Global Public M&A Guide - Philippines

General Legal Framework

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# 2. General Legal Framework

[Last updated: 1 January 2025, unless otherwise noted]

**2.1 Main legal framework**

The main rules and principles of Philippine law relating to public takeover bids can be found in:

Republic Act No. 11232, otherwise known as the Revised Corporation Code of the Philippines ("**Revised Corporation Code**"), which took effect on 23 February 2019; and

Republic Act No. 8799, otherwise known as the "Securities Regulation Code" ("**SRC**") and the 2015 Implementing Rules and Regulations of the SRC ("**SRC IRR**").

**2.2 Other rules and principles**

While the aforementioned legislation contains the main legal framework for public takeover bids in Philippines, there are a number of additional rules and principles that are to be taken into account when preparing or conducting a public takeover bid, such as:

The rules relating to compliance with foreign ownership ceilings. These rules determine the maximum allowable percentages of foreign ownership in companies subject to public takeovers, and are set out in Republic Act No. 7042 (Foreign Investments Act of 1991), and the Twelfth Regular Foreign Investments Negative List which specifies the types of industries subject to foreign ownership ceilings. Furthermore, the guidance on the computation of foreign ownership ceilings is provided in the Guidelines on Compliance with Filipino-Foreign Ownership Requirements Prescribed in the Constitution and/or Existing Laws by Corporations Engaged in Nationalized and Partly Nationalized Activities issued by the Philippine Securities and Exchange Commission ("**SEC**").

The rules relating to insider dealing and market manipulation (insider trading rules). These rules are contained in the SRC and SRC IRR.

The rules relating to minimum public ownership ("**MPO Rule**"). These rules are relevant to the extent that the company subject to the takeover is a listed company on the Philippine Stock Exchange ("**PSE**").

The rules and regulations regarding merger control. These rules and regulations are provided in the Philippine Competition Act ("**PCA**") and the Rules and Regulations to Implement the Provisions of the PCA ("**PCA IRR**").

The rules on disclosure issued by the PSE. Specifically, the PSE categorizes disclosure reports as either (i) structured reports, or those reports which public listed companies are required to submit on a regular basis, or (ii) unstructured reports, or those reports that need to be disclosed in relation to any material fact or event that may affect an investor's decision in relation to the public issuer's securities.

The rules relating to additional securities. The PSE requires publicly-listed companies to submit applications for listing of new shares that will be issued to the public, subject to the requirements set forth under the PSE's Consolidated Listing and Disclosure Rules ("**PSE Rules**").

The rules on backdoor listing. Under the PSE Rules, a backdoor listing is deemed to occur when a listed company acquires or merges or combines with an unlisted company, or when a listed company is acquired by, merged or combined with an unlisted company, and which acquisition, merger, or combination results in a substantial change in the business, membership of the board of directors, or voting structure of the listed company. In this regard, the PSE allows the listing of shares of a listed company subject to compliance with the requirements for a backdoor listing. In particular, the Revised Rules on Backdoor Listing require a backdoor listed company to conduct a public offering of at least 10% of its issued and outstanding shares within one year from closing or completion of the transaction giving rise to backdoor listing.

The rules on corporate governance. The Revised Corporation Code, as well as several recent guidelines of the SEC (i.e., the revised Code of Corporate Governance for Public Companies and Registered Issuers of the SEC took effect on 12 January 2020 and revised implementing rules and regulations of Republic Act No. 9856 or the Real Estate Investment Trust (REIT) Act of 2009) requires the appointment of independent directors and certain officers (such as REIT property managers) to maintain stability and enforce supervision and oversight over listed companies.

**2.3 Supervision and enforcement by the SEC**

Public takeover bids are subject to the supervision and control by the SEC, and the Philippine Competition Commission ("**PCC**"), to the extent that the takeover breaches the thresholds requiring merger clearance. The SEC is the principal securities regulator in the Philippines.

The SEC has a number of legal tools that it can use to supervise and enforce the compliance with the public takeover bid rules, including administrative fines. In particular, the Market and Securities Regulation Department ("**MSRD**") of the SEC is the department charged with regulation of registration of securities prior to their sale to the public, as well as compliance with disclosure obligations of listed companies. In addition, criminal penalties could be imposed by the courts in cases of non-compliance.

**2.4 General principles**

The following general principles apply to public takeovers in the Philippines. These rules are based on the Revised Corporation Code, SRC and the SRC IRR:

All stockholders of a stock corporation shall enjoy pre-emptive right to subscribe to all issues or disposition of shares of any class, in proportion to their respective shareholdings, unless such right is denied by the articles of incorporation or an amendment thereto, provided that such pre-emptive right shall not extend to shares to be issued in compliance with laws requiring stock offerings or minimum stock ownership by the public; or to shares to be issued in good faith with the approval of the stockholders representing two-thirds of the outstanding capital stock, in exchange for property needed for corporate purposes or in payment of a previously contracted debt;

All stockholders shall have an appraisal right to dissent and demand payment of the fair value of their shares in cases of public takeovers involving mergers or consolidation of companies;

All holders of the securities of an offeree company of the same class must be afforded equivalent treatment; moreover, if a person acquires control of a company, the other holders of securities must be protected;

The holders of the securities of an offeree company must have sufficient time and information to enable them to reach a properly informed decision on the bid; where it advises the holders of securities, the board of the offeree company must give its views on the effects of implementation of the bid on employment, conditions of employment and the locations of the company's places of business;

The board of an offeree company must act in the interests of the company as a whole and must not deny the holders of securities the opportunity to decide on the merits of the bid;

False markets must not be created in the securities of the offeree company, of the offeror company or of any other company concerned by the bid in such a way that the rise or fall of the prices of the securities becomes artificial and the normal functioning of the markets is distorted;

During a tender offer (or before its commencement, if the target public company's board of directors has reason to believe that an offer might be imminent), the target public company may not: (i) issue any authorized but unissued shares; (ii) issue or grant options in respect of any unissued shares; (iii) create or issue or permit the creation or issuance of, any securities carrying rights of conversion into, or subscription to shares; (iv) sell, dispose of or acquire, or agree to acquire, any asset whose value amounts to 5% or more of the total value of the assets prior to acquisition; or (v) enter into contracts that are not in the ordinary course of business, except in each case, if the transaction is (1) pursuant to a contract previously entered, (2) entered with the approval of the target public company's shareholders in a general meeting, or (3) with the prior approval of the SEC; and

Any person who shall become aware of a potential tender offer before the tender offer has been publicly announced may not buy or sell, directly or indirectly, the securities of the target public company (including any securities convertible or exchangeable into such securities, or any options or rights in any of the foregoing) until the tender offer shall have been publicly announced.

**2.5 Foreign investment restrictions**

Foreign investments are not restricted in the Philippines. Unless in the context of specific industries and sectors (such as the banking industry, the telecommunications sector or other public utilities), takeovers are not subject to prior governmental or regulatory approvals other than customary anti-trust approvals.

**2.6 Proposed reforms**

There are no proposed or upcoming reforms on takeovers in the Philippines. Note, however, that there is a proposal to raise the threshold for a mandatory tender offer, which is currently set at 35% of equity shares in a public company, but the same has not been implemented to date.

There are also pending reforms to:

 Propose amendments to the involuntary delisting rules of the PSE to require a listed company that is subject to involuntary delisting to conduct a tender offer to all its stockholders of record, at a minimum tender offer price which shall be the higher of (i) the highest value based on the fairness opinion or valuation report prepared by an independent valuation provider in accordance with SRC or (ii) the volume weighted average price of the listed security for one year immediately preceding the issuance of the delisting order. Previously, listed companies that are subject to an involuntary delisting proceeding are not required to conduct a tender offer. The PSE is also proposing to amend the voluntary delisting rules to require stockholders owning or representing at least 66% (2/3) of the total issued and outstanding capital stock to approve the voluntary delisting. The amended rules define total issued and outstanding shares as all shares of the same class as the existing listed shares issued under binding subscription contracts to subscribers or stockholders, whether fully or partially paid, except treasury shares. The current voluntary delisting rules require approval by the majority of the Board of Directors and 2/3 of the total outstanding and listed shares of the company to commence voluntary delisting proceedings.

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