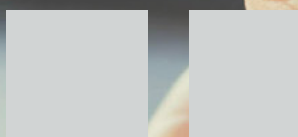




M&A OPPORTUNITIES IN THE ENERGY SECTOR



MALTA



How has the energy crisis affected M&A transactions in your jurisdiction?

Malta, a small island in the middle of the Mediterranean with an area of 316 km², is a very unique example when analysing the energy sector and the current energy crisis Europe finds itself in. Malta has only one energy supplier – it distributes electricity and develops the national electricity distribution network. The sole supplier of energy in Malta, Enemalta PLC, was partly acquired through an M&A transaction back in 2014.

The island does not currently have any wind farms, although it does have several solar farms, in relation to which there has been some recent M&A activity. Therefore, whereas M&A activity in other industries is quite active, both on a national and a cross-border level, the energy sector does not attract substantial M&A work in Malta.

How are local regulations trying to manage insolvency rules in this tough time (are any ad-hoc insolvency measures being implemented as a result of the crisis)?

The main legislation applicable to insolvencies and reorganisations is the Companies Act of 1995 (Chap. 386 of the Laws of Malta). The liquidation process available under the Companies Act varies based on whether a company is solvent or insolvent. In the former case, shareholders may decide by means of an extraordinary resolution that a company is to be dissolved and put into liquidation. A detailed statement of affairs, including a list of creditors alongside a declaration of solvency, must be submitted by the directors of the company. The winding up process must be completed within a year.

As to the latter case, shareholders may decide by means of an extraordinary resolution that a company is to be put into a creditors' voluntary winding up. A creditors' meeting must be convened within

fourteen (14) days of the shareholders' resolution. In this case, creditors have priority when it comes to appointing a liquidator.

In other cases, a company may be dissolved or wound up by the court. This generally happens when creditors wish to initiate the liquidation of a company. The law thus grants such creditors the opportunity to apply to the court for a winding-up order. A possible ground that can be used in such case is a company's inability to pay its debts. If the court is satisfied that the creditor has obtained enforcement measures against the company through an enforceable document and the debt remains unpaid for twenty-four (24) weeks, there will be a presumption of insolvency enabling the court to proceed with the winding-up order.

As for Reorganisation Processes, a company may choose between three different procedures. Firstly, if all creditors agree, it may enter into an arrangement with its creditors. Secondly, it may choose to carry out a Company Reconstruction Procedure, under which the company applies to the court for it to appoint a mediator to assist the parties in reaching a compromise, which will then have to be submitted to the court for approval. The court could also be asked to sanction a compromise or arrangement that ensures the support of creditors representing 2/3 in value of the claims. Finally, another option is the Company Recovery Procedure (CRP), which involves an application to the court to appoint a special controller to manage the company. This is intended to give respite to the company for a period of four (4) months, during which creditors cannot act against it. When considering whether to grant such a moratorium, the court will consider the likelihood of the company reaching a compromise with its creditors as a result of it.

No new energy-specific procedures have been introduced. However, the Maltese Parliament recently issued three bills with the main goal of partially transposing the EU Directive on Restructuring and Insolvency of 20 June 2019. These are as follows:

- 1 Commercial Code (Amendment) Bill:** An update to certain provisions of the Commercial Code, mainly replacing the term "curator" with "bankruptcy trustee", as well as extending the powers of the Civil Court (Commercial Section) within the insolvency legislation and strengthening the existing legal framework on bankruptcy and the discharge of debt.
- 2 Pre-Insolvency Bill:** A newly proposed Act to strengthen the legislative framework relating to insolvency and provide a pre-restructuring and restructuring framework.
- 3 Insolvency Practitioners' Bill:** A newly proposed Act to provide a modern framework to make the existing insolvency legislation framework more efficient and effective by regulating the work of insolvency practitioners.



Which tax measures against the energy crisis have been adopted in your jurisdiction?

Malta's budget for 2023, which was announced in October, focuses on the energy crisis, with the government stating that it would spend 10% of its recurrent expenditure in 2023 to maintain a freeze on energy and fuel prices. The government has therefore decided to absorb the increased energy costs, at a predicted cost to the government, according to analysts, of around €400 million in 2023.

Through Malta Enterprise, Malta has also introduced the Smart and Sustainable Investment Grant, which provides business funding to support investments in more sustainable and digitalised processes resulting in competitive enterprises by optimising the use of resources in their activities. The maximum grant that can be awarded to support an eligible investment is for 50% of the eligible expenditure, up to a maximum grant of €50,000 per project. Furthermore, a Tax Credit of up to €20,000 per project may be awarded as an additional 10% (i.e. rising to 60%) if the project meets one of the criteria set forth below and 20% (i.e. rising to 70%) provided the project meets the required criteria.

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The liquidation process available under the Companies Act varies based on whether a company is solvent or insolvent.



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