Global Public M&A Guide - Luxembourg

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*This content was last reviewed around January 2025.*

# Overview

## 1. Overview

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

The following M&A transactions have been conducted in Luxembourg in the past few years:

A Derogation regarding the requirement of Article 5 (1) of the Takeover Law in 2024 to launch a takeover bid for the shares of SMG Technology Acceleration SE in the context of the of the business combination between SMG Technology Acceleration SE and BigRep GmbH.

A Derogation regarding the requirement of Article 5 (1) of the Takeover Law in 2023 to launch a takeover bid for the shares of 468 SPAC II SE in the context of the business combination between 468 SPAC II SE and Marley Spoon SE

A Derogation regarding the requirement of Article 5 (1) of the Takeover Law in 2023 to launch a takeover bid for the shares of GFJ ESG Acquisition I SE in the context of the business combination between GFJ ESG Acquisition I SE and learnd Limited.

A Derogation regarding the requirement of Article 5 (1) of the Takeover Law in 2023 to launch a takeover bid for the shares of Odyssey Acquisition S.A. in the context of the business combination between Odyssey Acquisition S.A. and BenevolentAI Limited.

A Derogation regarding the requirement of Article 5 (1) of the Takeover Law in 2022 to launch a takeover bid for the shares of Lakestar SPAC I SE in the context of the acquisition of HomeToGo GmbH by Lakestar SPAC I SE.

# General Legal Framework

## 2. General Legal Framework

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

**2.1 Main legal framework**

The main rules and principles of Luxembourg law relating to public takeover bids can be found in the Law of 19 May 2006, as amended, on takeover bids.

The Law of 19 May 2006 on takeover bids applies only to shares listed on the regulated market of the Luxembourg Stock Exchange ("**LSE**") and Luxembourg issuers of shares listed on a regulated market operating in the European Economic Area (EEA). The law does not apply to takeover bids launched for shares of open-ended undertakings for collective investment operating on the principle of risk spreading. It does not apply to takeover bids for securities issued by the Member State's central banks.

The main body of the Luxembourg takeover legislation is based on Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids ("**Takeover Directive**"). This directive was aimed at harmonizing the rules on public takeover bids in the different Member States of the EEA. Be that as it may, the Takeover Directive still allows Member States to take different approaches in connection with some important features of a public takeover bid (such as the percentage of shares that, upon acquisition, triggers a mandatory public takeover bid on the remaining shares of the target company, and the powers of the board of directors). Accordingly, relevant differences remain in the national rules of the individual Member States of the EEA regarding public takeover bids.

**2.2 Other rules and principles**

While the aforementioned legislation contains the main legal framework for public takeover bids in Luxembourg, 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 the disclosure of significant shareholdings in listed companies (the so-called transparency rules). These rules are based on Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, transposed in Luxembourg in the Law of 11 January 2008. For further information, see 3.4 below.

The rules relating to insider dealing and market manipulation (the so-called market abuse rules). These rules are based on Regulation (EU) No 596/2014 of 16 April 2014 on market abuse transposed in Luxembourg in the Law of 23 December 2016. For further information, see 6.3 below.

The rules relating to the public offer of securities and the admission of these securities to trading on a regulated market. These rules could be relevant if the consideration that is offered in the public takeover bid consists of securities. The rules are based on Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the offering document to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC and related EU legislation.

The law of 21 July 2012 on squeeze-outs and sell-outs of securities of Luxembourg companies admitted or formerly admitted to trading on a regulated market, or which have been the object of a public offer.

The general rules on the supervision and control of the financial markets.

The rules and regulations regarding merger control. These rules and regulations are not further discussed herein.

The rules and regulations regarding the *Commission de Surveillance du Secteur Financier* ("**CSSF**").

The rules and regulations regarding commercial companies, such as the law of 10 August 1915 on commercial companies, as amended.

The rules and regulations regarding companies listed on the LSE, such as the law of 24 May 2011 on the exercise of certain rights of shareholders in general meetings of listed companies, implementing Directive 2007/36/EC on the exercise of certain rights of shareholders in listed companies.

**2.3 Supervision and enforcement by the CSSF**

Public takeover bids are subject to the supervision and control of the CSSF. The CSSF is the principal securities regulator in Luxembourg.

The CSSF has a number of legal tools that it can use to supervise and enforce compliance with the public takeover bid rules, including administrative fines. In addition, criminal penalties could be imposed by the courts in case of non-compliance.

The CSSF also has the power to grant (in certain cases) exemptions from the rules that would otherwise apply to a public takeover bid.

The CSSF is competent to supervise a bid if the offeree company has its registered office in Luxembourg and if the securities of that company are admitted to trading on the regulated market operated by the LSE. If the offeree company’s securities are not admitted to trading on a regulated market in the Member State in which the company has its registered office, the authority competent to supervise the bid shall be that of the Member State on the regulated market of which the company’s securities are admitted to trading. In respect of governing law and competent authorities, matters relating to the consideration offered in the case of a bid for all the remaining shares in the company, particularly the price, matters relating to the bid procedure, the information on the offeror's decision to make a bid, the contents of the offer document and the disclosure of the bid, shall be dealt with in accordance with the rules of the EEA Member State of the regulated market where the shares are listed. In matters relating to the information to be provided to the employees of the offeree company and in matters relating to company law, the percentage of voting rights which confer control and any derogation from the obligation to launch a bid for all the remaining shares in the company, the applicable rules and the competent authority shall be those of the EEA Member State in which the offeree company has its registered office.

In addition, in accordance with Article 2 (2) of the law of 23 December 1998, as amended, establishing a financial sector supervisory commission, the CSSF is the competent authority for the supervision of the LSE. As a result of this provision, the CSSF has authority to review the information memorandum relating to the acquisition of all or part of the shares of a company incorporated in a non-EU member state and admitted to trading on the LSE.

**2.4 Foreign investments**

Foreign investments are not restricted in Luxembourg. Unless in the context of specific industries and sectors, takeovers are not subject to prior governmental or regulatory approvals.

**2.5 General principles**

The following general principles apply to public takeovers in Luxembourg. These rules are based on the Takeover Directive:

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, the offeror company or 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;

an offeror must announce a bid only after ensuring that they can fulfil any cash consideration in full, if such is offered, and after taking all reasonable measures to secure the implementation of any other type of consideration; and

an offeree company must not be hindered in the conduct of its affairs for longer than is reasonable by a bid for its securities.

# Before a Public Takeover Bid

## 3. Before a Public Takeover Bid

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

**3.1 Shareholding rights and powers**

The table below provides an overview of the different rights and powers that are attached to different levels of shareholding within a Luxembourg listed public limited liability company (*société anonyme*) whose shares are admitted to trading on a regulated market operating in the EEA:

|  |  |
| --- | --- |
| **Shareholding** | **Rights** |
| One ordinary share | * The right to attend and vote at general shareholders’ meetings.
* The right to obtain a copy of the documentation submitted to general shareholders’ meetings.
* The right to submit questions to the directors at general shareholders’ meetings on subjects already on the agenda (10% shareholding required if the shares of the company are not admitted to trading on a regulated market operating in the EEA).
 |
| 5% | The right to put additional items on the agenda of a general shareholders’ meeting and to table draft resolutions for items on the agenda (10% shareholding required if the shares of the company are not admitted to trading on a regulated market operating in the EEA). |
| 10% | * The right to request the board of directors to convene a general shareholders’ meeting.
* The right to request the board of directors to postpone a general shareholders’ meeting that has commenced.
 |
| 25% (at a general shareholders’ meeting)  | The ability to require the dissolution of the company if the ratio of the company’s statutory net equity to the company’s share capital has dropped below 25%. |
| More than 25% (at a general shareholders’ meeting) | The ability at a general shareholders’ meeting to block:* any changes to the articles of association, mergers, de-mergers, capital increases, capital reductions and dissolution of the company;
* the authorization of the board of directors to increase the company’s share capital without further shareholder approval (the so-called authorized capital); and
* the disapplication (limitation or cancellation) of the preferential subscription right of existing shareholders in case of share issues in cash, or issues of convertible bonds or warrants.
 |
| More than 50% (at a general shareholders’ meeting)  | The ability at a general shareholders’ meeting:* to appoint and dismiss directors and to approve their remuneration;
* to appoint and dismiss statutory auditors and to approve their remuneration;
* to approve the annual financial statements;
* to grant discharge from liability to the directors and statutory auditor for the performance of their mandate; and
* to take decisions for which no special majority is required (see, among other things, 1-6 above).
 |
| 95% | The possibility to force all other shareholders to sell their shares through a public bid (a "**squeeze-out**"). |

**3.2 Restrictions and careful planning**

Luxembourg law contains a number of rules that already apply before a public takeover bid is announced. These rules impose restrictions and hurdles in relation to prior stake building by a bidder and prior due diligence by a potential bidder. The main restrictions and hurdles have been summarized below. Some careful planning is therefore necessary if a potential bidder or target company intends to start up a process that is to lead towards a public takeover bid.

**3.3 Insider dealing and market abuse**

Before, during and after a takeover bid, the normal rules regarding insider dealing and market abuse remain applicable. For further information on the rules on insider dealing and market abuse, see 6.3 below. The rules include, amongst other things, that manipulation of the target's stock price, e.g. by creating misleading rumors, is prohibited. In addition, the rules on the prohibition of insider trading prevent a bidder that has inside information regarding a target company, other than in relation to the actual takeover bid, from launching a takeover bid.

**3.4 Disclosure of shareholdings**

The rules regarding the disclosure of shareholdings and transparency apply before, during and after a public takeover bid.

Pursuant to these rules, if a potential bidder starts building up a stake in the target company, it will be obliged to announce its stake if the voting rights attached to its stake have passed an applicable disclosure threshold. The relevant disclosure thresholds in Luxembourg are 5%, 10%, 15%, 20%, 25%, 33 1/3%, 50% and 66 ⅔%. Several listed companies have also opted in their articles of association to apply a lower threshold than the initial threshold of 5% for consistency with the market practice of the jurisdiction where the shares are listed.

When determining whether or not a threshold has been passed, a potential bidder must also take into account the voting securities held by the parties with whom it acts in concert or may be deemed to act in concert (see 3.9 below). These include affiliates. The parties could also include existing shareholders of the target company with whom the potential bidder has entered into specific arrangements (such as call option agreements).

**3.5 Disclosures by the target company**

The target company must continue to comply with the general rules regarding disclosure and transparency. These rules include that a company must immediately announce all inside information. For further information on inside information, see 6.1 below. The facts surrounding the preparation of a public takeover bid may constitute inside information. If so, the target company must announce this. However, the board of the target company can delay the announcement if it believes that a disclosure would not be in the legitimate interest of the company. For instance, this could be the case if the target's board believes that an early disclosure would prejudice the negotiations regarding a bid. A delay of the announcement, however, is only permitted provided that the non-disclosure does not entail the risk of the public being misled, and that the company can keep the relevant information confidential.

**3.6 Announcements of a public takeover bid**

Prior to the public announcement of the takeover bid to the CSSF (see 6.2), no one is permitted to announce the launching of a public takeover bid. This prohibition not only applies to a bidder, but also to the target company, even if the target company has to announce the launch of a bid pursuant to the general disclosure obligations described in 3.5.

A bidder that intends to announce a public takeover bid must first inform the competent securities market authority, i.e., the CSSF if the shares are listed on the regulated market of the LSE, of its intention and then make the announcement. In addition, the bidder will at that time have to make the necessary filings for the actual launching of a public takeover bid, since as soon as the public takeover bid is announced, it can normally no longer be withdrawn, except in certain circumstances.

If there are rumors or leaks that a (potential) bidder intends to launch a public takeover bid, the CSSF could ask for more information on the bidder's intent. See 3.7 for more information. This could lead to an early disclosure, and possibly an acceleration of the preparations by a bidder, as it could be forced by the CSSF to make an announcement as to its intentions.

**3.7 Early disclosures – Put-up or shut-up**

Early disclosure demanded by the CSSF – Whenever required for the good functioning of the markets, the CSSF may request that a person that could be involved in a possible public takeover bid make an announcement without delay or, if the latter person does not make such disclosure, to make the announcement itself. This type of disclosure is often made when the takeover bid cannot yet be formally launched, e.g., for practical purposes or due to merger control, but an announcement is nevertheless appropriate.

Put-up or shut-up – Luxembourg law does not provide an express "Put-up or shut-up" mechanism to force a person to make an announcement regarding whether or not it intends to carry out a public takeover bid. However, under the general supervisory powers of the CSSF and transparency laws, the CSSF could require that the potential bidder disclose its intentions.

**3.8 Due diligence**

The Luxembourg public takeover bid law does not contain specific rules regarding the question of whether or not a prior due diligence can be organized, or how such due diligence is to be organized. Be that as it may, the concept of a prior due diligence or pre-acquisition review by a bidder is generally accepted in the market and also by the CSSF. Appropriate mechanisms have been developed in practice to organize a due diligence or pre-acquisition review and to cope with potential market abuse and early disclosure concerns. These include the use of strict confidentiality procedures and data rooms.

**3.9 Acting in concert**

For the purpose of the Luxembourg takeover bid rules, persons "act in concert":

if they collaborate with the bidder, the target company or with any other person on the basis of an express or silent, oral or written, agreement aimed at acquiring control over the target company, frustrating the success of a takeover bid or maintaining control over the target company;

if they have entered into an agreement relating to the exercise in concert of their voting rights with a view to having a lasting common policy *vis-à-vis* the target company.

Persons that are affiliates of each other are deemed to act in concert or to have entered into an agreement to act in concert.

In view of the above rules and criteria, the target company could be one of the persons with whom a shareholder acts in concert or is deemed to act in concert. For example, this is the case when a target company is already controlled by a shareholder.

The concept of persons acting in concert is very broad and, in practice, many issues can arise when determining whether or not persons act in concert. This is especially relevant in relation to mandatory takeover bids. If one or more persons in a group of persons acting in concert acquire voting securities, as a result of which the group in the aggregate would pass the 33 1/3% threshold, the members of the group will have a joint obligation to carry out a mandatory takeover bid, even though the individual group members do not pass the 33 1/3% threshold.

# Effecting a Takeover

## 4. Effecting a Takeover

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

There are three main forms of takeover bids in Luxembourg:

a voluntary takeover bid, in which a bidder voluntarily makes an offer for all the voting securities issued by the target company (and securities issued by the company conferring the right to acquire voting securities of the target company);

a mandatory takeover bid, which a bidder is required to make if, as a result of an acquisition of securities, it crosses (alone or in concert with others) a threshold of 33 1/3% of the voting securities of the target; and

a squeeze-out bid, in which a shareholder who already holds 95% of the voting securities can squeeze out the remaining holders of voting securities. This can be combined with a voluntary or mandatory takeover bid.

**4.1 Voluntary public takeover bid**

The bidder is free to make the takeover bid subject to merger control clearance and, subject to prior approval by the CSSF, certain other conditions precedent, such as a minimum acceptance level, a material adverse change condition or a war clause.

The bidder is, in principle, free to determine the price and the form of consideration offered to the target shareholders (absent any pre-existing controlling interest in the target):

The offered price may be paid in cash, securities or a combination of both.

There is no minimum price for a voluntary takeover bid, but the legal rules provide that the terms of the takeover bid, including the price, must be such that they could reasonably be expected to allow the takeover bid to succeed.

If there are different categories of securities, different prices per category can only be due to the characteristics of such categories.

If, during the takeover bid period (starting on the date of the formal offer notice to the CSSF), the bidder or persons acting in concert with the bidder acquire or commit to acquire securities to which the takeover bid relates at a higher price, then the offered price must be raised to that higher price.

**4.2 Mandatory public takeover bid**

A mandatory takeover bid is triggered as soon as a person or group of persons acting in concert (or persons acting on their account), as a result of an acquisition of voting securities, directly or indirectly holds more than 33 1/3% of the (actual outstanding) voting securities of the Luxembourg target company.

The mandatory takeover bid is unconditional.

The main exceptions to the takeover bid obligation include the situations where the stake of more than 33 1/3% is acquired as a result of a voluntary takeover bid. Luxembourg law does not expressly provide other exemptions. Any other exemption is subject to the prior approval of the CSSF. According to publicly available information, the CSSF has granted exemptions in the following circumstances:

the person(s) who ultimately control(s) the Luxembourg target company do(es) not change;

subscription of shares by underwriters in connection with a secondary offering of shares of a listed company;

with respect to the control over special acquisition purpose companies where the interests of the minority shareholders are sufficiently protected, taking into account the transparency of the acquisition operation and the relating arrangements, the ensuing possibility for shareholders to act knowingly, the provisions regarding the related voting procedures and the possibility of an unlimited de facto exit for the shareholders.

In terms of the price offered and the form of the consideration, the same rules apply as in case of a voluntary takeover bid. In addition:

The mandatory offer price must at least equal the highest price paid by the bidder (or any person acting in concert with it) during a period of 12 months preceding the announcement of the takeover bid.

The consideration offered can consist of cash, securities or a combination of both. A cash alternative must be offered (in an amount corresponding to the cash value of the consideration securities at the time of the filing of the takeover bid with the CSSF) if (i) the consideration does not consist of liquid securities that are admitted to trading on a regulated market in Luxembourg or elsewhere in the EEA, or (ii) during a term of 12 months prior to the announcement of the mandatory public takeover bid or during the takeover bid period, the bidder (or a person acting in concert) acquired securities in consideration of a payment in cash (or agreed to make such cash payment) to which at least 5% of the voting rights in the target company are attached.

The CSSF has the power to allow or require an amendment of the price.

**4.3 Follow-on squeeze-out and sell-out right**

Follow-on squeeze-out – a bidder will be able to squeeze out the residual minority shareholders at the end of the takeover bid if it holds, alone or in concert with others, 95% of the voting securities of the target, and can exercise 95% of the voting rights.

Follow-on sell-out right – minority shareholders have a sell-out right if, at the end of the takeover bid (or of its reopening), the bidder holds, alone or in concert with others, 90% of the voting rights of the target.

# Timeline

## 5. Timeline

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

As a general rule, the takeover bid process for a mandatory public takeover bid is similar to the process that applies to a voluntary public takeover bid, with certain exceptions.

The table below contains a summarized overview of the main steps of a typical voluntary public takeover bid process under Luxembourg law with respect to Luxembourg companies whose shares are listed on the regulated market of the LSE. In other circumstances, for example when the shares of the Luxembourg company are only listed on an EEA regulated market operating outside Luxembourg, the CSSF will share jurisdiction with the securities market authority of another EEA Member State and the process described below will change.

|  |
| --- |
| **Step** |
| 1. Preparatory stage:* Preparation of the bid by the bidder (study, due diligence, financing and draft offering document).
* The bidder approaches the target and/or its key shareholders.
* Negotiations with the target and/or its key shareholders.
 |
| 2. Disclosing the decision of the bidder to launch a bid:* The bidder gives notice of its decision to launch the bid to the CSSF and then discloses its decision to the public
* Within 10 business days, the bidder files the bid with the CSSF. The filing must contain, amongst other elements., proof of certain funds to pay the offer price and a draft offering document.
* Within 10 business days, the CSSF requests additional information (see 3. below). As of that moment the offering document is public and the bidder can no longer withdraw the bid (except in certain limited circumstances, such as in the event of a counter-bid or certain defensive actions by the target company) and the powers of the board of the target company are limited.
* Counter-bids and higher bids can be filed.
 |
| 3. Review and approval of the bidder's offering document by the CSSF within 30 business days. Consult with and provide information to employees, in parallel. |
| 4. Response memorandum by the target’s board:* In practice, the target’s board will involve the works council. If the board has timely received the position of the works council, this must be attached to the response memorandum.
* Following approval of the offering document by the CSSF, the board shall promptly issue its response memorandum.
 |
| 5. Publication of the offering document after approval of the CSSF. |
| 6. Launch of the acceptance period:* Start: Immediately after the publication of the offering document, at the earliest.
* Duration: Not less than two weeks and not more than 10 weeks.
* The CSSF may grant a derogation in order to allow the bidder to call a general meeting of the shareholders to consider the bid. Where the bidder acquires control of the target company, the shareholders that did not accept the bid until the closing of the acceptance period have the opportunity to accept this bid within fifteen days
 |
| 7. Publication of results and, when relevant, whether or not the bidder waives the conditions precedent to the bid (as soon as practicable after the end of the acceptance period). |
| 8. Payment of the offered consideration by the bidder (in accordance with the terms described in the offering document). |
| 9. Sell-out period if the bidder acquired 90% of the shares within three months following the expiry of the acceptance period of the bid. |
| 10. Squeeze-out period if the bidder acquired 95% of the shares. Squeeze-out option to be exercised within three months following the expiry of the acceptance period of the bid. |
| 11. Publication of results of the squeeze-out/sell-out (as soon as practicable at the end of additional three-month period). |
| 12. Payment of the offered consideration by the bidder (in accordance with the terms described in the offering document). |

Set out below is an overview of the main steps for a voluntary public takeover in Luxembourg.

**5.1 Indicative timeline of a voluntary public takeover**

Click here to view diagram for [Luxembourg](https://resourcehub.bakermckenzie.com/en/-/media/global-public-ma-handbook/files/2025-version/luxembourg-timeline.pdf?sc_lang=en).

# Takeover Tactics

## 6. Takeover Tactics

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

**6.1 Inside information**

A Luxembourg company whose shares are admitted to trading on a regulated market has the obligation to immediately disclose to the public all "inside information" that relates to it, including all material changes in information that has already been disclosed to the public.

"*Inside information*" means information of a precise nature which has not been made public, relating, directly or indirectly, to one or more issuers of financial instruments or to one or more financial instruments and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments.

Information shall be deemed to be of a "*precise nature*" if it indicates a set of circumstances which exists or may reasonably be expected to come into existence or an event which has occurred or may reasonably be expected to do so and if it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of financial instruments or related derivative financial instruments.

"*Information which, if it were made public, would be likely to have a significant effect on the prices of financial instruments or related derivative financial instruments*" shall mean information that a reasonable investor would be likely to use as part of the basis of their investment decisions.

It is up to the company to determine if certain information qualifies as "inside information". This will often be a difficult exercise and a large grey area will exist as to whether certain events will need to be disclosed or not.

**6.2 In the event of a public takeover bid**

The Luxembourg takeover bid rules provide that no announcement can be made of a potential takeover bid unless prior notice has been given to the CSSF.

**6.3 Insider dealing and market abuse**

The basic legal framework regarding insider dealing and market abuse under Luxembourg law is set forth in Regulation (EU) No 596/2014 of 16 April 2014 on Market Abuse (supplementing, as of 3 July 2016, the law of 9 May 2006 on market abuse, as amended). The same regulation applies in the other jurisdictions of the EEA.

In principle, the rules on insider dealing and market abuse remain applicable before, during and after a public takeover bid, albeit that during a takeover bid additional disclosures and restrictions apply in relation to trading in listed securities.

**6.4 Common anti-takeover defense mechanisms**

The table below contains a summarized overview of the mechanisms that can be used by a target company as a defense against a takeover bid. These take into account the restrictions that apply to the board and general shareholders' meeting of the target company pending a takeover bid.

The implementation of anti-takeover defense mechanisms is subject to the prior approval of the general meeting of shareholders, if the articles of association of the target company require such approval.

|  |  |
| --- | --- |
| **Mechanism** | **Assessment and considerations** |
| **1. Capital increase** Capital increase by the board (authorized capital) without preferential subscription rights of the shareholders. | * Requires an express authorization in the articles of association by a majority of three quarters of the votes cast at a general shareholders' meeting at which at least 50% of the share capital is present or represented (the 50% quorum does not apply to the second meeting that is convened if the 50% quorum was not reached at the first meeting).
* The authorization is valid for up to 5 years but can be renewed.
 |
| **2. Share buyback** Share buyback "with a view to avoid imminent and serious harm" to the company. | * A share buyback that is not done "with a view to avoid imminent and serious harm" requires an express authorization from the general shareholders' meeting (no quorum and simple majority of votes cast).
* The amount that can be used to finance the share buyback is capped at the amount of available distributable profits and reserves.
* Buybacks to be made in compliance with corporate transparency and market (abuse) rules.
 |
| **3. Sale of crown jewels** An arrangement affecting the assets of, or creating a liability for, the company, which is triggered by a change in control or the launch of a takeover bid. | * Even though it is not expressly required by Luxembourg law, if the transaction results in a change in fact of the purpose of the company, prior approval by the general shareholders' meeting, by a majority of two-thirds of the votes cast at a general shareholders' meeting at which at least 50% of the share capital is present or represented, is required (the 50% quorum does not apply to the second meeting that is convened if the 50% quorum was not reached at the first meeting).
 |
| **4. Warrants on new shares**  Warrants are issued prior to the takeover bid in favor of "friendly person(s)" (without preferential subscription rights of the shareholders) who can exercise the warrants at their option and subscribe for new shares. | * Requires only a decision of the target company's board if the authorized capital permits the issuance of warrants as takeover defense. Prior approval, by a majority of two-thirds of the votes cast at a general shareholders' meeting at which at least 50% of the share capital is present or represented, is required (the 50% quorum does not apply to the second meeting that is convened if the 50% quorum was not reached at the first meeting).
 |
| **5. Frustrating actions** Actions such as significant acquisitions, disposals, changes in indebtedness, etc. | * Only transactions that have sufficiently progressed already (prior to receipt of notification of a takeover bid) may be implemented by the target's board.
* Other transactions require shareholders' approval after the takeover bid has been notified to the target if it is required pursuant to the articles of association of the target company, provided such requirement has been approved by the general meeting of shareholders of the target company
 |
| **6. Shareholders’ agreements** Shareholders undertake to (consult with a view to) vote their shares in accordance with terms agreed among them. | * A voting undertaking is only valid if it is limited in time.
* The shareholders could be considered as "acting in concert". If so, disclosure obligations apply and if they hold more than 33 1/3% of voting rights, any subsequent acquisition of shares will trigger an obligation to launch a takeover bid.
* Assumes a stable shareholder base or reference shareholders.
 |
| **7. Veto rights for certain shareholders** Clauses providing for nomination rights by a reference shareholder or similar governance mechanisms. | * Requires an express inclusion in the articles of association by a majority of three quarters of the votes cast at a general shareholders' meeting at which at least 50% of the share capital is present or represented (the 50% quorum does not apply to the second meeting that is convened if the 50% quorum was not reached at the first meeting)
* Requires reference shareholder(s).
 |
| **8. Limitations on share transfers** Board approval or pre-emptive restriction clauses in the articles of association or in agreements between shareholders. | * Inclusion in the articles of association requires an approval by a majority of three quarters of the votes cast at a general shareholders' meeting at which at least 50% of the share capital is present or represented (the 50% quorum does not apply to the second meeting that is convened if the 50% quorum was not reached at the first meeting).
* Limitations have to be, and must remain at all times, in the interest of the company and must be limited in time.
* Prior approval clauses can only be invoked against a bidder provided that a refusal of approval is motivated on the basis of a non-discriminating application of approval rules.
* Shareholders could be considered as "acting in concert". If so, see "Shareholders' agreements" above.
* Exceptional for listed companies (listed securities are in principle freely transferable; impact on share liquidity).
 |
| **9. Multiple listings** Listing of the shares on several stock exchanges. | * Should make the takeover more difficult, particularly if one or more of these markets is located outside of the EEA.
 |

# Squeeze-out of Minority Shareholders after Completion of the Takeover

## 7. Squeeze-out of Minority Shareholders after Completion of the Takeover

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

**7.1 Squeeze-out**

If, following the takeover bid (or its reopening), the bidder (together with the persons with whom the bidder acts in concert) holds 95% of the share capital with voting rights and 95% of the voting securities, they can force all other holders of voting securities and securities conferring the right to voting securities to transfer their securities to the bidder at a fair price. The consideration offered in the takeover bid is presumed to be fair.

This type of summarized squeeze-out bid is not subject to the rules and procedures that would otherwise apply to a stand-alone squeeze-out procedure outside the framework of a voluntary or a mandatory public takeover bid.

In the event of a summarized squeeze-out, the takeover bid will be reopened at the squeeze-out price during the three months following the expiry of the acceptance period of the bid. Securities that are not tendered to the bidder at the expiry of the reopened bid are deemed to be automatically acquired by the bidder.

**7.2 Sell-out**

If, following the takeover bid (or its reopening), the bidder (together with the persons with whom the bidder acts in concert) holds 90% of the share capital with voting rights, the security holders that did not accept the takeover bid shall have the right to demand that the bidder acquires their voting securities and securities conferring the right to voting securities on the terms of the takeover bid. This right can be exercised by means of a registered letter with confirmation of receipt to the bidder (or the intermediary appointed by the bidder for this purpose) within a term of three months following the expiry of the acceptance period of the bid.

# Delisting

## 8. Delisting

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

To delist a Luxembourg company, a request must be made to the LSE. To make its decision, the board of the LSE takes into account the interests of the market, the investors and the issuer. The intention to delist the shares must be fully disclosed in any takeover bid document and must be discussed with the LSE in advance. Following the takeover bid, the target's board can decide to delist, after having notified the LSE.

The CSSF may oppose a delisting of a Luxembourg company that is listed on the LSE in the interest of protecting investors. In particular, the CSSF may oppose a delisting of a Luxembourg company (even if the company no longer has a relevant free float) if minority shareholders did not have the opportunity to sell their shares at a fair price.

# Contacts

## Contacts within Baker McKenzie

Jean-François Findling is the most appropriate contact within Baker McKenzie for inquiries about public M&A in Luxembourg.

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