

PUBLIC M&A

United Arab Emirates



Public M&A

Consulting editors

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Quick reference guide enabling side-by-side comparison of local insights into public M&A issues worldwide, including types of business combination; principal laws and regulations; cross-border and sector-specific considerations; governing laws; filing and disclosure requirements; duties of directors and controlling shareholders; shareholder approval and appraisal rights; hostile transactions; break-up fees and frustration of additional bidders; government influence; conditional offers; financing; minority squeeze-outs; waiting and notification periods; tax; labour and employee benefits; restructuring, bankruptcy or receivership; anti-bribery, anti-corruption and sanctions issues; and recent trends.

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STRUCTURES AND APPLICABLE LAW

Types of transaction

How may publicly listed businesses combine?

There are two types of business combination:

- mergers by amalgamation: where two or more companies are merged into an existing company, the merging company is de-registered and its licence cancelled, and the surviving company assumes all assets and liabilities of the merging company; and
- mergers by combination: where two or more companies merge into a new company, the merging companies are de-registered and their licences cancelled, and the new company assumes all assets and liabilities of the 'merging' companies.

Law stated - 10 April 2023

Statutes and regulations

What are the main laws and regulations governing business combinations and acquisitions of publicly listed companies?

The main laws are UAE Federal Law No. 32 of 2021 on Commercial Companies (as amended from time to time) (CCL) and UAE Federal Law No. 4 of 2012 concerning Regulation of Competition (the Competition Law).

There are four main regulatory bodies to consider:

- the Securities and Commodities Authority (SCA);
- the relevant stock exchange market (in this case, Abu Dhabi Securities Exchange or Dubai Financial Market) (the Market);
- the Competition Regulation Committee (CRC) of the UAE Ministry of Economy;
- the UAE Central Bank for banks and licensed financial companies; and
- the Department of Economic Development (DED) in each of the emirates.

The main regulations are as follows:

- the Decision of the Chair of the SCA Board of Directors No. (18 RM) of 2017 Concerning the Rules of Acquisition and Merger of Public Shareholding Com and Administrative Decision No. (62 RT) of 2017 Concerning the Technical Requirements for Acquisition and Merger Rules (together, the SCA M&A Rules);
- SCA Board of Directors' Decision No. (3 Chairman) of 2020 concerning Approval of Joint Stock Companies Governance Guide (the Corporate Governance Rules);
- SCA Chairman of the Board Resolution No. 1 of 2022 concerning the Regulations for Special Purpose Acquisition Companies;
- SCA Board of Directors' Decision No. 3 of 2000 concerning the Regulations as to Disclosure and Transparency;
- SCA Board of Directors' Decision No. 2 of 2001 concerned the Regulations for Trading, Clearing, Settlement, Transfer of Ownership and the Safekeeping of Securities;
- SCA Board of Directors' Decision No. 2 of 2001 concerning Securities, Trading of Securities and Suspension of Securities;
- Cabinet Decision No. 37 of 2014 with regard to the implementing regulations of the Competition Law;

- Presidential Decree No. 6 of 2015 establishing the Federal Competitiveness and Statistics Authority;
- Cabinet Decision No. 13 of 2016 in respect of market share thresholds; and
- the applicable rules of the Market.

Law stated - 10 April 2023

Cross-border transactions

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

There are no specific laws and regulations that apply to cross-border transactions; the structure will depend on the parties' jurisdiction.

In the UAE, historically there were certain restrictions on ownership of mainland companies, which meant that companies were required to be owned by UAE national shareholders. However, the erstwhile CCL was amended to allow 100 per cent foreign ownership, except for certain commercial activities that would continue to require UAE national ownership. If companies fall under this list, the structural planning of a transaction may require some extra thought.

Law stated - 10 April 2023

Sector-specific rules

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

Yes, all publicly listed companies will be obliged under the CCL and SCA M&A Rules to hold a commercial licence and, depending on the commercial activities undertaken, will be further regulated by an industry-specific authority with their own laws and regulations (in addition to the CCL and SCA M&A Rules), for example:

- banks are regulated by the Central Bank and governed under Federal Law No. 14 of 2018 Regarding the Central Bank and Organisation of Financial Institutions and Activities;
- insurance companies are regulated by the Insurance Authority and governed under Federal Law No. 6 of 2007 establishing the Insurance Authority and governing the organisation of its operations (the Insurance Law);
- schools are regulated by the Department of Education and Knowledge in each emirate (eg, the Knowledge and Human Development Authority in Dubai and are governed under Law No. 2 of 2021 concerning the Knowledge and Human Development Authority in Dubai); and
- pharmaceutical companies are regulated by the health authorities in each emirate (eg, the Dubai Health Authority in Dubai) and are governed under Federal Law No. 8 of 2019 concerning Medical products, Pharmacy Profession and Pharmacies.

By way of example, where two insurance companies are merging by amalgamation, both companies will be required to comply with the CCL, SCA M&A Rules and the merger provisions in the Insurance Law and applicable insurance authority regulations, decisions and circulars.

Law stated - 10 April 2023

Transaction agreements

Are transaction agreements typically concluded when publicly listed companies are acquired?
What law typically governs the agreements?

Yes, similar to private M&A transactions, there will be the usual suite of documentation, including a share purchase agreement or merger contract. However, these will usually have limited indemnities, representations and warranties compared with those considered standard in private M&A transactions. Further, the due diligence on such companies will usually be limited to publicly available information that is not share price sensitive to ensure that the relevant market is not affected.

Publicly listed companies will also have disclosure requirements for their relevant market, along with general assembly notices and shareholder circulars to approve the transaction. We would expect the transaction agreements to be governed by UAE law given that publicly listed companies are subject to strict rules and regulations under UAE law. To avoid contradiction and ambiguity in interpretation of the contracts, legally, UAE law is the prudent choice.

Law stated - 10 April 2023

FILINGS AND DISCLOSURE

Filings and fees

Which government or stock exchange filings are necessary in connection with a business combination or acquisition of a public company? Are there stamp taxes or other government fees in connection with completing these transactions?

General

- In addition to the below specific disclosures, filings and notifications, there is an ongoing obligation on all publicly listed companies to notify (both the Securities and Commodities Authority (SCA) and the board of directors of the relevant stock exchange market (the Market)) of any material developments that could affect the share price of the publicly listed company (disclosure), and the Market's board of directors has the right to publish any statement in respect of such material information in the local newspapers and other media as it deems appropriate (save where a stay is approved). Notices and agendas for both board and general assembly meetings, and the results of such meetings, should be disclosed.
- Where there is a potential merger or acquisition taking place, the publicly listed companies and acquirer involved will usually apply for consent to stay the obligation to disclose in relation to such negotiations until such time as a binding contract is signed. Such application must be made by the publicly listed companies involved in the merger or the publicly listed company and acquirer if it is an acquisition.
- A request for a stay will usually include a list of names that are prohibited from trading certain shares (the Insiders List). This will usually include the board of directors, management, advisers, relatives and connected persons of the relevant companies (and acquirer). The Insiders List will be prohibited from trading in shares of the publicly listed company in question and any parent, subsidiary, sister or affiliate company for certain periods (known as 'black-out' periods).
- In addition to such filings and notifications, any transaction that creates an 'economic concentration' with an industry share of at least 40 per cent in the relevant industry in the UAE must be notified to the Competition Regulation Committee (CRC) of the UAE Ministry of Economy. This requirement applies to domestic M&A transactions as well as any international M&A transactions creating a notifiable (greater than 40 per cent) economic concentration in the UAE. The concerned parties must make an application for approval no later than

30 days prior to completing the relevant transaction. The CRC then has 90 days (extendable by a further 45 days) to review the transaction and issue a resolution approving or rejecting the transaction in question.

Mergers

- SCA: owing to the disclosure obligations on publicly listed companies, the SCA will (whether a stay has been requested or not) be aware of potential transactions. However, a formal application to the SCA will be required that will include details of the merger as well as a copy of the merger contract; proposed articles of the merged company; financial statements for the two preceding financial years; the initial approvals from the Department of Economic Development (DED) in each of the emirates and any industry-specific regulator; an action plan and approach report for the merger; the audited financial position of the merging companies (that reflects the financial position no later than three months from the date of submitting the application); valuation from the company or their financial advisers; the valuation report of the merging companies; auditor's report; the resolutions of the board of directors approving the merger; the shareholder circular; and special resolutions.
- Industry-specific regulator: an initial approval is often sought from any industry-specific regulators early in the negotiations, to incorporate any comments or requirements that such regulator may have so that when applications for final approval are made, the regulator has already agreed to the transaction in principle and provided its feedback.
- DED: similar to the industry-specific regulator, an initial approval is commonly sought from the DED to approve the transaction in principle. The DED will carry out the implementation of certain parts of the merger, including (but not limited to) amending and cancelling the commercial licences of the relevant merging company; amending and updating the memorandum and articles of association; de-registration of the 'merging' company; and a capital increase of the 'surviving' company.
- Market: where the publicly listed company has been approved a stay, it will only be required to disclose to the Market (as a whole) once the merger contract is signed.

Acquisitions

- Exempt acquisitions: all acquisitions of shares listed on the Market must be carried out on the market trading system through one of the Market's registered brokers, unless it is an over-the-counter (OTC) acquisition or one of the following exempt transactions:
 - a transfer of ownership between spouses and relatives to the second degree;
 - a transfer of ownership taking place as a result of inheritance, wills or gifts made to official charitable bodies in the state without consideration;
 - a transfer of ownership taking place pursuant to court orders;
 - a transfer of ownership taking place pursuant to an amicable settlement with a financial institution;
 - a transfer of ownership taking place between persons whose names appear on one single certificate of ownership;
 - the sale of securities by public auction; or
 - a transfer of ownership requested through the banks, finance companies or mutual funds licensed to complete the financing operations in securities. The Market shall set the necessary controls for this purpose with the SCA's approval.
- Acquiring less than 5 per cent of a publicly listed company: there are no specific notification or disclosure

obligations to the SCA, DED or the Market. There are often no share transfer agreements on transactions of this size.

- Acquiring 5 per cent or more of a publicly listed company (or 10 per cent or more of a parent, subsidiary, sister or affiliate company of a publicly listed company): there are no prior notification or disclosure obligations to the SCA, DED or the Market. However, unlike the above, the acquirer is required to provide an immediate post-notification of the acquisition to the Market (as a whole). Further, the industry-specific regulators may have their own rules and regulations in this regard, for example, where a bank is acquiring 5 per cent or more of shares in a publicly listed company, they will require the prior approval of the Central Bank. This process is repeated for each additional 1 per cent of shares in such publicly listed company purchased by the acquirer.
- Acquiring 30 per cent or more of a publicly listed company:
 - SCA: the acquirer will be required to apply to the SCA and obtain their prior approval of the acquisition. The acquirer will need to provide the details of the acquisition including (but not limited to) the share price, number of shares, acquirer's details and whether it is being transacted on an OTC basis or not.
 - Industry-specific regulator: it is likely that the approval of any industry-specific regulator will be required prior to obtaining approval from the SCA; for example, an acquirer purchasing shares in a bank will need approval from the Central Bank before it can obtain approval from the SCA.
 - DED: there are no specific notification or disclosure obligations to the DED.
 - The Market: where the acquirer has been approved a stay, it will be required to disclose to the Market (as a whole) immediately upon execution of the purchase order.
 - OTC acquisitions: certain transactions can be carried out on an OTC basis, meaning that they are executed outside of the market trading system.
 - SCA: the acquirer will be required to apply to the SCA and obtain its prior approval of the acquisition. The acquirer will need to provide the details of the acquisition including (but not limited to) the share price, number of shares and acquirer's details.
 - Industry-specific regulator: it is likely that the approval of any industry-specific regulator will be required prior to obtaining approval from the SCA; for example, an acquirer purchasing shares in a bank will need approval from the Central Bank before it can obtain approval from the SCA.
 - DED: there are no specific notification or disclosure obligations to the DED.
 - The Market: the seller and the acquirer will need to submit a formal request to the chair of the Market containing the details of the transaction (including, but not limited to, the agreed price) containing a signed undertaking to the Market. OTC acquisitions must exceed a certain financial threshold (eg, under the Dubai Financial Market, the aggregate price of the shares being acquired through a block deal must be at least 10 million UAE dirhams, and such price must be equal to the last traded price or equal to the previous close price if no trade occurred on the security).

Mandatory tender offers

- A mandatory tender offer (MTO) is triggered where an acquirer acquires, or where an acquisition shall result in such acquirer holding, 30 per cent plus 1 per cent or more of a publicly listed company.
- The acquirer shall be obliged to immediately stop increasing its ownership ratio, notify the SCA of its ownership ratio and whether there is an intention to make an MTO offer; if not, the acquirer's ownership ratio must be reduced to 30 per cent or less within three months of notification to the SCA.
- Where the acquirer wishes to make an MTO offer, it shall be completed if such offer results in the acquirer holding at least 50 per cent plus 1 per cent or more shares in the capital of the publicly listed company; if this threshold is not reached, the offer is cancelled and the acquirer's share ratio shall be reduced to 30 per cent or less.

- The SCA can make exceptions to this rule, including (but not limited to) government-owned companies, distressed companies and securities acquired through inheritance.

There are no stamp taxes, a government fee is payable to the SCA for mergers and acquisitions and if the acquisition is OTC, there will be an OTC-relevant fee payable to the Market.

Law stated - 10 April 2023

Information to be disclosed

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

General

- In addition to the below specific disclosures, filings and notifications, there is an ongoing obligation on all publicly listed companies to notify (both the SCA and the board of directors of the Market) of any material developments that could affect the share price of the publicly listed company (disclosure), and the Market's board of directors has the right to publish any statement in respect of such material information in the local newspapers and other media as it deems appropriate (save where a stay is approved). Notices and agendas for both board and general assembly meetings, and the results of such meetings, should be disclosed.
- Where there is a potential merger or acquisition taking place, the publicly listed companies and acquirer involved will usually apply for consent to stay the obligation to disclose in relation to such negotiations until such time as a binding contract is signed. Such application must be made by the publicly listed companies involved in the merger or the publicly listed company and acquirer if an acquisition.
- A request for a stay will usually include a list of names that are prohibited from trading certain shares (the Insiders List). This will usually include the board of directors, management, advisers, relatives and connected persons of the relevant companies (and acquirer). The Insiders List will be prohibited from trading in shares of the publicly listed company in question and any parent, subsidiary, sister or affiliate company for certain periods (known as 'black-out' periods).
- In addition to such filings and notifications, any transaction that creates an 'economic concentration' with an industry share of at least 40 per cent in the relevant industry in the UAE must be notified to the CRC of the UAE Ministry of Economy. This requirement applies to domestic M&A transactions as well as any international M&A transactions creating a notifiable (greater than 40 per cent) economic concentration in the UAE. The concerned parties must make an application for approval no later than 30 days prior to completing the relevant transaction. The CRC then has 90 days (extendable by a further 45 days) to review the transaction and issue a resolution approving or rejecting the transaction in question.

Mergers

- SCA: owing to the disclosure obligations on publicly listed companies, the SCA will (whether a stay has been requested or not) be aware of potential transactions. However, a formal application to the SCA will be required that will include details of the merger as well as a copy of the merger contract; proposed articles of the merged company; financial statements for the two preceding financial years; the initial approvals from the Department of Economic Development (DED) in each of the emirates and any industry-specific regulator; an action plan and approach report for the merger; the audited financial position of the merging companies (that reflects the

financial position no later than three months from the date of submitting the application); valuation from the company or their financial advisers; the valuation report of the merging companies; auditor's report; the resolutions of the board of directors approving the merger; the shareholder circular; and special resolutions.

- Industry-specific regulator: an initial approval is often sought from any industry-specific regulators early in the negotiations, to incorporate any comments or requirements that such regulator may have so that when applications for final approval are made, the regulator has already agreed to the transaction in principle and provided its feedback.
- DED: similarly to the industry-specific regulator, an initial approval is commonly sought from the DED to approve the transaction in principle. The DED will carry out the implementation of certain parts of the merger, including (but not limited to) amending and cancelling the commercial licences of the relevant merging company; amending and updating the memorandum and articles of association; de-registration of the 'merging' company; and a capital increase of the 'surviving' company.
- Market: where the publicly listed company has been approved a stay, it will only be required to disclose to the Market (as a whole) once the merger contract is signed.

Acquisitions

- Exempt acquisitions: all acquisitions of shares listed on the Market must be carried out on the Market trading system through one of the Market's registered brokers, unless it is an OTC (as defined below) acquisition or one of the following exempt transactions:
 - a transfer of ownership between spouses and relatives to the second degree;
 - a transfer of ownership taking place as a result of inheritance, wills or gifts made to official charitable bodies in the state without consideration;
 - a transfer of ownership taking place pursuant to court orders;
 - a transfer of ownership taking place pursuant to an amicable settlement with a financial institution;
 - a transfer of ownership taking place between persons whose names appear on one single certificate of ownership;
 - the sale of securities by public auction; or
 - a transfer of ownership requested through the banks, finance companies or mutual funds licensed to complete the financing operations in securities. The Market shall set the necessary controls for this purpose with the SCA's approval.
- Acquiring less than 5 per cent of a publicly listed company: there are no specific notification or disclosure obligations to the SCA, DED or the Market. There are often no share transfer agreements on transactions of this size.
- Acquiring 5 per cent or more of a publicly listed company (or 10 per cent or more of a parent, subsidiary, sister or affiliate company of a publicly listed company): there are no prior notification or disclosure obligations to the SCA, DED or the Market. However, unlike the above, the acquirer is required to provide an immediate post-notification of the acquisition to the Market (as a whole). Further, the industry-specific regulators may have their own rules and regulations in this regard, for example, where a bank is acquiring 5 per cent or more of shares in a publicly listed company, they will require the prior approval of the Central Bank. This process is repeated for each additional 1 per cent of shares in such publicly listed company purchased by the acquirer.
- Acquiring 30 per cent or more of a publicly listed company:
 - SCA: the acquirer will be required to apply to the SCA and obtain their prior approval of the acquisition. The

acquirer will need to provide the details of the acquisition including (but not limited to) the share price, number of shares, acquirer's details and whether it is being transacted on an OTC basis or not.

- Industry-specific regulator: it is likely that the approval of any industry-specific regulator will be required prior to obtaining approval from the SCA; for example, an acquirer purchasing shares in a bank will need approval from the Central Bank before it can obtain approval from the SCA.
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Mandatory tender offers

- A mandatory tender offer (MTO) is triggered where an acquirer acquires, or where an acquisition shall result in such acquirer holding, 30 per cent plus 1 per cent or more of a publicly listed company.
- The acquirer shall be obliged to immediately stop increasing its ownership ratio, notify the SCA of its ownership ratio and whether there is an intention to make an MTO offer; if not, the acquirer's ownership ratio must be reduced to 30 per cent or less within three months of notification to the SCA.
- Where the acquirer wishes to make an MTO offer, it shall be completed if such offer results in the acquirer holding at least 50 per cent plus 1 per cent or more shares in the capital of the publicly listed company; if this threshold is not reached, the offer is cancelled and the acquirer's share ratio shall be reduced to 30 per cent or less.
- the SCA can make exceptions to this rule, including (but not limited to) government-owned companies, distressed companies and securities acquired through inheritance.

Law stated - 10 April 2023

Disclosure of substantial shareholdings

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

General

In addition to the below specific disclosures, filings and notifications, there is an ongoing obligation on all publicly listed

companies to notify (both the SCA and the board of directors of the Market) of any material developments that could affect the share price of the publicly listed company (disclosure), and the Market's board of directors has the right to publish any statement in respect of such material information in the local newspapers and other media as it deems appropriate (save where a stay is approved). Notices and agendas for both board and general assembly meetings, and the results of such meetings, should be disclosed.

Where there is a potential merger or acquisition taking place, the publicly listed companies and acquirer involved will usually apply for consent to stay the obligation to disclose in relation to such negotiations until such time as a binding contract is signed. Such application must be made by the publicly listed companies involved in the merger or the publicly listed company and acquirer if an acquisition.

A request for a stay will usually include a list of names that are prohibited from trading certain shares (the Insiders List). This will usually include the board of directors, management, advisers, relatives and connected persons of the relevant companies (and acquirer). The Insiders List will be prohibited from trading in shares of the publicly listed company in question and any parent, subsidiary, sister or affiliate company for certain periods (known as 'black-out' periods).

In addition to such filings and notifications, any transaction that creates an 'economic concentration' with an industry share of at least 40 per cent in the relevant industry in the UAE must be notified to the CRC of the UAE Ministry of Economy. This requirement applies to domestic M&A transactions as well as any international M&A transactions creating a notifiable (greater than 40 per cent) economic concentration in the UAE. The concerned parties must make an application for approval no later than 30 days prior to completing the relevant transaction. The CRC then has 90 days (extendable by a further 45 days) to review the transaction and issue a resolution approving or rejecting the transaction in question.

Mergers

- SCA: owing to the disclosure obligations on publicly listed companies, the SCA will (whether a stay has been requested or not) be aware of potential transactions. However, a formal application to the SCA will be required that will include details of the merger as well as a copy of the merger contract; proposed articles of the merged company; financial statements for the two preceding financial years; the initial approvals from the Department of Economic Development (DED) in each of the emirates and any industry-specific regulator; an action plan and approach report for the merger; the audited financial position of the merging companies (that reflects the financial position no later than three months from the date of submitting the application); valuation from the company or their financial advisers; the valuation report of the merging companies; auditor's report; the resolutions of the board of directors approving the merger; the shareholder circular; and special resolutions.
- Industry-specific regulator: an initial approval is often sought from any industry-specific regulators early in the negotiations, to incorporate any comments or requirements that such regulator may have so that when applications for final approval are made, the regulator has already agreed to the transaction in principle and provided its feedback.
- DED: similarly to the industry-specific regulator, an initial approval is commonly sought from the DED to approve the transaction in principle. The DED will carry out the implementation of certain parts of the merger, including (but not limited to) amending and cancelling the commercial licences of the relevant merging company; amending and updating the memorandum and articles of association; de-registration of the 'merging' company; and a capital increase of the 'surviving' company.
- Market: where the publicly listed company has been approved a stay, it will only be required to disclose to the Market (as a whole) once the merger contract is signed.

Acquisitions

- Exempt acquisitions:
 - a transfer of ownership between spouses and relatives to the second degree;
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 - a transfer of ownership taking place pursuant to court orders;
 - a transfer of ownership taking place pursuant to an amicable settlement with a financial institution;
 - a transfer of ownership taking place between persons whose names appear on one single certificate of ownership;
 - the sale of securities by public auction; or
 - a transfer of ownership requested through the banks, finance companies or mutual funds licensed to complete the financing operations in securities. The Market shall set the necessary controls for this purpose with the Authority's approval.
- Acquiring 5 per cent or more of a publicly listed company (or 10 per cent or more of a parent, subsidiary, sister or affiliate company of a publicly listed company): there are no prior notification or disclosure obligations to the SCA, DED or the Market. However, unlike the above, the acquirer is required to provide an immediate post-notification of the acquisition to the Market (as a whole). Further, the industry-specific regulators may have their own rules and regulations in this regard, for example, where a bank is acquiring 5 per cent or more of shares in a publicly listed company, they will require the prior approval of the Central Bank. This process is repeated for each additional 1 per cent of shares in such publicly listed company purchased by the acquirer.
- Acquiring 30 per cent or more of a publicly listed company:
 - SCA: the acquirer will be required to apply to the SCA and obtain their prior approval of the acquisition. The acquirer will need to provide the details of the acquisition including (but not limited to) the share price, number of shares, acquirer's details and whether it is being transacted on an OTC basis or not.
 - Industry-specific regulator: it is likely that the approval of any industry-specific regulator will be required prior to obtaining approval from the SCA; for example, an acquirer purchasing shares in a bank will need approval from the Central Bank before it can obtain approval from the SCA.
 - DED: there are no specific notification or disclosure obligations to the DED.
 - The Market: where the acquirer has been approved a stay, it will be required to disclose to the Market (as a whole) immediately upon execution of the purchase order.

Over-the-counter acquisitions

- Certain transactions can be carried out on an over-the-counter (OTC) basis, meaning that they are executed outside of the Market trading system.
- SCA: the acquirer will be required to apply to the SCA and obtain their prior approval of the acquisition. The acquirer will need to provide the details of the acquisition including (but not limited to) the share price, number of shares and acquirer's details.
- Industry-specific regulator: it is likely that the approval of any industry-specific regulator will be required prior to obtaining approval from the SCA; for example, an acquirer purchasing shares in a bank will need approval from the Central Bank before it can obtain approval from the SCA.
- DED: there are no specific notification or disclosure obligations to the DED.
- Market: the seller and the acquirer will need to submit a formal request to the chair of the Market containing the

details of the transaction (including, but not limited to, the agreed price) containing a signed undertaking to the Market. OTC acquisitions must exceed a certain financial threshold (eg, under the Dubai Financial Market, the aggregate price of the shares being acquired through a block deal must be at least 10 million UAE dirhams and such price must be equal to the last traded price or equal to the previous close price if no trade occurred on the security).

Mandatory tender offer

- A mandatory tender offer (MTO) is triggered where an acquirer acquires, or where an acquisition shall result in such acquirer holding, 30 per cent plus 1 per cent or more of a publicly listed company.
- The acquirer shall be obliged to immediately stop increasing its ownership ratio, notify the SCA of its ownership ratio and whether there is an intention to make an MTO offer; if not, the acquirer's ownership ratio must be reduced to 30 per cent or less within three months of notification to the SCA.
- Where the acquirer wishes to make an MTO offer, it shall be completed if such offer results in the acquirer holding at least 50 per cent plus 1 per cent or more shares in the capital of the publicly listed company; if this threshold is not reached, the offer is cancelled and the acquirer's share ratio shall be reduced to 30 per cent or less.
- The SCA can make exceptions to this rule, including (but not limited to) government-owned companies, distressed companies and securities acquired through inheritance.

Law stated - 10 April 2023

DIRECTORS' AND SHAREHOLDERS' DUTIES AND RIGHTS

Duties of directors and controlling shareholders

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

General

The duties and liabilities imposed on directors of publicly listed companies are referred to in several sources. The main source is the UAE Federal Law No. 32 of 2021 on Commercial Companies (as amended from time to time) (CCL), in addition, the Civil Code (UAE Federal Law No. 5 of 1985, as amended), the UAE Commercial Transaction Law (UAE Federal Law No. 18 of 1993, as amended) and the UAE Penal Code also contain various duties.

The CCL, the Civil Code and the Commercial Transaction Law define directors' duties both by a combination of rules stating what directors should do as well as what they may be personally liable for (and hence what they should not do) rather than just relying on a general concept of fiduciary duties being owed by a director to the company. We have set out the key duties and obligations on directors of publicly listed companies below.

Directors

- Are personally liable towards the company, its shareholders and third parties for all acts of fraud, misuse of power, violations of the CCL or the company's articles of association and for any error or mismanagement of the company;
- are obliged to carry out certain administrative duties related to the financial aspects of the company, for example, to maintain a register of shareholders and prepare the annual budget of the company, as well as the profit and

- loss accounts within three months of the end of the company's financial year;
- are obliged to refer the dissolution of the company to a general assembly of the shareholders if a company's aggregate losses amount to 50 per cent of the share capital of the company;
- can only act within the authorities assigned to him or her by the company and shall be liable to the company for any losses incurred by the company by reason of exceeding such authority;
- may, in certain circumstances, be criminally liable where a company is declared bankrupt;
- are prohibited from participating in any business that may be in competition with the business of the company itself, whether on his or her own account or on account of third parties without having received the prior consent for any such activity from the shareholders at a general assembly;
- are required to disclose any conflicts of interest that a director may have in relation to any transaction being considered by the board and prohibits any conflicted director from voting on such resolution;
- where, following a declaration of bankruptcy, the assets of a company are insufficient to satisfy at least 20 per cent of its debts, the court declaring the bankruptcy may order a director or all directors (on a joint and several basis) to pay all or part of the debts of the company;
- may be criminally liable where the company is declared bankrupt, if they have committed any of the following acts:
 - if they have concealed, destroyed or altered the books of the company;
 - if they have misappropriated or concealed part of the company's property;
 - if they have knowingly acknowledged debts that are not payable by the company, or abstained from presenting certain documents held in their possession;
 - if they have obtained a special arrangement for the company by way of fraud;
 - if they have disclosed untrue information on the subscribed or paid-up capital, or have distributed fictitious profits or received bonuses in excess of the amount provided for in the laws or in its memorandum of incorporation or articles of association;
 - if they fail to keep commercial books sufficient enough to reflect the true financial position of the company;
 - if they refrain from supplying the information needed by the judge of the bankruptcy, or the trustee in bankruptcy, or if they deliberately supply untrue information;
 - if they deal with the property of the company after suspension of payment, to keep such property from the creditors;
 - if, after the suspension of payment, they have honoured the debt of any creditor to inflict harm on others, or have provided securities or special benefits to any of the creditors, by giving him or her preference over others;
 - if they sell the goods of the company at less than market value in an attempt to delay the suspension by the company of the payment, or the declaration of its bankruptcy, or termination of the arrangement, or have resorted to illegal channels to obtain money, to achieve their purposes;
 - if they expend substantial amounts on gambling or fictitious speculation, or matters irrelevant to the affairs of the company; or
 - if they act jointly in a way contrary to the law or to the company's memorandum of incorporation or articles of association (eg, ultra vires acts), or have agreed to such acts; and
- may be subject to a penalty between 50,000 and 1 million UAE dirhams or imprisonment for a period between six months and three years if:
 - they make dividend distributions in contravention of the CCL or the company's memorandum and articles;
 - they intentionally falsify the accounts of the company; or
 - they use or divulge confidential information or company secrets of the company for their own benefit or the benefit of others.

Merger

In addition to the above, the board of directors of both the merging and merged companies are required to approve the merger and the valuation report. They shall seek the shareholders' approval on the merger and on amending the articles of association of the surviving entity by way of a special resolution. The creditors are sent a notice regarding the merger within 10 days from the publication of its approval. The creditors and other interested parties have the right to object to the merger and have 30 days to file their objection. If such objection is not settled by the end of such period, the objector has the right to take such objection to court and the court has the power to suspend the merger. Further, any one or more of the shareholders holding no less than 20 per cent of the share capital of the company seeking to merge who objected to the merger may appeal the merger to the court within 30 days from the date of approval of the merger agreement by the shareholders.

Acquisitions

In addition to the above, the board of directors of the publicly listed target company are required to approve the acquisition and shall be required to report on the impact of executing the acquisition on the publicly listed target company. They shall put the interests of the shareholders as a priority over their own interests. The board of directors of the publicly listed target company are prohibited from certain dealings of the shares upon its knowledge of a potential offer.

The shareholders do not have any specific duties in relation to mergers or acquisitions, however, all parties involved in the merger or acquisition shall consider the interest of the shareholders of the merging and merged companies as well as the new company arising from the merger or the surviving entity, without prejudice to the public interest and the rights of the creditors and stakeholders.

Law stated - 10 April 2023

Approval and appraisal rights

What approval rights do shareholders have over business combinations or sales of a public company? Do shareholders have appraisal or similar rights in these transactions?

The mergers of public companies need to be approved by the shareholders by way of special resolution. The general assembly shall look into the following items: the merger agreement or its summary, the draft of the articles of association of the merging company or the new company arising from the merger, the valuation of the companies seeking to merge.

Any one or more of the shareholders holding no less than 20 per cent of the share capital of the company seeking to merge who objected to the merger, may appeal the merger at the Competent Court within 30 days from the date of approval of the merger agreement by the General Assembly.

In relation to the approvals of the acquisitions, typically, it is granted to the board of directors. However, it will also be subject to the constitutional documents of the company and the authority matrix approved by the relevant board committees.

Law stated - 10 April 2023

COMPLETING THE TRANSACTION

Hostile transactions

What are the special considerations for unsolicited transactions for public companies?

A competing offer can be announced but shall not be able to be submitted any later than 53 days after receiving the primary offer. The competing offer must be on better terms for the shareholders than the primary offer. The offeror must seek approval from the Securities and Commodities Authority (SCA) before submitting the competing offer. The SCA may approve the offer where it contains material amendments in favour of the shareholders (including but not limited to price) or where the target company has recommended the offer (subject to the directors not being related to such competing offeror).

Law stated - 10 April 2023

Break-up fees – frustration of additional bidders

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

Under UAE law, only break-up fees are permitted and can be agreed between the acquirer and the target company, under which the target company will pay up to a maximum of a sum equivalent to 2 per cent of the value of the acquirer's offer. These fees are commonly triggered upon certain events, such as the target company recommending the acceptance of a higher offer. The SCA's prior approval is required for any type of termination fee.

Over-the-counter acquisitions

- Certain transactions can be carried out on an over-the-counter (OTC) basis, meaning that they are executed outside of the relevant exchange market (the Market) trading system.
- SCA: the acquirer will be required to apply to the SCA and obtain their prior approval of the acquisition. The acquirer will need to provide the details of the acquisition including (but not limited to) the share price, number of shares and acquirer's details.
- Industry-specific regulator: it is likely that the approval of any industry-specific regulator will be required prior to obtaining approval from the SCA; for example, an acquirer purchasing shares in a bank will need approval from the Central Bank before it can obtain approval from the SCA.
- DED: there are no specific notification or disclosure obligations to the Department of Economic Development (DED).
- Market: the seller and the acquirer will need to submit a formal request to the chair of the Market containing the details of the transaction (including, but not limited to, the agreed price) containing a signed undertaking to the Market. OTC acquisitions must exceed a certain financial threshold (eg, under the Dubai Financial Market, the aggregate price of the shares being acquired must be at least 10 million UAE dirhams and such price must represent at least the fair market value of such shares).

UAE Federal Law No. 32 of 2021 on Commercial Companies (as amended from time to time) (CCL) forbids financial assistance; a company (or any of its subsidiaries) is not permitted to provide financial aid to any person to enable him or her to hold any shares in the company, which includes loans, gifts, assets, guarantees and the use of any reserves, funds or profits of the company to pay any obligation of such person. With such a wide definition, merging companies

can be easily caught under these definitions when restructuring.

Law stated - 10 April 2023

Government influence

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

The SCA, the DED in each of the emirates, the Market and any relevant industry-specific regulators will usually be required to sign off on mergers and acquisitions. Initial approval or approval in principle is usually obtained early in the transaction with final sign-off on closing.

There are certain disclosure requirements once you reach certain thresholds in acquisitions, restrictions regarding merging companies and competition rules that are in place to protect national security.

Law stated - 10 April 2023

Conditional offers

What conditions to a tender offer, exchange offer, merger, plan or scheme of arrangement or other form of business combination are allowed? In a cash transaction, may the financing be conditional? Can the commencement of a tender offer or exchange offer for a public company be subject to conditions?

Conditions to the offer can be applied; however, given that tender offers are quite rare in the UAE, there is no precedent and no specific rules in this regard.

In practice, there have been no mandatory tender offers in the UAE, except for very recently, when a few squeeze-out transactions were carried out successfully by two real estate-listed public joint-stock companies. It is expected that these precedents, together with the explicit reference in the CCL, will see the Market implementing more of these takeover and squeeze-out mechanisms.

Any conditions applied to the offer (such as a minimum threshold of acceptance or approval of the general assembly on particular decisions) will always be subject to SCA approval and any industry-specific regulatory approval.

M&A will usually be completed subject to a list of condition precedents (as is standard in public M&A transactions). In the UAE, this will include (in addition to the usual commercial conditions) the necessary waivers, approvals, and consents from a regulatory perspective, which will be approval from the DED and SCA as well as the Market (if certain thresholds are exceeded) and any relevant industry-specific approvals. The normal company approvals will be required, plus any specific company approvals (eg, if the company has any committee approvals). Often, companies will require an exemption or waiver from a particular part of the laws or regulations to complete the transaction and this will also need to be a condition precedent.

The financing can be conditional. The SCA will often ask questions about financing and formal valuations are often undertaken in public transactions.

Law stated - 10 April 2023

Financing

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

Under acquisition financing, we would usually expect the finance and security documentation to form part of the transaction document pack. There will likely be references to the finance and security documentation, particularly (as is standard) where the shares being acquired are to be pledged to the bank lending.

Where the acquisition financing is Islamic financing, the bank will often hold the legal title to the shares being acquired to be released only upon repayment of the debt. In this scenario, the bank will form an integral part, and be party to, the transaction documents.

The seller will usually be required to comply with such due-diligence requirements of the lending bank.

Law stated - 10 April 2023

Minority squeeze-out

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

Minority squeeze-outs are referred to as 'mandatory acquisitions' under the SCA M&A Rules. An acquirer who acquires, or as a result of an acquisition will hold, 90 per cent plus 1 per cent or more of the total share capital of a publicly listed company may apply to the SCA for approval to force the remaining minority shareholders to sell or swap their shares to the acquirer within 60 days of the date of the final settlement of the primary offer (the Offer Period). The minority shareholders can object and take the matter to court; however, the mandatory acquisition will not be suspended save by court order. If there is no objection or no court order to suspend the mandatory acquisition, it will be completed seven days after the Offer Period.

The articles of association of the publicly listed company must permit the mandatory acquisition for it to be valid.

The minority shareholders have the equivalent right to tag along with an acquirer who acquires, or as a result of an acquisition will hold, 90 per cent plus 1 per cent or more of the total share capital of a publicly listed company, any holders with at least 3 per cent of the total share capital of a publicly listed company may submit an offer to the acquirer to purchase the minority shares. The acquirer must respond within 60 days and can approve or reject the offer. If the offer is rejected or the acquirer does not respond, the minority shareholders can ask the SCA to force the acquirer to make an offer. If the SCA agrees, the acquirer shall be required to make an offer within 60 days of being notified of the SCA's agreement.

Law stated - 10 April 2023

Waiting or notification periods

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

Mergers

Two companies that are merging will be required to get the appropriate board approval and call a general assembly to

approve the merger. This will involve formal valuations of both companies. They will also require the relevant regulatory approvals (industry-specific and from the SCA and the DED), which will usually involve certain applications and submissions of documentation.

An application will need to be submitted to the SCA and a merger certificate obtained from the SCA approving the merger before it can complete said merger. The SCA has 20 business days from the date of submission to issue a decision approving or denying the application. Practically, an initial approval will be sought from the SCA, the DED and the relevant industry-specific regulator to ensure that they approve the merger in principle before applying for formal and final approval.

The DED will also need to give final approval and implement the merger, including the de-registration of the merging entity. There will also likely be industry-specific requirements that will need to be complied with before completion can occur.

Shareholders holding not less than 20 per cent of the capital of the companies seeking to merge shall have the right to oppose the merger and challenge the merger before the court within 30 days of the date of approval of the merger by general assembly.

A notice confirming the intention to merge within 10 business days from the date of approval of the merger by general assembly shall be sent in writing to all creditors and published in two daily newspapers (one in Arabic). Creditors and other concerned parties will then have a 30-day period to object to the merger.

Acquisitions

With the exception of over-the-counter transactions, the following applies to acquisitions in general.

The parties shall perform the necessary due diligence to ensure the acquisition achieves their interests (this is limited to public information and information that would not have an impact on the share price-sensitive information). The acquirer shall deliver its intent to acquire to the target company in writing and, if there is no requirement to declare before it is announced, the acquirer shall announce the intention to offer on the Market.

The acquirer shall be obliged to obtain consent of the DED and any industry-specific regulator prior to applying to the SCA for approval of the offer, which it shall submit no later than 21 days from the date of announcing its intent to acquire. If the acquirer fails to make the offer in this time it shall be prohibited from making any other offer to the target company for six months.

The SCA has seven days to either approve or reject the offer. If it is rejected, the acquirer has 14 days to appeal the decision. If approved, the acquirer shall notify the Market and the target company and publish a notice of the same. The shareholders shall be notified by the board of directors of the target company within 14 days of receiving the offer.

The offer shall be valid for up to 60 days or as the SCA otherwise determines, the offer must satisfy its conditions and minimum acceptance restrictions either within 28 days or as extended up to 60 days. Once satisfied, the offer should be completed no later than 21 days from the first or second closing date (as applicable). The acquirer will have three days to settle the payment.

Law stated - 10 April 2023

OTHER CONSIDERATIONS

Tax issues

What are the basic tax issues involved in business combinations or acquisitions involving public companies?

Historically, the only tax considerations in the UAE were value added tax, which is charged at 5 per cent, which does not impact such transactions, however, the UAE has introduced a federal corporate tax in the UAE, which will come into effect in June 2023. The implementation of corporate tax is likely to have a significant impact on potential transactions, as tax implications would now have to be factored in during an acquisition. Economic substance regulations, which had come into effect in 2020 and have hefty penalties for non-compliance, are also intrinsically linked with the taxability of a UAE entity and will also have to be taken into consideration.

Law stated - 10 April 2023

Labour and employee benefits

What is the basic regulatory framework governing labour and employee benefits in a business combination or acquisition involving a public company?

There are no specific laws or regulations regarding employee benefits in the M&A of publicly listed companies. Upon completion of a merger, employees will move to the amalgamated or new entity by operation of law. In acquisitions, there is no change to the employment and the employees remain employed by the same entity under the same terms.

There is no protection of employees post-completion; therefore, the merged entity or the acquired entity has to choose whether to continue to employ its employees or terminate their employment in accordance with the UAE Labour Law (Federal Decree-Law No. (33) of 2021) and the relevant employee's employment contract.

When choosing whether to keep employees or terminate their contract, the companies will need to consider the Labour Law, in particular:

- there is no concept of redundancy in the UAE. All employment contracts are required to be limited-term contracts and under the Labour Law, the instances under which the termination of an employment contract can be carried out (with or without notice) have been broadly set out, with no specific reference to redundancy;
- if employees' contracts are terminated, employees with more than one year of continuous employment will be entitled to end-of-service gratuity, calculated on a multiplier of the final basic salary taking into account the length of service of the employee; and
- it is mandatory for an employer to provide medical health insurance to its employees.

Law stated - 10 April 2023

Restructuring, bankruptcy or receivership

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

Purchasing businesses in liquidation is uncommon in this region and there is therefore little by way of precedent. It would be dealt with case by case.

Distressed companies (where their shares are not pledged, attached or encumbered in any way) are free to sell their shares in accordance with the aforementioned procedures. The implementation of an acquisition depends on whether the shares remain tradable on the relevant stock exchange market (in this case, Abu Dhabi Securities Exchange or Dubai Financial Market) (the Market) or whether the financial difficulty of the company means that the Market has suspended trading of these shares.

If the trading of a publicly listed company's shares via the Market trading system has been suspended they cannot be sold on the Market trading system and the transaction would have to be completed by way of an OTC acquisition, and

the specific rules noted herein would not apply; however, the Securities and Commodities Authority, the Market and the industry-specific regulator would likely still need to sign off on the transaction.

If the company is in bankruptcy or receivership, the appointed administrator or receiver would be responsible for the sale or acquisition of such shares in accordance with the rules and regulations set out above.

UAE Federal Law No. 32 of 2021 on Commercial Companies (as amended from time to time) expressly permits a company to merge with another company even during the liquidation of that company. The implementation of such merger would be governed under the rules and regulations set out above.

Law stated - 10 April 2023

Anti-corruption and sanctions

What are the anti-corruption, anti-bribery and economic sanctions considerations in connection with business combinations with, or acquisitions of, a public company?

The UAE Penal Code (Federal Law No. 31 of 2021) states that a prison term between three years and not exceeding 15 years shall be imposed upon any public official or person assigned to a public service or foreign public official or an employee of an international organisation, who solicits, requests or accepts a bribe. This would include employees working in ministries and government departments, members of boards of directors, managers and all other employees working in publicly listed companies.

A bribe is understood as any undue gift, benefit or privilege of any kind, or any promise thereof for himself, herself or for another person, in return for the performance, completion, abstention or omission of an act in breach of his duties.

Law stated - 10 April 2023

UPDATE AND TRENDS

Key developments

What are the current trends in public mergers and acquisitions in your jurisdiction? What can we expect in the near future? Are there current proposals to change the regulatory or statutory framework governing M&A or the financial sector in a way that could affect business combinations with, or acquisitions of, a public company?

The abrupt change in the geopolitical situation in early 2022 has led to a surprising shift towards the East. The impact of this change has also been felt in the transactional space in the UAE. Existing global market players are increasingly looking at the UAE as their new headquarters and head offices, as well as their destination for carrying out initial public offerings. Fuelled by this shift, dynamic deals are taking place in many sectors in the UAE, including cross-border transactions, with many deals finding support through investments by the government. Sectors such as green energy, real estate and power have seen an increase.

The UAE has introduced a federal corporate tax, which will come into effect in June 2023. The implementation of the corporate tax is likely to have a significant impact on potential transactions, as tax implications would now have to be factored in during a public acquisition. Economic substance regulations, which had come into effect in 2020 and have hefty penalties for non-compliance, are also intrinsically linked with the taxability of a UAE entity and will also have to be taken into consideration.

We have also seen a significant impetus by the regulatory authorities to ensure satisfaction of know-your-customer requirements, and these requirements have to be mandatorily complied with.

Jurisdictions

	Austria	Schindler Attorneys
	Bermuda	BeesMont Law Limited
	Brazil	Loeser e Hadad Advogados
	Bulgaria	Kambourov & Partners, Attorneys at Law
	China	HJM Asia Law & Co LLC
	Germany	GSK Stockmann
	Ghana	Kimathi & Partners Corporate Attorneys
	Greece	Karatzas & Partners Law Firm
	India	Khaitan & Co
	Ireland	Mason Hayes & Curran LLP
	Israel	Barnea Jaffa Lande
	Italy	Nunziante Magrone
	Japan	Hibiya-Nakata
	Luxembourg	Bonn & Schmitt
	Netherlands	AKD
	Nigeria	G Elias
	North Macedonia	Debarliev Dameski & Kelesoska
	Norway	Aabø-Evensen & Co
	Romania	Muşat & Asociații
	South Korea	Lee & Ko
	Sweden	Advokatfirman Hammariskiöld
	Taiwan	Lee and Li Attorneys at Law
	Thailand	Weerawong, Chinnavat & Partners Ltd
	United Arab Emirates	IN'P Ibrahim & Partners
	USA	Simpson Thacher & Bartlett LLP

