dates of appointment of office bearers.

Any other information may be given at the discretion of the board of the target company.

4.2 Is negotiation confidential and is access restricted?

If the target company is a Reporting Issuer, any person involved in an offer shall take such measures as are necessary to ensure that confidentiality is maintained at all times until a public announcement is made in accordance with the Securities (Takeover) Rules 2010.

If the target company is not a Reporting Issuer, it is recommended to sign a non-disclosure agreement before embarking into any negotiations to ensure that confidentiality is preserved.

4.3 When is an announcement required and what will become public?

Where the target company is a Reporting Issuer, a public announcement is required to be published forthwith:

(a) by the target board , when a firm intention is made;
(b) by the target board, when there is undue movement in its share price or in the volume of shares traded, whether or not there is a firm intention;
(c) by the offeror where, before a firm intention has been made under rule 9 of the Securities (Takeover) Rules 2010, there is undue movement in its share price or in the volume of share turnover, and the Financial Services Commission has reasonable cause to believe that it is the offeror's actions that have led to the situation;
(d) by the offeror, upon an acquisition that gives rise to an obligation to make an offer under rule 33 of the Securities (Takeover) Rules 2010;
(e) by the target board when the offeror has withdrawn its offer; or
(f) by the offeror or the board of the offeree upon direction being given by the Financial Services Commission.

Such public announcement should be made in two newspapers of wide circulation in Mauritius.

The announcement should contain the following information:

(a) the proposed terms of the offer;
(b) the identity of the offeror or any person acting in concert;
(c) a confirmation by the board of the offeror that sufficient financial resources are available to satisfy the acceptance of the offer and, where the offer includes non-cash consideration, that all reasonable measures have been taken to secure full payment of the shares acquired;
(d) details of any existing holding of shares by the offeror in the target company, including:
  (i) shares that are owned or controlled by the offeror; or
  (ii) shares that are owned or controlled by any person acting in concert;
(e) details of any agreement that exists between the target company and the offeror or any person acting in concert in relation to the relevant shares, irrespective of whether or not any dealings have taken place; and
(f) all conditions that relate to the acceptances to which the offer is to be subject.

4.4 What if the information is wrong or changes?

Where the target company is a Reporting Issuer, all documents issued in connection with a takeover by the target company shall contain a statement signed by all the directors that they jointly and severally accept full responsibility for the accuracy of the information contained in the documents and confirm, that having made all reasonable inquiries and to the best of

their knowledge, opinions expressed in the document have been arrived at after due and careful consideration and that there are no other facts omitted from the document, which omission would make any statement in the document misleading.

Subject to the prior approval of the Financial Services Commission, an offer may be varied in terms of the consideration offered for the shares proposed to be acquired in the following way where:

(a) a cash sum is offered, by increasing the amount of that sum;
(b) shares are offered, by increasing the number of those shares;
(c) debentures are offered, by increasing the rate of interest payable under those debentures or by increasing the amount of those debentures;
(d) an option to acquire unissued shares is offered, by increasing the number of unissued shares that may be acquired under that option; and
(e) a combination of any of the above is offered, by increasing the amount or value of any component of the offer.

Where the consideration offered for the shares to be acquired under an offer is varied, all the shareholders of the target company shall be entitled to receive the consideration as so varied.

Subject to the prior approval of the Financial Services Commission, an offeror may vary an offer by extending the period during which it remains open.

In the event of a variation of an offer, the offeror shall give to the target company and its shareholders notice of the variation by post or by any other expedient means.

The revised offer shall remain open for at least 14 days from the day of the notice of the variation.

5 Stakebuilding

5.1 Can shares be bought outside the offer process?

Dealings in the securities of a listed issuer in cases of takeovers shall not be suspended during the offer period. However, dealings may be suspended in the event of a compulsory acquisition of shares of dissenting shareholders.

If the target company is a Reporting Issuer, an offeror or a person acting in concert shall not enter into any agreement relating to the purchase or sale of shares of the offeree at any time during the offer period. Besides, any person who has inside information about an offer shall not deal in the shares of the offeror or the target company until a public announcement concerning the offer has been made.

5.2 Can derivatives be bought outside the offer process?

Given that the definition of "*securities*" under the Securities Act 2005 includes both shares and derivatives, the answer would be the same as for question 5.1.

5.3 What are the disclosure triggers for shares and derivatives stakebuilding before the offer and during the offer period?

An acquisition or disposition would trigger a disclosure when the value of the asset, property or interest acquired or disposed of is not less than 10 per cent of the net assets of the Reporting Issuer.

In addition, the following changes shall require disclosure:

(a) any distribution of securities in Mauritius or in any other jurisdiction;
(b) any change in the beneficial ownership of the issuer's securities that affects or is likely to affect the control of the issuer;
(c) any change of name of the Reporting Issuer;
(d) any reorganisation in capital, merger or amalgamation;
(e) a takeover bid on its own securities or made on the securities of another issuer or issuer bid;
(f) any significant acquisition or disposition of assets, property or joint venture interests; and
(g) any stock split, share consolidation, stock dividend, exchange, redemption or other change in capital structure.

5.4 What are the limitations and consequences?

Where a material change occurs in the affairs of a Reporting Issuer that is likely to have a significant influence on the value or market price of its securities, the Reporting Issuer shall immediately issue a press release disclosing the change, unless such disclosure would amount to a criminal offence.

The press release shall be made in plain ordinary language so that investors can understand. A copy of the press release shall be filed with the Financial Services Commission forthwith.

A Reporting Issuer may choose not to issue a press release where:

(a) the information concerns an incomplete proposal or negotiation;
(b) the information comprises matters of supposition or is insufficiently definite such that it would be misleading to the market for it to be disclosed;
(c) the information is generated solely for the purposes of the internal management of the issuer and its advisers; or
(d) the information is a trade secret.

6 Deal Protection

6.1 Are break fees available?

Break fees are not specifically regulated but they can be catered for in the Share Purchase Agreement or other agreement entered into by the parties.

6.2 Can the target agree not to shop the company or its assets?

No-shop clauses are not specifically regulated but the parties may impose such restrictions in the Share Purchase Agreement or any other agreement.

6.3 Can the target agree to issue shares or sell assets?

Yes, to the extent that the Securities (Takeover) Rules 2010 provide that, in cases of takeovers, dealings in the securities of a listed issuer shall not be suspended during the offer period.

6.4 What commitments are available to tie up a deal?

Any offer, which has been made in accordance with the Securities (Takeover) Rules 2010, shall not be withdrawn except with the prior approval of the Financial Services Commission.

7 Bidder Protection

7.1 What deal conditions are permitted and is their invocation restricted?

Subject to the applicable law, the parties are free to negotiate any deal conditions.

Except with the prior approval of the Financial Services Commission, a voluntary offer to acquire all voting shares shall be conditional upon the offeror having received acceptances in respect of voting shares that, together with voting shares acquired or agreed to be acquired before or during the takeover offer, will result in the offeror and any person acting in concert holding more than 50 per cent of the voting shares of the offeree.

Besides, when the Competition Commission determines, after investigation, that a merger is likely to result in a substantial lessening of competition in a market for goods and services, the Competition Commission may give such directions as it considers necessary, reasonable and practicable to remedy, mitigate, or prevent the substantial lessening of competition, and to remedy, mitigate or prevent any adverse effects that have resulted from, or are likely to result from, the substantial lessening of competition.

Such restrictions may include a requirement to:

(a) desist from completion or implementation of the merger insofar as it relates to a market in Mauritius;
(b) divest such assets as are specified in the direction within the period so specified in the direction, before the merger can be completed or implemented; or
(c) adopt, or desist from, such conduct, including conduct in relation to prices, as is specified in the direction as a condition of proceeding with the merger.

In the case of a completed merger, a direction may require an enterprise to:

(a) divest itself of such assets as are specified in the direction within the period so specified in the direction; or
(b) adopt, or to desist from, such conduct, including conduct in relation to prices, as is specified in the direction as a condition of maintaining or proceeding with the merger.

7.2 What control does the bidder have over the target during the process?

Where a firm intention of an offer has been communicated to the target board, the target board or any director shall not take any action in relation to the target's affairs that may directly or indirectly result in:

(a) the offer being frustrated; or
(b) the shareholders of the target being denied an opportunity to decide on the merits of an offer.

Any person who has inside information about an offer shall not deal in the shares of the offeror or the offeree until a public announcement concerning the offer has been made.

7.3 When does control pass to the bidder?

The Securities (Takeover) Rules 2010 set out a definition of "effective control", which means the holding of securities by any person, either individually or together with a person acting in concert, which will result in that person, either individually or together with a person acting in concert, having the right to exercise, or control the exercise of, more than 30 per cent of the rights attached to the voting shares of the target.

7.4 How can the bidder get 100% control?

As mentioned at question 7.3, the Securities (Takeover) Rules 2010 set out a definition of "effective control", which is defined as the exercise of more than 30 per cent of the rights attached to the voting shares of the target.

8 Target Defences

8.1 What can the target do to resist change of control?

The Securities (Takeover) Rules 2010 are silent as to the means for a target to resist a change of control. However, the Securities (Takeover) Rules 2010 prohibit the target's board from taking action that may result in any offer or *bona fide* possible offer being frustrated, or in target shareholders being denied the opportunity to decide on its merits. The target's board may insist that the offeror provides equal and fair treatment to all shareholders of the same class of an offeree in relation to the consideration to be paid for their shares. Having said so, it may not defeat the bid, but it should put pressure on the offeror to pay a fair and reasonable full price for control.

In addition, dissenting shareholders can make an application to the Court for an order in accordance with rule 47 of the Securities (Takeover) Rules 2010.

8.2 Is it a fair fight?

The Securities (Takeover) Rules 2010 ensure that target shareholders have sufficient time and information to reach a properly informed decision on the bid and that they are treated equally.

Additionally, the target board is empowered to appoint an independent adviser who shall advise the target board as to whether the offer is fair and reasonable. The target board shall, on the basis of the independent adviser's report, make a recommendation in good faith to the shareholders.

Where the offeror, by virtue of acceptance of the offer, has acquired or contracted to acquire not less than 90 per cent of the rights attached to voting shares to which the offer relates, any dissenting shareholder may require the offeror to acquire his shares within 28 days.

Besides, as mentioned above, any dissenting shareholders also have the option to make an application to the Court for an order in accordance with Rule 47 of the Securities (Takeover) Rules 2010.

9 Other Useful Facts

9.1 What are the major influences on the success of an acquisition?

The contents of the offer document (prescribed in the First Schedule of the Securities (Takeover) Rules 2010) have a major influence on the success of an acquisition, including the cash resources available for the offer, the offeror's intention regarding major changes to be introduced in the business, the continued employment of the employees of the target and details about implementation of future plans.

9.2 What happens if it fails?

Except with the prior approval of the Financial Services Commission, where a person, either individually or together

with a person acting in concert, has made an offer and the offer has been withdrawn, that person or a person acting in concert shall not, within 12 months from the date on which such offer is withdrawn or lapses, make a subsequent offer to the target.

10 Updates

10.1 Please provide a summary of any relevant new law or practices in M&A in your jurisdiction.

There have been no new laws or practices in relation to M&A during the past year.

Bertrand Betsy is a Partner at LEGIS and Partners Ltd. He has acquired experience in the field of M&A by spearheading several acquisitions of companies operating in the mining, banking, pharmaceutical, manufacturing, hospitality and agricultural sectors. With more than 10 years of practice in the corporate sector, his experience spans over the conduct of legal and tax due diligence, to the drafting and closing of the acquisition agreements (share purchase agreements, seller's warranties on contingent liabilities, shareholders' agreements).
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