Global Public M&A Guide - Luxembourg

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 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.

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