



## Squeeze-out and sell-out of securities

On 2 July 2012, the Luxembourg parliament has approved the bill 5978 on the mandatory squeeze-out and sell-out of securities issued by companies, currently or previously admitted to trading on a regulating market or having been subject to a public offering and amending the law of 23 December 1998 creating a financial services supervision commission (the "Law").

The mandatory squeeze-out refers to the right given to the majority shareholder of a company to require the minority shareholders to sell their securities at a fair price. Likewise, the mandatory sell-out gives a minority shareholder the right to force the majority shareholders to purchase its securities.

The main provisions introduced by the Law are set out below.

### Scope of the Law

The Law governs the mandatory squeeze-out and sell-out of securities (defined by the Law as the transferable securities issued by a company and to which are attached voting rights) and certain mandatory notification and information, when a company has its registered office in Luxembourg and all or part of its securities:

- (i). are admitted to trading on a regulated market in one or more members states; or
- (ii). were admitted on a regulated market in one or more member states, but are no longer admitted, provided that the effective date of withdrawal of trading is not older than five years; or
- (iii). have been subject to a public offering, which resulted in the requirement to publish a prospectus in accordance with the Article 3 of the Directive 2003/71/EC of the European Parliament and Council of 4 November 2003 or for which the obligation to publish such a prospectus has not been applied in accordance with Article 4, paragraph 1 of this Directive and the commencement of the offer is not older than five years.

The Law does not apply to companies whose object is the collective investment of capital raised from the public which operate under the principle of risk spreading and which units are, at the request of their holders, repurchased, directly or indirectly, out of the assets of these companies.

The Law does not apply either to takeover bids made in accordance with the Directive 2004/25/EC of the European Parliament and Council of 21 April 2004 on takeover bids, until the expiration of any period set up for the exercise of rights subsequent to such offer and during a period of six months after the expiration of such period.

## Notification and information obligations

A security holder is required to notify the concerned company and the financial services supervision commission ("*Commission de Surveillance du Secteur Financier*" or "CSSF") when it:

- (i). becomes a "Majority Shareholder" (defined by the Law as a person holding, alone or with other persons acting in concert with it, directly or indirectly, securities giving it at least 95 % of the capital carrying voting rights and 95 % of the voting rights of a company);
- (ii). is a Majority Shareholder and falls below the thresholds indicated hereabove;
- (iii). is a Majority Shareholder, and proceeds with the acquisition of additional securities of the concerned company.

The notification shall be made as soon as possible and no later than four working days, starting on the business day following the date on which the security holder has knowledge of the effective acquisition or disposal, or of the opportunity to exercise or not to exercise the voting rights, or on which it should have known, given the circumstances, whatever the date of acquisition, disposal or possibility to exercise voting rights takes effect.

The notification shall include at least the following information:

- (i). the exact percentage of holding;
- (ii). a description of the operation that has triggered the notification requirement;
- (iii). the date on which the transaction has become effective;
- (iv). the identity of the holder; and
- (v). the modalities of holding.

As from the receipt of the notification and no later than three business days, the company shall disclose all information in connection with the notification received. The CSSF shall also publish on its website, for a period of at least twelve months, a list of companies for which a notification has been filed.

## Mandatory squeeze-out

When a securities holder is or becomes a Majority Shareholder, it can require all the holders of the remaining securities to sell him their securities provided that the information to the CSSF has been filed within the delays provided by the Law. A shareholder who decides to exercise its right of squeeze-out shall ensure that it can entirely pay in cash the consideration for such a squeeze-out.

As soon as a Majority Shareholder decides to exercise its squeeze-out right, it must first inform the CSSF and commit itself to conduct the removal until its term. The Majority Shareholder must then inform the company and publish its decision.

The CSSF shall determine the content and format of the information required which shall comprise at least the following:

- (i). the identity and contact details of the Majority Shareholder;
- (ii). the name of the independent expert that the Majority Shareholder intends to appoint for the determination of the fair price;

- (iii). the payment terms; and
- (iv). the other terms to which the squeeze-out is subject to.

The squeeze-out shall be exercised at a fair price based on objective and adequate methods used in case of sales of assets.

Within the month of notification of the squeeze-out, the Majority Shareholder shall communicate to the CSSF the offered price and a valuation report.

The valuation report shall be established at the expense of the Majority Shareholder by an independent expert of its choice. The CSSF may also request a statement of position from the management of the company on the price offered by the Majority Shareholder.

Each holder of securities covered by the squeeze-out can object to the proposed squeeze-out project during a one month period as from the date of publication of the proposed price, by registered mail sent to the CSSF with copies addressed to the Majority Shareholder and to the company.

If no objection has been made, the CSSF accepts the proposed price as fair price and informs the Majority Shareholder and the company and publishes this price on its website.

When one or more holders of securities object to the squeeze-out, the CSSF may request the company to propose five independent experts. The CSSF shall then appoint one of the proposed experts to submit a second valuation report at the expense of the Majority Shareholder. The CSSF shall then retain the fair price to be paid by the Majority Shareholder within a period of three months as from the delay to object or, in case it requests a second valuation report, within a three months period as from receipt of this second report.

Securities not presented for repurchase, are deemed to be transferred automatically to the Majority Shareholder and the repurchase price shall be held in escrow.

When a squeeze-out procedure is taking place, no take-over bids can be made before the term of the squeeze-out procedure.

## **Mandatory sell-out**

When, through the acquisition of securities by itself or by persons acting in concert with it, a securities holder becomes a Majority Shareholder or, when it is already a Majority Shareholder and comes to hold additional securities in the company, one or more holders of the remaining securities may require such Majority Shareholder to purchase their securities.

A minority holder, who decides to exercise its sell-out right, shall inform the Majority Shareholder by registered mail with copies sent to the CSSF and the company. The notification shall include:

- (i). the identity and the contact details of the securities holder; and
- (ii). the evidence of the quality of security holder and the number of securities held.

The sell-out right shall be exercised at a fair price based on objective valuation methods.

Within one month of the notification, the Majority Shareholder shall communicate to the CSSF the proposed price and a valuation report of the securities covered by the mandatory sell-out. This report shall then be communicated to the

company which in its turn shall communicate it to its shareholders. The report shall be established by an independent expert at the expense of the Majority Shareholder. The CSSF may also request a statement of position from the management of the company on the price offered by the Majority Shareholder.

The holders of the remaining securities, who have exercised their sell-out right, may object to the proposed price. The holders of the remaining securities who object to the proposed price are in such case required to participate to the sell-out. The objection shall be made by registered mail addressed to the CSSF within one month as from the publication of the proposed price, with copies addressed to the Majority Shareholder and the company.

If no objection is made, the CSSF accepts the proposed price as fair price and informs the shareholder and the company.

When one or more holders of remaining securities object, the CSSF may request the company to propose five independent experts. The CSSF shall then appoint one of the proposed experts in order to submit a second valuation report at the expense of the Majority Shareholder. In case of objection, the CSSF shall retain the fair price to be paid by the Majority Shareholder within a three months period as from the delay to object or, in case it requests a second valuation report, within a three months period as of receipt of this second report.

The security holders, who have not exercised their right to mandatory sell-out on or before the final payment date, can nonetheless submit their titles to the mandatory sell-out procedure at the fair price retained by the CSSF during a delay to be fixed by the CSSF (which cannot be less than one month nor more than six months).

A securities holder who presents its securities to mandatory sell-out shall present all the securities it holds.

A security holder who has neither exercised its right to sell-out nor presented its securities to the mandatory sell-out procedure does not participate to the sell-out.

## Competent Authority

The CSSF is the competent authority for the application of the Law and is granted special powers in order to monitor and control the procedures set forth therein. As such, the CSSF is entitled to:

- (i). require any holder of securities or a company to provide information and documents;
- (ii). require the independent auditors, the statutory auditors and the management of a company to provide information and documents;
- (iii). suspend a squeeze-out or a sell-out procedure each time it has reasonable grounds to suspect a violation of the Law;
- (iv). prohibit or suspend advertisements communications related to a squeeze-out or a sell-out procedure each time it has reasonable grounds to suspect a violation of the Law;
- (v). prohibit a squeeze-out or a sell-out procedure, if it finds a violation of the law;
- (vi). make public the fact that a securities holder or a company does not comply with its obligations;
- (vii). require a securities holder or a company to cease any practices contrary to the Law; and
- (viii). require a securities holder or a company to comply with their obligations.

## Penalties

The CSSF may impose a fine from 125 to 125,000 euros in case a person has not complied with the obligations laid down by the Law.

In addition, a penalty of imprisonment from eight days to five years and a fine from 251 to 125,000 euros or one of these penalties may be imposed on a person who has knowingly given inaccurate or incomplete information in relation to their shareholdings or in connection with squeeze-out or sell-out operations.

## Entry into force

The Law will come into force on the first day of the third month following its publication in the Luxembourg official gazette ("*Mémorial*").

## Editor:

Jean-Philippe Drescher  
Partner – Avocat à la Cour