

## CORPORATE ACQUISITIONS AND MERGERS

### Author Guide

#### [A] Aim of the Publication

The objective of this publication is to provide, in respect of every significant economy in the world, a succinct aide-memoire for the senior executive or professional adviser negotiating a cross-border transaction. They will invariably want to identify the key issues likely to affect the course of the deal and to formulate the questions on which further advice will be needed. The aim of *Corporate Acquisitions and Mergers* is to provide all the essential information in a compact format.

Each individual country contribution (which is updated at least annually) is intended to complement, but not to substitute for, local professional advice. However by providing an early appreciation of the relevant business environment, regulatory issues and differences in applicable systems, structures and procedures, we hope that our publication will lead to more realistic expectations, a more effective and informed briefing of the local advisers, and to more efficient management of the overall transaction.

#### [B] Contact Details

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#### [C] Submission Guidelines

- [1] A brief biographical note, including both the current affiliation as well as the e-mail address of the author(s), should be provided in the manuscript.
- [2] Only manuscripts in English will be considered for publication. Manuscripts should be written in standard English, while using 'ize' and 'ization' instead of 'ise' and 'isation'. Preferred reference source is the Oxford English Dictionary. However, in case of quotations the original spelling should be maintained. In case the complete manuscript is written by an American author, US spelling may also be used.
- [3] Manuscripts will be returned to the author if the English is below standard. In case of doubt about the correct use of the English language, authors are advised to have their text checked by a native speaker before submitting it.
- [4] Heading levels should be clearly indicated and should follow the standardized outline to allow for the full comparability of the contribution with other such contributions in the publication.
- [5] Special attention should be paid to quotations, footnotes, and references. All citations and quotations must be verified before submission of the manuscript. The accuracy of the contribution is the responsibility of the author. The journal has adopted the Association of

Legal Writing Directors (ALWD) legal citation style to ensure uniformity. Citations should not appear in the text but in the footnotes. Footnotes should be numbered consecutively, using the footnote function in Word so that if any footnotes are added or deleted the others are automatically renumbered.

- [6] Tables should be self-explanatory and their content should not be repeated in the text. Do not tabulate unnecessarily. Tables should be numbered and should include concise titles.
- [7] Figures should be submitted as separate files along with the manuscript, and it is very important that they are high quality: .tif or .jpg files with a resolution of at least 600 dpi. Image material that has been downloaded from the internet generally is not acceptable due to low resolution.
- [8] Submitted manuscripts are understood to be final versions. They must not have been published or submitted for publication elsewhere.
- [9] Manuscripts should be submitted electronically, in Word format.

For further information on style, see the [House Style Guide](#).

#### **[D] Copyright**

- [1] Publication of the manuscript is subject to authors signing a 'Consent to Publish and Grant of Exclusive Licence' form. By signing this Form, authors warrant and represent that their contribution does not contain infringing, libellous, obscene or other unlawful matter.
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- [3] The author shall receive for the rights granted an electronic copy of their contribution.

#### **[E] Outline**

##### LOCAL ECONOMIC, POLITICAL AND CULTURAL ASPECTS

##### General comments on the country profile

*Please comment generally on geographical location (particularly where this is strategic for any reason), population and population growth, language, natural resources and currency. Employment costs and availability of labour (and literacy rates where relevant). Perhaps also some comment on the physical infrastructure – road, rail links, ease of travel.*

##### Government and Political System

*Is the country politically stable? Is it generally protectionist towards domestic owners or favourably disposed to foreign investors? Is it well integrated into the global financial system? Membership of trade alliances/associations or political groups would be useful (e.g., EU/EMU or WTO). Is it a favourable environment for entrepreneurs?*

##### Legal system

*What is the legal system based on (for example, civil law, common law or a mixture of both)? How effectively are the laws enforced? How easy is it to enforce contractual and other rights through the courts? How easy is it to identify acquisition targets?*

#### Current Economic Aspects

*Actual (current) and projected growth rates of the economy.  
M&A trends, including any published details of deal volume and payment type (eg cash, stock, loan notes).*

#### Main Industries

- *What are the key industries in your jurisdiction? To what extent are they protected against foreign ownership? What is the role of the State in the economy (eg majority or minority ownership)?*
- *A few practical and topical examples of local deals – preferably those with which your firm may have been involved - would be both useful and interesting, as well as cementing the credibility of your firm – where relevant consider outbound as well as in-bound deals.*
- *Have buyers typically been strategic corporate buyers or has there been a lot of activity by financial buyers – private equity, venture capital etc?*

#### Cultural Aspects

- *Is your jurisdiction generally open and welcoming to foreign investment? An easy and liberal place to do business? If not, what are the main obstacles?*
- *Is it generally an expensive place to do business? A risky place to do business? If so, what are the biggest key risks and how can one mitigate them?*
- *Is the giving and acceptance of gifts a normal feature of business transactions?*
- *Are there any other established local business practices or cultural issues which might represent a hurdle? (Consider for example that in India “yes” does not always mean “yes”, it may mean “I’ll think about it”! Vigorous shaking of the head will often indicate to a Westerner the opposite of what it means in the West! Examples like this are welcome and will add colour and interest to the narrative.)*

## THE REGULATORY FRAMEWORK

#### Business Vehicles

- *What are the most common forms of business vehicle used in your jurisdiction? (Consider public and private companies limited by shares, general partnerships, limited liability partnerships, and associations).*
- *In relation to the most common forms of corporate vehicle used by foreign companies in your jurisdiction, what are the main compliance, registration and reporting requirements? (Consider annual accounts, annual returns, public announcements, changes of share capital or of directors). Are there any minimum share capital requirements?*

- *In relation to the most common form of corporate vehicle used by foreign companies in your jurisdiction, please outline typical/ normal management structures. (Consider for example single-tier boards, supervisory boards, integrated boards with a mix of executive and non-executive directors, and any governmental auditor or other supervisory organ). Would there normally be one or more managing directors?*
- *Who is normally empowered to exercise executive authority and is there any specific document (eg a power of attorney) which must be used where such authority is exercised?*

#### Laws affecting M&A

- *What are the main laws and/or regulations involved in M&A activity in your jurisdiction? Are there different laws/regulations for different types of company or different types of transaction? What are the main differences for private as opposed to public deals? Are there any differences for friendly/agreed or hostile transactions?*
- *Under the laws and regulations in your jurisdiction, what are the main ways in which companies and businesses can combine and divide? (Consider for example different forms of merger, amalgamation or reconstruction, public takeovers – recommended or hostile, take privates, tender offers, exchange offers, acquisitions of shares of private companies and businesses, demergers - eg where a separate listed business is created independent of its former parent - scissions and splits).*
- *What is the role (if any) of any voluntary codes, guidelines or self-regulation mechanisms?*

#### Relevant Regulatory Authorities

- *Which are the main governmental/ regulatory authorities, and what are they responsible for? (Consider in particular securities market regulation - including any insider trading legislation – and stock exchange involvement, foreign investment, merger controls, company law/ corporate compliance, other relevant laws).*
- *What are the timing implications of the various governmental approvals and are there any tips/tricks for expediting them? Is it possible to engage personally/proactively with regulatory authorities, or is it all very bureaucratic and handled exclusively through advisers?*

#### Controls / Restrictions on Foreign Investment

- *Are there any restrictions on foreign investment (including authorisations required by central or local government)? Consider whether there are any specifically regulated areas where specific authorisation to invest may be required - eg*
  - *Defence.*
  - *Banking.*
  - *Insurance.*
  - *Communications markets (newspapers, TV, radio and other media).*
  - *Financial services*
  - *Utilities*

- Nuclear and other energy markets
- Transportation
- *Can a foreign purchaser acquire a 100% interest or only a partial interest? (A foreign investor will need to consider whether the ability to acquire less than a given threshold might prevent tax consolidation). If partial only, what is the extent of domestic ownership required? Are there minimum or maximum foreign ownership restrictions? To what extent can such rules be circumvented by acquisition through a locally-formed SPV which is owned by foreign interests?*
- *If any formal approvals are required, please consider the costs and time involved in this process.*
- *Are there any restrictions on foreign directors or managers? Is a local partner required? To what extent are local directors required on the board or in other elements of the corporate structure? Is the presence of any governmental official required on a supervisory basis?*
- *Is a permit to trade required by a foreign-owned company? Are there any minimum capital requirements (or capital import requirements) for foreign-owned companies? Are there any restrictions on a foreigner or foreign-owned company owning land, mining/mineral rights or other immovable property?*

#### Incentives for Foreign Investment

- *Are there any grants or investment incentives available to foreign investors? Are there any special tax exemptions? Are there any special economic zones, free zones or other regions offering special investment incentives?*
- *Are any government guarantees available against expropriation or nationalisation? Are there any secure mechanisms/safeguards allowing for the payment of dividends abroad and repatriation of profits and/or the proceeds of liquidation or sale? Are there safeguards for the payment of interest on foreign loans or payment of fees and charges to foreign companies for IP or technology transfer?*
- *What local financing options are there for acquisitions in your jurisdiction? Do the domestic banks undertake lending for large-scale investment? Is it permissible for a foreign lender to take security over local immovable property? Are there any controls over the transfer of funds to foreign lenders for payment of interest or repayment of capital?*
- *Is it permissible for local/domestic companies to hold off-shore bank accounts? Are there any relevant exchange control or currency regulations affecting foreign investors?*

#### Specific issues of company/securities law

*In terms of company and or securities law in your jurisdiction:*

- *Shareholder approval - To what extent do shareholders have approval rights in respect of M&A transactions, and how are these rights exercised? What levels of acceptance or approval are required?*
- *Directors' duties - What duties are owed – whether to shareholders, creditors, employees or others - by the directors of a company which is engaged in an M&A transaction? Are there any particular considerations which arise in respect of hostile transactions?*

- Form of consideration - Can shares be issued for a non-cash consideration such as assets or services? Is a formal valuation process or any other formality required for this purpose? Are there any subsequent restrictions on disposal of shares acquired as a result of a contribution in kind?
- Financial Assistance - Where the acquisition is being financed by bank loans, the banks may require security from members of the target group to guarantee loans made to the acquiring company. Are there prohibitions against the granting of such security? Can financial assistance be given by a company for the purchase of its own shares? Are any exclusions or exemptions available – eg for private companies? Are any requirements imposed as a condition for obtaining such exemptions – eg a “whitewash” (proof of solvency) procedure or the passing of a special resolution?
- Security Interests – Where the acquisition is being financed by bank loans what kinds of security are available? Does the concept of a floating charge over all the assets exist? Or fixed charges over defined assets only? Is it possible/mandatory to register any such securities, mortgages or charges in a centralised registry? How easy/ practicable is it to enforce such securities in the event of default or insolvency? Are there any preferential creditors (eg employees, tax authorities) who will rank ahead of secured creditors in the event of insolvency? Is there a risk that such securities could be unwound or set aside on the insolvency of the target group? Is there a “suspect period” prior to the commencement of formal insolvency proceedings for the avoidance of preferences?
- Completion Formalities - Are there any particular formalities required to effect the transfer of shares, land or other assets? (Consider for example any requirements for formal merger or transformation plans, management, auditor or other financial reports, certificates, protocols, notarial deeds, any notarisation and/or apostille requirements, translations, and the mandatory presence of auditors, controllers, notary public or other officials. Bear in mind also that in some jurisdictions assets need to be legally “transferred” as well as “sold”).
- Costs and Fees - What are the main fees (excluding professional advisory fees) and other transaction costs which will arise? What filings, disclosures, notifications, announcements or completion certificates will be involved? Are there any disclosure obligations concerned with the acquisition of substantial holdings of shares?
- Dividends - Can dividends be paid otherwise than out of distributable profits? Are there any restrictions on a domestic company’s ability to distribute dividends, whether to domestic shareholders or to foreign shareholders? Please describe any special reserves which must be created before such dividends can be paid.
- Purchase of own shares - Are there any restrictions on a company's ability to redeem or purchase its own shares? Can the proceeds of any such exercise be freely repatriated to a foreign owner?
- The corporate veil - Can parent companies become liable for the debts or other liabilities of their subsidiaries in your jurisdiction?
- Insolvency – What are the main implications of buying shares or businesses which have gone into insolvency? Do any special considerations arise where the target company is in receivership or liquidation or other insolvency procedure?

- *Choice of Law* - Are choice of law, jurisdiction and arbitration clauses recognized and enforceable in your jurisdiction? Is it feasible/ desirable for the overall contractual arrangements to be made subject to the law of a different jurisdiction?

#### Specific Rules on Public Takeovers

*Where do you find the relevant rules on public takeovers, and which is the competent authority to regulate them? As regards public takeovers, please consider:*

- *To which sort of companies are these rules applicable?*
- *What different types of takeover structure are available? – eg contractual offers via an offer document, tender offers, court-approved schemes of arrangement? Relative advantages/disadvantages of each?*
- *What are the responsibilities of the directors of a target board on receiving an offer? Is there any protective action (eg “poison pills”) or other “frustrating action” they are able to take to resist a change of control?*
- *Is it possible for a buyer to make a partial offer?*
- *Does the concept of a “mandatory” bid exist in your jurisdiction and, if so, when is this triggered?*
- *What are the rules about buying shares in advance of, or during a bid?*
- *Stakebuilding - Are there any announcement/ disclosure obligations associated with such share purchases?*
- *Can a target company offer a buyer exclusivity or a break fee? Can commitments be obtained from target company shareholders in advance of a bid?*
- *What constraints are there on normal due diligence? Is due diligence feasible in the context of a public takeover? What information is publicly-available to a buyer? How does a buyer protect itself against undisclosed liabilities in the target company?*
- *Are there any rules about announcements – particularly where news of the bid leaks out in advance?*
- *Are there any minimum price obligations imposed on a buyer (eg where buying of shares has taken place in advance)?*
- *Can securities be offered as consideration?*
- *Do the same terms have to be offered to all shareholders?*
- *Are there obligations to acquire other classes of security in the target company? How are any options over or convertible securities of the target company dealt with?*
- *What conditions are normally permitted? Are there any mandatory conditions? Can the deal be conditional on the raising of adequate finance? What are the normal conditions for a bid? Is a bid normally conditional on a minimum number of acceptances?*
- *General comments on timetable (How do anti-trust/merger control issues affect the timetable? How do other bids, whether friendly or hostile, affect the timetable?)*
- *General comments on content of documents. To what extent are documents reviewed in advance by regulators?*



- *Are there any rules about advertising, press interviews, PR activity and publicity on bids?*
- *Can a bid, once made, be withdrawn?*
- *When does control formally pass to the buyer? Are there other relevant levels of control (eg to change the constitutional documents, reduce capital or liquidate the company)?*
- *Are there any compulsory purchase procedures for squeezing out recalcitrant or dissenting minority shareholders? Do such shareholders have a right to be bought out?*
- *What happens if the rules on public takeovers are broken? Can compliance with the takeover rules be enforced by the competent authority (or by anyone else) through the courts?*

#### Other relevant laws and due diligence issues

- *Are there any anti-bribery or anti-corruption laws affecting M&A activity in your jurisdiction? How rigorously are these enforced? Has the “long reach” of the US Foreign Corrupt Practices Act (FCPA) and the UK Bribery Act had any effect on M&A activity in your jurisdiction? Has bribery and corruption got better or worse in your country in recent years? (This may be particularly relevant where the country has only recently opened up to foreign investment).*
- *Are there any money-laundering regulations?*
- *Are there any significant environmental or product safety laws which will need to be considered?*
- *How easy is it to register, protect and enforce intellectual property rights (IPR) in your jurisdiction (eg patents, trade marks, designs, database rights etc)? How easily can these be verified for due diligence purposes?*
- *Are agents and/or distributors operating in your jurisdiction entitled to any mandatory compensation or other indemnities on termination? If so, is this dependant on the extent to which they have established new business or secured substantial benefits for their principal?*
- *What problems are there (if any) with valuation of intangible assets like brands, goodwill, IPR? Do any other valuation issues frequently arise?*
- *Are “change of control” clauses commonly used and are they enforceable? Would you typically expect to find such clauses in the banking loan arrangements of the target company?*

#### The due diligence process

- *How familiar/comfortable do you think sellers are generally likely to be with the concept of a full due diligence investigation involving commercial, financial, tax, property, environmental and other issues? In relation to property is it normal to investigate or obtain certificates of title? How common are environmental audits? Would “data rooms” commonly be used?*
- *What other legislative issues would you regard as absolutely critical for a “due diligence” investigation in your jurisdiction? Is this related to any specific local conditions?*



- *In your experience what have been the worst (avoidable) faults arising in the context of due diligence and planning? Do you have any case examples of how the due diligence process has been particularly well-handled or particularly badly-handled?*
- *What is the relationship between the formal due diligence process and the imposition of contractual representations, warranties and indemnities? Are these widely used and accepted in your jurisdiction? How easy is it to enforce them?*

#### Role of the Courts

- *Please could you comment on the role of the courts and on any other relevant dispute resolution mechanisms in your jurisdiction? Will the courts tend to support domestic residents and companies over foreigners, or individuals over businesses? Please comment on the independence and competence of the judiciary and the time generally taken to get a case heard.*
- *Also please comment on the enforceability of key contractual provisions. Consider in particular restrictive covenants (to stop the vendor(s) competing with the business sold), confidentiality constraints (to ensure data privacy), protection of minority shareholder rights, and enforcement of warranty or indemnity claims. What is it actually like (ie how time-consuming, fast/slow, expensive or laborious) is it to pursue these through the courts?*

#### MERGER CONTROLS. ANTITRUST/COMPETITION ISSUES

##### Relevant legislation and competent authorities.

- *Is there a merger control regime, and if so, what are the relevant legislative provisions covering merger control and what is the relevant/ competent authority?*
- *Is more than one authority involved? (Consider any supranational authority like the European Merger Regulation and note that mergers falling within the criteria and thresholds laid out in the EU must be notified to the European Commission. However please note that there is no need to cover the European Merger Control Regulation in any depth, as it is dealt with by a separate chapter in the overall work).*
- *Is there a mandatory filing obligation? Or is filing voluntary? Is there a mandatory suspension obligation before the transaction may lawfully be implemented?*

##### Scope of the Controls

*To which deals do the relevant merger control laws apply, and what tests (if any) are involved in determining this?*

##### Process/ Mechanics

- *What is the procedure for pre-notification and/or post-deal notification of prospective or concluded deals?*
- *What is the procedure for assessment and approval/rejection of prospective or concluded deals? [NB if these procedures are particularly complex a pro forma timetable or illustration would be very useful]*

- *What are the timing implications of obtaining approvals and are there any tips/tricks for expediting them? Is it possible to engage personally/proactively with the relevant authorities, or is it all very bureaucratic and handled exclusively through advisers?*
- *What deals are likely to be refused/rejected? (Consider any public interest issues, foreign ownership issues, protected sectors, deals which reduce the number of competitors in the market, anti-competitive deals, or deals creating a dominant position in a particular market).*
- *Are the views of trade competitors or other stakeholders sought and/or taken into account?*
- *What is the scope for offering remedies to obtain clearance? (Consider for example disposals of particular assets or behavioural undertakings).*
- *Consider the timing of approvals in the context of a bid for a publicly-held company.*
- *What are the sanctions for breaching the merger control or other anti-trust laws?*

#### Anti-competitive restraints

- *To what extent is it normal/feasible/practicable to prevent, or to try to prevent, the vendor and/or key employees from competing with the business sold? Or soliciting away key employees from the business sold?*
- *Are there limitations on the permissible duration and/or geographical scope of such restraints?*
- *What practical steps can be taken to prevent (where this is the objective) the departure of the management team and/or key employees?*
- *What are the main constraints affecting competitive behavior after the deal has been implemented? (Consider for example cartels, anti-competitive agreements with trade competitors, and abuse of dominant or monopoly position). Are there any individual or block exemptions provided for by law?*
- *Which are the relevant competition authorities for this purpose? And are they effective?*

#### TAXATION ASPECTS

##### Nature of the Tax Regime

*As regards tax would you describe your jurisdiction as a certain or uncertain tax environment? As a transparent tax system or an opaque system? Are the rules generally simple or complex? Are they aggressively enforced or is the regime lax?*

##### Liability to Tax

- *When is a business vehicle subject to tax in your jurisdiction? (Consider whether it is tax resident if it is incorporated in your jurisdiction or managed and controlled from your jurisdiction). When resident in your jurisdiction is it subject to tax on its worldwide income or only on locally-generated income?*
- *If a company is not resident for tax purposes but has a permanent establishment in your jurisdiction, what taxes is it liable for?*

- *What are the main taxes that potentially apply to a business vehicle subject to tax in your jurisdiction (including applicable tax rates)? Consider for example:*
  - *Corporation tax or corporate income taxes (are these paid on companies' worldwide profits or just local profits?)*
  - *Taxes on capital gains*
  - *Value added tax (VAT) or sales taxes or other taxes on revenue/sales*
  - *Stamp duties or other taxes on land transactions*
  - *Other taxes on land or real estate*
  - *Capital duties or other duties on share capital*
  - *Business rates*
  - *Taxes imposed on employers (eg PAYE and social security obligations).*
  - *Customs and Excise duties*
- *What incentives are available by way of capital allowances or other deductions in respect of capital expenditure?*

Tax consolidation. Group relief of gains and losses.

- *What scope exists for the use of gains or losses of the target company elsewhere within the purchaser's group?*
- *Are the profits of a foreign subsidiary imputed to a parent company which is tax resident in your jurisdiction? (Note that under controlled foreign company (CFC) rules in some jurisdictions - including the UK - profits can be imputed to a parent company if the foreign subsidiary is subject to levels of tax significantly lower than the rates to which it would be subject if it were tax resident in the home state).*

Tax considerations arising on M&A transactions

- *What are the basic tax issues which will arise for the principal parties on M&A transactions? From the perspective of taxes on capital gains, income, corporation taxes and stamp, transfer or capital duties, please consider the different tax considerations which will apply:*
  - (a) *On a sale of shares (for cash, shares or other securities)*
    - (i) *From the vendor's perspective*
      - *Individual vendor*
      - *Corporate vendor*
    - (ii) *From the purchaser's perspective*
      - *Individual purchaser*
      - *Corporate purchaser*
  - (b) *On a sale of assets (for cash, shares or other securities)*
    - (i) *From the vendor's perspective*
      - *Individual vendor*
      - *Corporate vendor*
    - (ii) *From the purchaser's perspective*
      - *Individual purchaser*
      - *Corporate purchaser*

- *To what extent are values negotiable between the parties in any discussion on price? To what extent are they required to be determined by independent assessment?*
- *Are there any tax reliefs, exemptions or deferrals available for particular types of amalgamation or reorganisation? (Consider particularly any rollover reliefs for share-for-share transactions). Is it possible and/or customary to obtain advance tax clearances from the relevant tax authorities?*
- *To what extent are unused tax losses in the target company available for use by a foreign-owned acquirer or its subsidiaries? Are there any restrictions on the carry forward of losses? (For example on a change of control of the target company?)*
- *To what extent are deferred payments, retentions, holdbacks and “earn-outs” commonly used /acceptable in your jurisdiction as a means of mitigating transaction risks? How are these dealt with from a tax perspective?*
- *Are acquisition expenses generally deductible as a business expense?*

#### Structuring the investment - Withholding taxes

- *Are payments to non-residents subject to withholding taxes (ie a tax collected at source by the payer)? [Note that the imposition of high withholding taxes, particularly on interest payments to overseas lenders, may mean the jurisdiction is not sympathetic to foreign finance/private capital]. As regards withholding and other taxes, how are the following taxed:*
  - *Dividends paid to foreign corporate/group shareholders?*
  - *Dividends paid to foreign individual shareholders?*
  - *Dividends received from foreign subsidiaries/affiliates? (Are these exempt from further taxes in your jurisdiction?)*
  - *Interest paid to foreign corporate/group shareholders or affiliates?*
  - *Interest received from foreign corporate/group shareholders or affiliates?*
  - *Intellectual property (IP) royalties paid to foreign corporate/group shareholders or affiliates?*
  - *Intellectual property (IP) royalties received from foreign corporate/group shareholders or affiliates?*
  - *Management or consultancy fees paid to foreign corporate/group shareholders or affiliates?*
  - *Payments to non-residents in respect of the purchase or renting of immovable property?*
- *Is there a wide network of double tax treaties affecting the payment of withholding taxes? What are the main requirements for obtaining relief from the obligation to withhold under these treaties? Would you say there are any “typical” or commonly-used investment structures in your jurisdiction to take advantage of these treaties?*

#### Debt financing

*Are finance costs associated with the acquisition generally deductible?*

#### Thin capitalization

*Are there any thin capitalisation rules (restrictions on loans from foreign parent or subsidiary companies)? If so, do these adopt the arm's length pricing principle in the OECD Transfer Pricing Guidelines? What are the specific tests involved? (Are specific debt/equity ratios relevant here, if so what is the threshold ratio? Is evidence of independent third party loan arrangements relevant?) If a company in your jurisdiction is thinly capitalised, please explain how the deductibility of interest is affected or any other restrictions which would apply.*

#### Transfer pricing

*Are there any transfer pricing rules? (Note that transfer pricing rules may provide that transactions between companies in your jurisdiction and foreign shareholders or foreign subsidiaries/affiliates must be taxed on the basis of the proper arm's-length value of the transaction). Are the tax authorities generally aggressive in enforcing transfer pricing and other forms of revenue leakage?*

### EMPLOYMENT CONSIDERATIONS

#### Legislative Framework

*What is the main legislative framework affecting labour and employment in your jurisdiction?*

#### Employment Protection

- *What employment protection legislation is in place? Please consider for example:*
  - *Is there a principle of continuity on business transfers? Are employees and/or their employment contracts automatically transferred to a purchaser of a business by operation of law? (ie without the purchaser being able to pre-select those employees he wishes to keep and those he wishes to dispense with?)*
  - *Are employees (eg in large companies) entitled to management representation – ie to one or more seats on company boards?*
  - *What obligations of information or consultation apply on a transfer of shares or the sale of a business? Must the board of a company consult with its employees? Can the employees block such a transaction? To what extent can they delay it?*
  - *Are strong rights given to works councils (as in eg Germany, France and the Netherlands)? (Note that protective employment legislation tends to be a feature of richer countries with more advanced welfare states).*
  - *Are employees entitled to be informed or consulted in relation to any other corporate transactions (such as mass redundancies, mass layoffs or changes of pension schemes)? Can such transactions be blocked by the workforce – eg by works councils?*
- *To what extent are these protections mandatory? Is it possible to contract out/ derogate from them to the detriment of the employee?*
- *How is the termination of individual employment contracts regulated? Are employees entitled to rights against dismissal and/or to compensation on termination? Is it possible to contract out/ derogate from these entitlements to the detriment of the employee?*

- *Are there any differences for this purpose between “blue collar workers” and “white collar workers”? Are there relevant procedures to be followed on termination?*
- *Can you comment generally on labour costs and working conditions in your jurisdiction? Is it normal to negotiate collective bargaining agreements with the local workforce? Are unions generally powerful /a problem? Or not?*

#### Pensions

- *Is pension/superannuation provision for companies and their employees governed by law? If so what are the requirements?*
- *If not, is such provision generally made by companies for employee pensions/superannuation? If so what problems (if any) typically arise in the context of M&A transactions with regard to pension schemes, or other pension commitments or promises? (Please consider the existence and adequacy of any relevant funding arrangements).*

#### Retention of key management and employees

- *What effective steps are available to purchasers to ensure the continuation of individual vendors, members of the management team or other key employees?*
- *Is it practicable to impose non-competition clauses on vendors and/or key employees? Are such clauses effective and enforceable?*

#### Treatment of Foreign Employees

- *Are there any restrictions on foreign managers? Are there any restrictions on foreign directors? Are there any specific controls affecting foreign employees working in your jurisdiction?*
- *Do foreign employees require work permits and/or residency permits? How long does it generally take to get them and is this expensive?*
- *In what circumstances is a foreign employee taxed in your jurisdiction and what criteria are used? Is this based on residence? If so, for how long? What income tax, social security contributions or other duties must be paid by the employee and the employer during the employment relationship?*
- *Is it an onerous responsibility to be a director of a company in your jurisdiction? Is it possible to insure this liability?*

#### ACCOUNTING TREATMENT

- *Is the format and content of group accounts determined by specific laws or by local accounting standards issued by the accounting profession?*
- *Are any or all companies in your jurisdiction required to implement IFRS?*
- *Are different accounting treatments possible for business combinations? Are companies at liberty to adopt merger accounting as well as acquisition accounting? If so, what criteria determine whether, and if so when, merger accounting may be used? Are these criteria determined by law or by local accounting practice?*



- *Where there is a share-for-share acquisition, does merger relief apply, such that under certain circumstances the value of the share premium does not have to be transferred to a share premium account? What are those circumstances?*
- *Are fair values affected by any changes in the assets or liabilities that result from the intentions of the acquirer or from events occurring after the acquisition, or should such changes be dealt with as post-acquisition items?*
- *What scope is there for “provisioning”? How are the costs of any proposed reorganization and/or integration of the acquired business dealt with?*
- *If companies are required to capitalise goodwill, are they required to amortise it through the P&L account, and if so, over what period are they required to do this?*
- *Can the life of acquired goodwill (or goodwill arising on consolidation) be regarded as “indefinite” and therefore not subject to amortization?*
- *If that is the case, is it mandatory to undertake impairment reviews? If so, how often? (In the UK impairment reviews test the amount recoverable for goodwill against the existing balance sheet carrying value; if the carrying value is higher, the asset will be written down and any loss in value deducted from the company's annual profit for the year).*
- *When/ under what circumstances/ are intangible assets recognized?*
- *Are intangible assets amortized over their useful lives or are they subject to impairment reviews? If the latter, how often?*
- *Is negative goodwill recognized as a balance sheet item or is it credited to the profit and loss account?*
- *Are acquisition costs expensed in the period in which they are incurred or are they capitalized?*
- *What is the effective date of acquisition from which profits of the target company(ies) are brought into the acquiring company's P+L account? How/where is this defined?*
- *How are deferred and/or contingent consideration payments valued? (And do any changes in such values affect the P&L account or do they result in adjustments to the goodwill figure?)*
- *From the perspective of the vendor, when can any profit arising on the sale be brought into its P&L account? Are there differences between “extraordinary items” and “exceptional items” which will determine whether such profits appear “above the line” or “below the line?”*

## FUTURE DEVELOPMENTS

*What are the key recent developments, issues and trends relating to M&A activity in your jurisdiction and what developments do you anticipate in the near future which are going to affect the way in which M&A transactions are conducted in your jurisdiction? Please provide a brief summary of any prospective new laws or practices affecting M&A in your jurisdiction.*