



Mauritius

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M&A ACTIVITY

1. Please give a brief overview of the public M&A market in your jurisdiction.

Mauritius is a small economy with a booming financial services and offshore sector. However, most of the local wealth is dominated by close-knit corporate groups. On the offshore side, a number of major multinationals with operations in India and Africa are structured through holding companies in Mauritius. These companies have started being listed on the Stock Exchange of Mauritius (SEM).

While there are many transactions on the offshore M&A market, in comparison there has been a small but steady level of activity on the domestic side. There have not been any hostile takeovers.

However, with the coming into force of the new Securities (Takeover) Rules 2010, we should now see more mergers and acquisitions activity in the Mauritian market.

Some of the main merger and acquisition deals that have taken place in Mauritius include:

- The amalgamation of two listed insurance companies, namely La Prudence (Mauricienne) Assurances Ltée and the Mauritius Union Assurance Company Limited to form the Mauritius Union Group.
- The takeover of Shell Mauritius Limited by Vitol Group and Helios Investment Partners.
- The de-merger of IBL, a major retail group between its majority shareholders CIEL and GML.

2. What are the main means of obtaining control of a public company?

There are different means of obtaining control of a public company in Mauritius, as explained below.

Mergers and amalgamations

These remain the primary means by which changes in control occur given the close-knit nature of Mauritius corporate groups. The procedures for amalgamations and mergers involve fairly straightforward corporate actions and shareholder resolutions.

Scheme of arrangement

These are court approved reconstructions, which are used within a corporate group and between related companies.

Takeovers

Mauritius has recently introduced the Securities (Takeover) Rules 2010 which has replaced previous legislation on takeovers. A takeover is an offer made by, or on behalf of, a person (bidder) to acquire the securities of another (target) which will result in the bidder acquiring effective control of the target, either immediately after the acquisition or over a period of time.

Effective control is defined as “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% of the rights attached to the voting shares of the company”.

Stock exchange transactions

Control of public listed companies can be obtained principally through the purchase of shares on the securities exchange through normal market operations or through cross-trade.

HOSTILE BIDS

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

Hostile bids are allowed but they are not common. The legislation enabling hostile bids (the Securities (Takeover) Rules 2010) only came into force in May 2011. Under the previous legislation, hostile bids were allowed, but they were much more difficult to implement.

REGULATION AND REGULATORY BODIES

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

Public takeovers are governed by the Financial Services Act 2007, the Securities Act 2005 and the rules and regulations made under these laws, namely the Securities (Takeover) Rules 2010 and the Securities (Acquisition of the shares of the dissenting shareholders during takeovers) Regulations 2010.

These laws apply to corporations defined as “Reporting Issuers”. Reporting Issuers are issuers who either:

- Make a public offer of securities.
- Have made a takeover offer by way of an exchange of securities or similar procedure.
- Have their securities listed on a securities exchange in Mauritius.
- Have 100 or more shareholders.



The regulator for takeovers and mergers is the Mauritius Financial Services Commission (FSC).

Mergers and takeovers can also come under the scrutiny of the Competition Commission where the transaction results in more than 30% of the market share being controlled by one entity or group, or where the Competition Commission has reasonable grounds to believe that it will result in a substantial lessening of competition within the market.

PRE-BID

Due diligence

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

Recommended bid

A bidder will generally conduct legal and financial due diligence on the target. In addition to the information the bidder can find in the public domain (*see below, Public domain*), the bidder will usually also obtain corporate and financial information from the target.

Hostile bid

In a hostile bid, the target's directors and shareholders do not usually co-operate and volunteer information. The bidder will only obtain information found in the public domain. That information can be restricted where the company is an offshore company.

Public domain

Information concerning a domestic company is publicly available from the Mauritius Registrar of Companies (ROC) on the payment of a prescribed fee.

The following company information can be obtained from the ROC:

- Incorporation details.
- Registered office.
- Regulatory status.
- Governing documents.
- Capital structure.
- Register of directors.
- Name, address and date of appointment of the secretary and auditor.
- Register of charges.
- Register of interests.
- Trade and business.
- Current standing on the register.
- Financial statements.
- Annual returns.

In the case of a listed company, the following information is publicly available:

- Listing particulars.
- Cautionary announcements.

- Net Asset Value.
- Latest published accounts.
- Declarations of distributions.

Further information concerning encumbrance(s) on both domestic and listed companies can be obtained from the Mauritius Registrar General on the payment of a prescribed fee.

Certain information can also be obtained from the register of Reporting Issuers which must be kept by the FSC. This register is open to the public and indicates:

- The interest in securities of the Reporting Issuer held by "insiders of the Reporting Issuer".
- Whether the Reporting Issuer is in default of the disclosure requirements.

Insiders of a Reporting Issuer include (under the Securities Act 2005):

- The Reporting Issuer itself, its subsidiaries, and the officers of the Reporting Issuer or its subsidiaries.
- Any person who controls more than 5% of a class of voting shares of the Reporting Issuer, or that person's officers.

Secrecy

6. Are there any rules on maintaining secrecy until the bid is made?

A person involved in a takeover must take all necessary steps to prevent the creation of a false market in the shares of either the bidder or the target, and ensure that confidentiality is maintained at all times until a public announcement is made. Persons with inside information on a takeover are prohibited from making use of that information, or disclosing that information to any other person other than in the course of their business, employment or profession.

Agreements with shareholders

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

It is common for a bidder to secure the agreement of major stakeholders in the form of a memorandum of understanding. The Securities (Takeover) Rules 2010 require the disclosure of all the details of any agreement which exists between the target and the bidder, or any person acting in concert with them, concerning the relevant shares while a firm intention is being discussed (irrespective of whether or not any dealings have taken place).

A person "acting in concert" is defined as an individual or company who, under an agreement or understanding (whether formal or informal) co-operates, through the acquisition of shares in a company, to obtain or consolidate effective control of that company.



Stakebuilding

- 8. If the bidder decides to build a stake in the target (either through a direct shareholding or by using derivatives), before announcing the bid, what disclosure requirements, restrictions or timetables apply? Are there circumstances in which shareholdings, or derivative holdings, of associates could be aggregated for these purposes?**

There is nothing that prevents the bidder from building a stake in a target company. An insider of a Reporting Issuer must disclose to the Reporting Issuer its stake in the Reporting Issuer, and any changes to that stake, within 14 days of acquisition of, or change to, that stake. For the purposes of this disclosure, the insider can opt to exclude the interests of its associates.

An insider of a Reporting Issuer includes any person holding or controlling more than 5% of the securities in the Reporting Issuer.

The Reporting Issuer must report this disclosure to the FSC and to any securities exchange on which the Reporting Issuer is listed on the day after the day that the disclosure was made to it.

Agreements in recommended bids

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

At the time an offer is made, the target's shareholders should also receive any agreement which exists between the target and the bidder, or any other person acting in concert with the bidder, concerning the relevant shares.

Break fees

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

This is not common in Mauritius, though there is no legislation prohibiting the practice.

Committed funding

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

Specific committed funding is not required under legislation. However, the contents of a firm intention must include a confirmation by the bidder's board that sufficient financial resources are available to satisfy an acceptance of the offer.

ANNOUNCING AND MAKING THE OFFER

Making the bid public

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

A bidder must first communicate its firm intention to make an offer to the target's board, the FSC and the relevant securities exchange.

The firm intention must include the information set out below prescribed for public announcements.

A public announcement must be published in two daily newspapers of wide circulation in the following circumstances:

- By the target's board when a firm intention is made.
- By the target's 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.
- By the bidder where, before a firm intention has been made, there is undue movement in its share price or in the volume of share turnover, and the FSC has reasonable cause to believe that it is the bidder's actions which have led to that situation.
- By the bidder, upon an acquisition that gives rise to an obligation to make a mandatory offer.
- By the target's board when the bidder has withdrawn its offer.
- By the bidder or the target's board upon direction being given by the FSC.

The public announcement must make reference to the contents of a firm intention and must comprise:

- The proposed terms of the offer.
- The identity of the bidder or any person acting in concert with the bidder.
- A confirmation by the bidder's board that sufficient financial resources are available to satisfy an 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.
- Details of any existing shares held by the bidder in the target including:
 - shares which are owned or controlled by the bidder;
 - shares which are owned or controlled by any person acting in concert with the bidder.
- Details of any agreement which exists between the target and the bidder, or any person acting in concert with the bidder, in relation to the relevant shares, irrespective of whether or not any dealings have taken place.
- All conditions relating to acceptance to which the offer is to be subject.
- Any other information that the FSC requests must be communicated to the target.



Within 14 days of filing with the FSC, unless the FSC directs otherwise, the bidder must communicate a copy of the offer document to the target's shareholders by registered post, or by any other expedient means of delivery, and a written notification to that effect must be sent to the target's board.

Within 21 days from the date that the bidder posts the offer document, the target's board must respond to its shareholders, including providing the board's reasoned recommendation, to enable shareholders to reach an informed decision.

Whenever an offer has been revised, extended or has expired, the bidder must immediately inform the FSC and the securities exchange of this fact and, within five days of the revision, extension or expiration, make a public announcement of the fact in at least two daily newspapers of wide circulation in Mauritius.

An offer remains open for a minimum of 35 days and a maximum of 60 days from the date the offer document is communicated to the target's shareholders. However, an extension can be provided upon application to the FSC and payment of the relevant prescribed fee.

Offer conditions

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

A bidder can only make a voluntary offer to acquire all of a target's voting shares where the bidder (together with any person acting in concert with the bidder) has received acceptances in respect of voting shares representing more than 50% of the total voting shares of the target.

An offer can be conditional or unconditional. There are no restrictions on the content of pre-conditions. If an offer is conditional, the offer document must specify the last date when the bidder can declare the takeover offer unconditional. Upon a conditional offer becoming unconditional, it remains open for acceptance for a minimum of 14 days after it becomes unconditional.

Two common types of condition include that:

- Regulatory approvals and clearances are obtained from the FSC and the relevant securities exchanges.
- Percentage interests must be acquired during the offer period.

A mandatory offer cannot be conditional.

Bid documents

14. What documents do the target's shareholders receive on a recommended and hostile bid?

The guiding principle behind documents and information to be given to shareholders is that these should be complete and accurate to enable them to make an informed decision concerning the merits, or demerits, of an offer.

Offer document

The bidder must send an offer document to the target's shareholders to enable them to make an informed decision on the proposed takeover (see *Question 12*). The offer document must contain the following information (*Schedule 1 of the Securities (Takeover) Rules 2010*):

- The takeover scheme proposed by the bidder.
- Statements advising the target's shareholders to consult a professional advisor if in doubt on any aspect of the offer and on the eligibility for the offer and the last acceptance date.
- Appropriate disclaimers (for example, that the document is not a prospectus and that there is no objection, but no warranty, from the FSC).
- A statement confirming that the bidder's board takes full responsibility for the correctness of the information in the offer document.
- Information on which documents are available for inspection in relation to the proposed offer.
- The names of the parties related to the offer.
- The intention of the offer (for example, the bidder's intention regarding the continuation of the target company's business).
- Details of shareholdings in the target company.
- Dividend entitlements.
- The offer price for the target's shares and cash resources available.
- Any information on the exchange of securities.
- Any other arrangements in connection with the offer and any other regulatory obligations.

Response

The target's board must give a response to the offer document to the shareholders. That response must contain the following information:

- Views of target's board (whether the board recommends the offer or not).
- Summary of the report of an independent adviser on the offer.
- Director's interests in the target.
- Shareholdings held by the target, and its related companies, in the bidder.
- Capital structure of the target.
- Financial information for the last three years.
- Prospects and material changes.
- Material contracts.
- Arrangements and benefits concerning the target's directors.
- Details on directors' service agreements.

No distinction is made between a recommended and hostile bid. The content of the response will reflect the fact that the bid is not recommended.



Employee consultation

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

There is no specific requirement for employee consultation on takeovers. However, employment practice recommends that major changes in workplace practice are discussed with employees.

Mandatory offers

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

A mandatory offer must be made in the following circumstances:

- Where a person, either individually or together with a person acting in concert, acquires the "effective control" of a Reporting Issuer (see *Question 2*).
- Where, in the course of normal dealings in securities, a person, either individually or together with a person acting in concert, ends up controlling more than 50% of the voting shares of a Reporting Issuer.

However, the requirement to make a mandatory offer can be waived in the following situations prescribed for under the legislation:

- Upon a change in control as a result of a restructuring of the target company.
- Where the FSC considers that an offer is unfair or contradictory to the market's interests.
- Any other case that the FSC considers fit.

A public announcement must be made in respect of all mandatory offers that are made, and the FSC and relevant securities exchange must also be notified of the mandatory offer.

CONSIDERATION

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

Generally, the consideration offered in a public takeover is usually cash, but can also be securities in the bidder, debentures and share options, or a combination of any of these.

18. Are there any regulations that provide for a minimum level of consideration?

The bidder determines the offer price. Where the target is not listed on a securities exchange, the offer document must contain information establishing the means by which the bidder has reached the offer price, which must be fair and reasonable. The offer price cannot be less than the highest price at which the bidder, or any person acting in concert with the bidder, purchased any share in the target during the offer period.

THE REGULATORY AUTHORITY

Mauritius Financial Services Commission (FSC)

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Main area of responsibility. The FSC is the regulator for all non-banking financial institutions and capital markets.

Where the target is listed on a securities exchange, the offer price must be the sum of any premium together with the highest of either:

- The price paid by the bidder, or a person acting in concert with the bidder, for any acquisition, including by way of allotment in a public issue, if any, during the six-month period before the date of the public announcement.
- The price paid by the bidder under a preferential allotment made to him, or to a person acting in concert with him, at any time during the 12-month period up to the closing date of the offer.
- The average of the weekly high and low of the closing prices of the target's shares as listed on the securities exchange where the target's shares are most frequently traded during the six months preceding the date of the public announcement.

19. Are there additional restrictions or requirements on the consideration that a foreign bidder can offer to shareholders?

There are no specific requirements or additional restrictions imposed on the type of consideration that a foreign bidder can offer to shareholders.

POST-BID

20. Can a bidder compulsorily purchase the shares of remaining minority shareholders?

A bidder that has acquired, or contracted to acquire, not less than 90% of the voting shares to which the offer relates can, within 28 days of the last day for acceptance of the offer, give notice to any dissenting shareholders that it intends to acquire their shares. Unless the acquisition is prevented by a court order, the bidder can acquire dissenting shareholders' shares within 21 days of that notice.



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

Where an offer has been made and then subsequently withdrawn, the bidder, and any person acting in concert with the bidder, are prevented from making a subsequent offer to the target within 12 months from the date on which that offer is withdrawn or lapses, unless the FSC gives its approval. For situations where a mandatory offer is made, the cooling-off period is six months.

De-listing

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

There are no rules specific to delisting. A company that seeks to delist, or that no longer fulfils the criteria for listing (whether it no longer meets the required percentage of shares that must be in public funds, or otherwise) can seek removal from the official list of the exchange.

TARGET'S RESPONSE

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

Hostile bidding is not common in Mauritius, and the Securities (Takeover) Rules 2010 specify that, upon communication of a firm intention to make an offer the target's board must not take action which may directly or indirectly result in an offer being frustrated, or result in the target's shareholders being denied the opportunity to decide on the merits of an offer.

However, the target's board can, with the approval of the shareholders in a meeting, take the following actions:

- Issue new shares.
- Issue or grant options in respect of any unissued shares.
- Create, issue, or permit the creation or issue of, any securities carrying rights of conversion into, or subscription for, the target's shares.
- Sell, dispose of or acquire (or agree to sell, dispose of or acquire) assets of a material amount, or other than in the ordinary course of business.
- Cause the target, and any of its subsidiaries or associated companies, to purchase or redeem any shares in the target, or provide financial assistance for any such purchase.

There are no provisions which prevent defensive mechanisms post-bid.

TAX

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

There is no transfer duty payable on the sale of shares in a listed company in Mauritius. The sale of shares in non-listed companies, however, is subject to a transfer duty at 5% only where those companies hold immovable property in Mauritius.

Failure to pay this transfer duty, or any false declaration made regarding a transfer of shares or debentures, is a criminal offence. The Registrar General also has the authority to re-assess the transfer value of the transaction.

OTHER REGULATORY RESTRICTIONS

25. Are any other regulatory approvals required, such as merger control and banking? If so, what is the effect of obtaining these approvals on the public offer timetable?

Amalgamations and corporate reorganisations are subject to the approval of the Mauritius Registrar of Companies.

Mergers and sometimes takeovers, can be subject to review by the Competition Commission where it has reasonable grounds to believe that the creation of the merger (or takeover) may result in a substantial lessening of competition within any market for goods or services in Mauritius. This is not applicable to a takeover or merger in the offshore market.

Where a bidder intends to make a public offer that could have an impact on competition, it is advisable to apply for a ruling from the Competition Commission.

The approval of either the Bank of Mauritius or the FSC is required for any acquisition of any interest in a bank or non-bank regulated financial institution (as is applicable).

The timelines for obtaining approvals from regulatory authorities vary. It is customary to make these approvals conditions precedents to any agreement to acquire shares.

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

In general there are no restrictions on the foreign ownership of shares in Mauritius, except for the foreign ownership of shares in immovable property, which must have the approval of the Mauritius Board of Investment.

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

The exchange control has been suspended in Mauritius since 1994. There is no limit on transferring profits, dividends and capital out of the country.

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

After the public announcement, and during the offer period, a bidder, or person acting in concert with the bidder, cannot enter into any agreement relating to the purchase or sale of the target's shares.

Following the public announcement, there are no restrictions on dealing with the target's shares by any other person.



REFORM

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

The Securities (Takeover) Rules 2010 are operative from May 2011. They replace the piecemeal legislation concerning mergers and takeovers that previously existed, and seek to unify the regulation of listed and non-listed entities.

The new Rules also enable both:

- The compulsory acquisition of the shares of dissenting shareholders (see *Question 20*).
- The ability of a minority shareholder to compel a successful bidder to purchase its shares post-bid.

There is no immediate intention to reform the merger and takeovers regulations any further.

CONTRIBUTOR DETAILS



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Qualified. Victoria, Australia, 2005

Areas of practice. General corporate; investment funds; employment law; taxation.

Recent transactions

- Acted for Standard Bank (Mauritius) Limited for a financing transaction for the sum of US\$26 million for the financing of a Mauritius based investment company for the acquisition of investment opportunities in Africa.
- Provided advice to the World Bank on corporate governance laws in Mauritius for the drafting of the Report on the Observance of Standards and Codes (ROSC).
- Advised on the setting up of a private equity fund for the purposes of investing into Africa with a capital commitment of up to US\$60 million.



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Areas of practice. Investment funds; general corporate; commercial.

Recent transactions

- Advised in the restructuring by way of an amalgamation and consolidation of a real estate India fund structured as a protected cell company.
- Advised an Indian conglomerate in the reorganisation of its subsidiaries in Mauritius by way of a de-merger with a view to transferring reserves for a value of US\$185 million between Mauritius and India.

Recent transactions

- Represented a financial conglomerate in the potential purchase of a Mauritius real estate fund worth US\$30 million.
- Advised in a purchase bid in respect of the sale of a majority stakeholder of a company listed on the Stock Exchange of Mauritius.
- Advised various sophisticated and expert investors in the acquisition of shares in global business companies incorporated in Mauritius.
- Advised in respect of a proposed share purchase deal involving a multinational supermarket.



Choose the right partner.

Expertise in corporate law, project and trade finance, investment funds, banking, tax, real estate development, intellectual property and IT.

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