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Luxembourg

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M&A ACTIVITY

1. What is the current status of the M&A market in your jurisdiction?

The negative impact of the economic downturn in 2009 and 2010 has led to a reduction of M&A transactions. However, in the Luxembourg market, with its specific emphasis on financial activities, it is fair to say that the impact of the economic downturn has been limited.

Parties involved in M&A transactions have adopted a "wait and see" approach for some months, but on the other hand there has been a large emphasis on insolvency and corporate restructurings.

The credit crunch has negatively impacted private market activities since the end of 2009 up to mid 2010. The third quarter of 2010 showed encouraging signs with investors seeking opportunities, leading to a significant increase of activity in the course of the first half of 2011. However, even though this period showed the strongest performance since the collapse of Lehman Brothers, completing deals in the second half of 2011 was challenging. During this period, investors adopted a careful approach with a preference for highly selective transactions.

There is strong potential for rebound in M&A activities. Private equity houses are still operating with significant amounts of funds available and will become progressively more active as acquisition opportunities emerge and the debt market starts to recover.

Finally, a clear change in the balance of economic power has appeared with the emergence of wealthy investors originating in Asia and Brazil, Russia, India, China (BRIC) and Middle East countries. This has been evidenced in Luxembourg with three major investments made by Qatar investors:

- Qatar Airways acquired a 35% stake in Luxembourg based aeroplane carrier Cargolux, a worldwide leader in this field.
- A Qatar investment group acquired Belgian KBC's Luxembourg private banking subsidiary KBL for a total consideration of EUR1 billion (as at 1 March 2012, US$1 was about EUR0.74).
- A group made up of members of the Qatar royal family entered into an agreement with the State of the Grand Duchy of Luxembourg, acquiring a 90% stake in Dexia Bil, the outstanding 10% remaining with the Grand Duchy of Luxembourg.

2. What are the main means of obtaining control of a public company?

Control of a public company is most frequently obtained through the acquisition of the company's shares from its shareholders by means of a voluntary, or mandatory, public tender offer.

Alternatively, legal mergers can also be used to acquire control over a public company. In this case, the legal merger is regulated by the Luxembourg law on commercial companies dated 10 August 1915 (as amended) and includes the possibility of cross-border mergers and the creation of a European public company (*societas europeas*).

HOSTILE BIDS

3. Are hostile bids allowed? If so, are they common?

Hostile takeovers are allowed. However, since they do not receive the support of the target company's board of directors (at least, they receive no support during the initial phase, the duration of which varies depending on the circumstances), they are not common.

There has been a clear reduction in hostile takeovers since the beginning of the economic downturn but some signs on the market indicate that hostile takeovers could soon emerge again, if they have not done so already.

REGULATION AND REGULATORY BODIES

4. How are public takeovers and mergers regulated, and by whom?

Hostile takeovers are regulated by the Luxembourg law on takeover bids dated 19 May 2006 (Takeover Law), implementing Directive 2004/25/EC on takeover bids (Takeover Directive).

Other sources of law and regulations are relevant to public takeovers and mergers:

- The Luxembourg law on commercial companies dated 10 August 1915 (as amended) (Company Law).
- The Luxembourg law dated 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.

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- The Luxembourg law on the prospectus for securities dated 10 July 2005 implementing Directive 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading (Prospectus Directive), which contains the rules governing the prospectus to be published when securities are offered to the public in Luxembourg, or admitted to trading on the regulated market of the Luxembourg Stock Exchange (LSE).
- The rules and regulations of the LSE.
- The Luxembourg law dated 9 May 2006 on market abuse and transposing, among others, Directive 2003/6/EC on insider dealing and market manipulation (market abuse) (Market Abuse Law).
- The Luxembourg law on transparency requirements regarding information about issuers whose securities are admitted to trading on a regulated market dated 11 January 2008 (Transparency Law).
- The Luxembourg labour code.
- The Luxembourg financial sector supervisory authority (*Commission de Surveillance du Secteur Financier* (CSSF)) is the competent authority to supervise takeover bids where the target company has its registered office in Luxembourg and that company's securities are admitted to trading on a regulated market in Luxembourg.

Matters concerning the consideration offered in a bid (in particular, the price) and matters concerning the offer procedure (in particular, the information on the bidder's decision to make an offer, the contents of the offer document and the disclosure of the offer) are dealt with in accordance with the rules of the member state of the competent authority (as determined under the Takeover Law).

Matters concerning the information to be provided to employees of the target company, and matters concerning company law (in particular, the percentage of voting rights conferring control and any derogation from the obligation to launch a bid, as well as the conditions under which the target company's board of directors can take action to frustrate the bid) are governed by the competent authority and applicable rules of the member state in which the target company has its registered office.

For companies which have their registered office in Luxembourg, the percentage of voting rights conferring control is fixed at 33.33%. All the securities of the companies, other than those conferring voting rights only in certain situations, are taken into account in calculating this percentage.

PRE-BID

Due diligence

5. What due diligence enquiries does a bidder generally make before making a recommended bid and a hostile bid? What information is in the public domain?

Recommended bid

Due diligence investigations of public companies are not regulated per se under Luxembourg laws and regulations.

However, in recommended bids, during the pre-bid process, the prospective bidder will usually perform a due diligence investigation in liaison with the board of directors of the target, aiming to assess as precisely as possible the value of the target and identify eventual risk. The conclusion of this process will lead to a decision to pursue the process or not.

During the exchange of information between the potential bidder and the target's board of directors, any disclosure of inside information will trigger the application of the Market Abuse Law. Therefore, the parties should take all necessary measures to comply with the Market Abuse Law, strictly limiting the disclosure of inside information to information necessary for the assessment process. It is advisable to enter into confidentiality agreements with all recipients of the target's information and list those persons in an ad hoc register, which should be regularly updated. It is recommended that the due diligence process should only be started after serious discussions have been initiated between the parties, which should be formalised in a letter of intent.

The Takeover Law provides that the companies subject to it must publish detailed information on the following items:

- The structure of their capital.
- Any restrictions on the transfer of securities.
- Significant direct and indirect shareholdings.
- The holders of any securities with special control rights and a description of these rights.
- The system of control of any employee share scheme where the control rights are not exercised directly by the employees.
- Any restrictions on voting rights.
- Any agreements between shareholders which are known to the company and may result in restrictions on the transfer of securities and voting rights.
- The rules governing the appointment and the replacement of board members and the amendment of the articles of association (articles).
- The powers of board members and, in particular, the power to issue or buy back shares.
- Any significant agreements to which the company is a party and which take effect, alter or terminate on a change of control of the company following a takeover bid.
- Any agreements between the company and its board members or employees providing for compensation if they resign or are made redundant without valid reason, or if their employment ceases because of a takeover bid.

Hostile bid

Hostile bids are not supported by the target's board of directors, and so due diligence is usually limited to publicly available information. However, since there are an increasing number of rules and regulations aimed at ensuring transparency to the market, including investors, shareholders and stakeholders, the potential bidder may already have access to a significant amount of information.

Public domain

The following is a non-exhaustive list of the main information publicly available:

- Corporate documents, for example, articles, extract of the register of commerce and companies, minutes of the general meetings of shareholders and directors' details.
- Annual accounts and the directors' and auditors' reports, including the minutes dealing with potential conflicts of interest.
- Listing prospectuses, offering documents and information memoranda.
- Financial information as required in compliance with the Transparency Law, for example, half-year financial statements.
- Total numbers of outstanding shares and voting rights, statements of major shareholders crossing certain thresholds in the share capital or voting rights of the company.
- A significant amount of information is also now included in the company's annual report.

Secrecy

6. Are there any rules on maintaining secrecy until the bid is made?

Negotiations between the parties can be kept confidential provided that they comply with the rules set out in the Market Abuse Law, which states as a principle, to ensure transparency and equal treatment, that listed companies must make public as soon as possible any inside information which directly relates to them. That being said, in practice discussions between a potential bidder and the target can remain confidential during the initial phase provided that measures have been taken to ensure confidentiality and compliance with the Market Abuse Law.

Agreements with shareholders

7. Is it common to obtain a memorandum of understanding or undertaking from key shareholders to sell their shares? If so, are there any disclosure requirements or other restrictions on the nature or terms of the agreement?

A bidder can approach the target's major shareholders with the aim of securing a commitment to tender their shares. However, the enforceability of this type of agreement has not yet been settled under Luxembourg law.

Stakebuilding

8. If the bidder decides to build a stake in the target (either through a direct shareholding or by using derivatives), before announcing the bid, what disclosure requirements, restrictions or timetables apply?

This matter is strictly regulated by the Transparency Law, which provides that a security holder must notify the company of the percentage of voting rights in the company held by that person, where as a result of an acquisition or disposal, the percentage of voting rights held by that person reaches, exceeds or falls below any of the following thresholds: 5%, 10%, 15%, 20%, 25%, 33.33%, 50% and 66 2/3%.

The holding of financial instruments giving the right to the holder, on his initiative, to acquire shares in the company is assimilated to the holding of shares. The thresholds are calculated by reference to the aggregate amount of outstanding shares with voting rights in the company, including those shares whose voting rights are suspended.

A holder of shares must also notify the company in cases where it reaches, exceeds or falls below any of the above thresholds, not as a result of any acquisition or disposal, but where this is due to a modification of the number of voting rights in the company. Holders must determine whether they reach or cross those thresholds "passively" on the basis of the regular information to be published by the company under the Transparency Law.

Furthermore, along with these disclosure requirements, the target's articles can also contain additional disclosure requirements. In this instance, these notifications must be sent to the company in compliance with the rules set out in the articles, but do not need to be made public under the Transparency Law.

Voting rights attaching to the shares that exceed the threshold, and have not been notified, are suspended. The suspension is lifted as soon as the required notification is made in compliance with the Transparency Law.

Agreements in recommended bids

9. If the board of the target company recommends a bid, is it common to have a formal agreement between the bidder and target? If so, what are the main issues that are likely to be covered in the agreement? To what extent can a target board agree not to solicit or recommend other offers?

Luxembourg law does not regulate this matter. However, a formal agreement between the bidder and the target can only be used, in practice, in the context of a recommended offer. It would not be unusual in this instance for the bidder to enter into an agreement with the target's board of directors, aimed at agreeing on terms and conditions concerning the supported and recommended offer. Attention must be drawn to the fact that the target's board of directors must always act in the interest of the company. Corporate interest includes not only the shareholders' interests but also the protection of the so-called stakeholders.

This agreement could, for example, include details on the conditions applicable to the offer, an undertaking by the target to support the bidder's offer and not to actively seek other offers, undertakings by the target to carry on the ordinary course of business of the target during the offer process and not to take any measures which could potentially destroy the value of the target.

Break fees

10. Is it common on a recommended bid for the target, or the bidder, to agree to pay a break fee if the bid is not successful?

Break fees are not regulated and not illegal per se. However, if they can be obtained from the target company (or its majority

shareholder), they can raise issues concerning corporate interest. Indeed, the target company would have to justify break fees as being in their corporate interest, and they may trigger liability for the board of directors for misuse of corporate assets.

Committed funding

11. Is committed funding required before announcing an offer?

A bidder must announce the bid only after ensuring that he can fulfil, in full, any cash consideration, if that is offered, and after taking all reasonable measures to secure the implementation of any other type of consideration.

ANNOUNCING AND MAKING THE OFFER

Making the bid public

12. How (and when) is a bid made public? Is the timetable altered if there is a competing bid?

Offer document and bid procedure where the CSSF is the competent authority for controlling the bid

The decision to launch a bid must be made public by the bidder immediately after the decision is taken and the CSSF must be informed of the bid before the decision is made public.

As soon as the bid has been made public, the boards of directors of both the target company and the bidder must inform the representatives of their respective employees (or, where there are no such representatives, the employees themselves).

The bidder must then draw up, and in good time make public, an offer document containing the information necessary to enable the holders of the target company's securities to reach a proper and duly informed decision on the bid. Before this offer document is made public, the bidder must submit a draft to the CSSF for approval, within ten working days from the day the bid was made public.

The CSSF in turn must notify the bidder of its decision on approval within 30 working days following the presentation of the draft offer document. If the CSSF considers, on reasonable grounds, that the offer document is incomplete or that further information is necessary, it will inform the bidder within ten working days of the filing of the offer document for approval. In this case, the 30 working days' deadline referred to above runs from the date the requested information is given by the bidder.

In approving the offer document, the CSSF does not bind itself regarding the economic or financial soundness of the transaction, or the quality or solvency of the bidder or the target company.

When the offer document is made public, the boards of directors of both the target company and the bidder must communicate it to the representatives of their respective employees or, where there are no such representatives, to the employees themselves. The target's board of directors must draw up and make public a document setting out its opinion on the bid, and the reasons on which that opinion is based (in accordance with the Takeover Law rules), including its views on:

- The effect of implementing the bid on all the company's interests, and specifically on employment.
- The bidder's strategic plans for the target company, and their likely repercussions on employment and the location(s) of the company's place(s) of business as set out in the offer document.

Before drawing up its opinion, the target's board of directors must consult with the company's employee representatives, or with the employees themselves if there are no representatives. Where the target's board of directors receives, in good time, a separate opinion from the representatives of its employees on the effect of the bid on employment, that opinion must also be attached to the opinion of the board of directors.

The offer document is drawn up in a language accepted by the CSSF (either Luxembourgish, French, German or English).

Acceptance period

The time period allowed for the acceptance of the bid cannot be less than two weeks or more than ten weeks from the date of publication of the offer document.

One of the main principles contained in the Takeover Law is that the target company must not be hindered in the conduct of its affairs for longer than is reasonable by a bid for its securities. The time period from the date the decision to make the bid was made public to the end of the offer acceptance period cannot exceed six months.

The CSSF can grant derogations from the six-month period above in order to allow the target company to call a general meeting of shareholders to consider the bid.

Where the bidder acquires control of the target company, the holders of securities which had not accepted the bid before the end of the time period allowed for acceptance of the bid can then accept the bid during a supplementary 15-day period (except in cases of a mandatory offer), which runs from the last day of the acceptance period. In the event of a competing bid, the period for acceptance of the initial bid is automatically extended and will only expire when the period for acceptance of the competing bid expires.

Bid where the CSSF is not the competent authority for controlling the bid

Where the bid is not submitted to the supervision of the CSSF, the offer document is recognised in Luxembourg under the condition that it has been approved by the competent controlling authority and translated into one of the recognised languages in Luxembourg (*see above, Offer document and bid procedure where the CSSF is the competent authority for controlling the bid*). The disclosure of the bid will ensure market transparency and integrity for the securities of the target company, of the bidder and any of the companies affected by the bid, and, in particular, it prevents the publication or dissemination of false or misleading information.

Offer conditions

13. What conditions are usually attached to a takeover offer? Can an offer be made subject to the satisfaction of pre-conditions (and, if so, are there any restrictions on the content of these pre-conditions)?

This is not regulated in the Takeover Law, except in the case of a mandatory offer. In other cases, the bidder remains free to have, as a condition to the success of the bid, a specified minimum percentage of share capital or voting rights being acquired. Other conditions, for example, obtaining clearance from competition authorities, where applicable, are also acceptable.

Bid documents

14. What documents do the target's shareholders receive on a recommended and hostile bid?

The main documents to be provided to the shareholders of the target company in the case of a bid are the following:

- The announcement to the market issued by the bidder indicating the main purpose of the bid.
- The offer document prepared by the bidder (*see Question 12*) which must contain detailed terms and conditions of the offer in compliance with the Takeover Law.
- The acceptance form prepared by the bidder and attached to the offering documentation.
- The target notice relating to the valuation of the bid approved by the target's board of directors and containing all information necessary to assess the bid together with the opinion of the board of directors.

Employee consultation

15. Are there any requirements for a target's board to inform or consult its employees about the offer?

See *Question 12*.

Mandatory offers

16. Is there a requirement to make a mandatory offer?

Prior to implementing the Takeover Law, Luxembourg law had very few express rules protecting minority shareholders. The provisions in the Takeover Law concerning mandatory offers and those relating to "sell-out" rights now provide some protection for minority shareholders in the event of a change of control in the company.

The Takeover Law provides that if a natural or legal person acting alone, or in concert with others, acquires securities in a company which, when added to any existing holdings of those securities, gives him control of that company, that person is obliged to make a mandatory offer as a means of protecting the minority shareholders of that company. The Takeover Law has fixed the percentage of voting rights considered to give control for Luxembourg companies at 33.33%. All securities (other than those that only give a right to vote in certain limited situations) are taken into account when calculating this percentage.

The obligation to launch a mandatory offer does not apply where control has been obtained by means of a voluntary bid to all security holders of the company for all of their holdings.

The mandatory offer must be made at the earliest opportunity to all the holders of securities of the company at an equitable price. Equitable price is defined in Article 5(4) of the Takeover Law as the highest price paid for the same securities by the bidder, or by persons acting in concert with them, over a period of 12 months before the bid. The Takeover Directive provides that member states can choose a period of between six and 12 months. The 12-month period selected by the Luxembourg legislature reflects its intention to protect minority security holders. If, after publication of the offer document and before the end of the acceptance period, the bidder, or any persons acting in concert with him, acquire securities at a higher price to that of the mandatory offer, the bidder must raise the offer price to a price at least equal to the highest price paid for the securities.

The CSSF is authorised to modify the price in certain limited circumstances:

- If the highest price has been fixed by agreement between the buyer and seller.
- If the market price of the securities has been manipulated.
- If the market prices in general, or certain market prices in particular, have been affected by exceptional events.
- To enable a firm in difficulty to be rescued.

An earlier version of the draft law provided that the CSSF could amend the price in circumstances that were not as clearly defined as those above. The Council of State, however, insisted that the conditions in which the CSSF could make any amendments be limited and exhaustive (therefore not providing the CSSF with the opportunity to determine further criteria by which the price could be amended).

The consideration for the mandatory offer can take the form of securities, cash or a combination of both. The bidder must propose a cash alternative in two situations:

- When the consideration offered does not consist of liquid securities.
- Where the bidder, or persons acting in concert with him, have acquired, during the 12 months preceding the mandatory offer, securities carrying 5% or more of the voting rights in the target company.

The Luxembourg legislature did not enact the provision, offered in the Takeover Directive, providing that a cash consideration must be offered, at least as an alternative, in all cases.

CONSIDERATION

17. What form of consideration is commonly offered on a public takeover?

The bidder can offer as consideration securities, cash or a combination of both. However, when the consideration offered by the bidder does not consist of liquid securities admitted to trading on a regulated market, it must include a cash alternative. Securities are considered to be sufficiently liquid when either:

- At least 25% of the subscribed capital represented by the category of securities concerned are distributed to the public.
- In view of the large number of securities of the same category and the extent of their distribution in the public, the market will operate properly with a lower percentage.

Where the bidder, or persons acting in concert with him, have acquired, within a period of 12 months preceding the launch of the bid and ending at the close of the acceptance period of the bid, against cash, securities of the target company carrying 5% or more of the voting rights of the target company, the bidder must offer a cash consideration at least as an alternative.

18. Are there any regulations that provide for a minimum level of consideration?

Under the general principles that must be complied with during a bid, all holders of securities of the same class of a target company must be afforded equal treatment, and if a person acquires control of a company, the other holders of securities must be protected.

A mandatory offer over securities (*see Question 16*) must be addressed at the earliest opportunity to all the holders of these securities for all their holdings at the equitable price.

Under the Takeover Law, the offer document must include at least:

- The terms of the offer.
- The consideration offered for each security (or class of securities).
- In the case of a mandatory offer, the measures employed in determining it, with particulars determining precisely how that consideration is to be paid.
- The maximum and minimum percentage, or quantities of, securities which the bidder undertakes to acquire.
- All the conditions to which the offer is subject.
- The time allowed for acceptance of the offer.
- Information concerning the financing for the offer.
- Where the consideration offered by the bidder includes securities of any kind, information concerning those securities.

Prior information concerning the offer provided by the bidder to the CSSF cannot be changed, except if that change is more favourable for the holders of securities in the target company. Furthermore, any increase in the offer price must also benefit the holders of the securities who accepted the offer before that increase was announced, and any acceptance of the offer made before the announcement of the increase will not be binding on those holders of securities.

If any change in the conditions has taken place, the offer cannot be closed until a reasonable time has elapsed since those changes were published.

If the bidder wishes to exercise the right of squeeze-out following an offer, the CSSF will ensure that a fair price is guaranteed and that the price will take the same form as the consideration offered in the bid, or will be in cash. Cash must be offered at least as an alternative.

In case of a squeeze-out following a voluntary bid, the consideration offered in the offer will be presumed to be fair as regards the securities where, through acceptance of the offer, the bidder has acquired securities representing not less than 90% of the capital carrying voting rights comprised in the offer.

Following a mandatory offer, the consideration offered in the bid will be presumed to be fair as regards the securities.

19. Are there additional restrictions or requirements on the consideration that a foreign bidder can offer to shareholders?

Foreign bidders are subject to the same rules as a national bidder.

POST-BID

Compulsory purchase of minority shareholdings

20. Can a bidder compulsorily purchase the shares of remaining minority shareholders?

When a bid has been made to all the holders of the target company's securities for all their securities, the bidder can require all the holders of the remaining securities to sell him those remaining securities at a fair price, where the bidder holds securities representing not less than 95% of the capital carrying voting rights and 95% of the voting rights in the target company. In this instance, the CSSF will ensure that rules are in force to calculate when the threshold is reached, and when the target company has issued more than one class of securities, the squeeze-out can only be exercised in respect of the class in which that threshold has been reached.

The bidder wishing to exercise its right of squeeze-out must do so within three months after the end of the acceptance period, as determined under the Takeover Law. In the case of a squeeze-out, the CSSF will ensure that a fair price is guaranteed to the remaining minority shareholders (*see Question 18*).

Restrictions on new offers

21. If a bidder fails to obtain control of the target, are there any restrictions on it launching a new offer or buying shares in the target?

The Takeover Law states, as a general principle, that a target company must not be hindered in the conduct of its affairs for longer than is reasonable by an offer for its securities. The time period cannot exceed six months from the date the decision to make a bid was made public.

The Takeover Law does not prevent a bidder from launching a new offer if the bid is not successful.

De-listing

22. What action is required to de-list a company?

To withdraw shares from trading on the Luxembourg regulated market, a reasoned request should be addressed to LSE. The board of the LSE takes into account the interests of the market, the investors and the issuer when making its decision.

The intention to de-list the shares must be fully disclosed in any takeover bid document. If an offer has been made to all remaining shareholders for their shares this is likely to facilitate the approval of the de-listing by the LSE.

The intention to de-list must be discussed with the LSE in advance.

Following the takeover bid, the target's board can resolve to de-list, and this decision to de-list must be communicated to the LSE.

TARGET'S RESPONSE

23. What actions can a target's board take to defend a hostile bid (pre- and post-bid)?

In a hostile takeover the natural reaction of the board of the target company may be to defend against the takeover and attempt to block the offer. However, this approach is not always in the best interests of the shareholders. Shareholders, rather than the target company's board, ought to be able to decide what to do with their shares.

Under Article 9 of the Takeover Directive, the target's board should remain passive before the takeover bid (the "board-passivity" rule). In addition, Article 11 of the Takeover Directive provides that restrictions on the transfer of shares, or on the voting rights of a target company (whether statutory or contractual), are not effective vis-a-vis the bidder during the acceptance period for a bid (the "breakthrough" rule). These rules were weakened by an opt-out provision given to member states in Article 12 of the Takeover Directive.

The Takeover Law gives Luxembourg companies the choice as to whether to apply the board passivity and breakthrough rules. Under the Takeover Law, during the period from publication of the offer document until publication of the results of the bid, the target's board must obtain the shareholders' prior authorisation in a general meeting before taking any action which may frustrate the bid. This does not prevent the board from seeking alternative bids.

Board decisions taken before the beginning of the bid which are not yet partly or fully implemented can be approved at the shareholders' general meeting, provided those decisions do not form part of the ordinary course of the company's business, and the shareholders' approval is not intended to frustrate the bid.

The Takeover Law provides that all restrictions on the transfer of shares or on the right to vote (either statutory or contractual) do not apply vis-a-vis the bidder during the offer acceptance period. Additionally, shares carrying multiple voting rights carry only one vote during the offer acceptance period.

If the bidder, following a bid, holds at least 75% of the capital carrying voting rights, it has the right to convene a general meeting of shareholders at short notice to modify the articles or to re-organise the administrative or management organs of the company. During this meeting all voting and transfer restrictions, as well as all special rights attached to securities, are neutralised.

Luxembourg companies have the reversible right to voluntarily apply both, or either of the board passivity and breakthrough rules (*Article 9(1), Takeover Law*). This decision must be taken at a general meeting of shareholders, where a quorum of 50% is present or represented, with a two-third majority vote of those present or represented. The decision must be notified to the CSSF and the competent authorities in any other member state(s) where the securities are admitted to trading in a regulated market.

Companies that apply the board passivity and breakthrough rules can be exempted from applying those rules if they become the object of a takeover bid launched by a company not applying those rules, provided authorisation is given at a general meeting of shareholders of the target company. This authorisation must be given no earlier than 18 months before the bid was made public.

TAX

24. Are any transfer duties payable on the sale of shares in a company that is incorporated and/or listed in the jurisdiction? Can payment of transfer duties be avoided?

No transfer tax is payable in Luxembourg on the sale of shares.

OTHER REGULATORY RESTRICTIONS

25. Are any other regulatory approvals required, such as merger control and banking? If so, what is the effect of obtaining these approvals on the public offer timetable?

No regulatory approvals are required.

26. Are there restrictions on the foreign ownership of shares (generally and/or in specific sectors)? If so, what approvals are required for foreign ownership and from whom are they obtained?

No restrictions apply under Luxembourg law.

27. Are there any restrictions on repatriation of profits or exchange control rules for foreign companies?

No restrictions apply under Luxembourg law.

28. Following the announcement of the offer, are there any restrictions or disclosure requirements imposed on persons (whether or not parties to the bid or their associates) who deal in securities of the parties to the bid?

This matter is not regulated by the Takeover Law. However, the bidder's internal discussions concerning launching a bid will automatically trigger the application of the Market Abuse Law. Therefore, all recipients (as determined by the Market Abuse Law) of inside information will be prohibited from trading the shares of the target company.

REFORM

29. Are there any proposals for the reform of takeover regulation in your jurisdiction?

There are no proposals for reform currently pending.

THE REGULATORY AUTHORITY

***Commission de Surveillance du Secteur Financier* (CSSF) (Regulatory Commission of the Financial Sector)**

W *www.cssf.lu*

Main area of responsibility. The CSSF is responsible for the prudential supervision of credit institutions, other professionals in the financial sector, undertakings for collective investment, pension funds, risk capital investment companies (SICARs), securitisation undertakings issuing securities to the public on a continuous basis, regulated markets and their operators, multilateral trading facilities and payment institutions. It also supervises the securities markets, including their operators.

The CSSF took over the responsibilities of the *Institut Monétaire Luxembourgeois* (IML) which became the *Banque centrale du Luxembourg* (BcL) on 1 June 1998, as well as the responsibilities of the former *Commissariat aux Bourses*. The recent institutional changes in the structure and the practice of prudential supervision have not altered the existing legal and regulatory framework.

The CSSF examines all applications made by undertakings or persons seeking to carry out a financial activity in Luxembourg and requiring the authorisation of the Minister responsible for the CSSF.

It acts solely in the public interest, ensures that the laws and regulations in the financial sector are enforced and observed, and that international agreements and European directives in the fields under its responsibility are implemented.

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Recent transactions

- Representing BNP Paribas in the acquisition of 75% of Fortis Bank, a majority stake in *Banque Générale du Luxembourg*, 25% of Fortis Insurance Belgium, as well as the simultaneous sale of a portfolio of structured products from Fortis Bank worth about EUR11.5 billion.
- Representing a private investor in its attempt to acquire the control over a major telecom operator.
- Representing Italy1 Investments SA in the cross-border merger process with IVS Group Holding SpA.
- Representing several underwriters in connection with the set up and IPO of several SPAC.

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Areas of practice. Capital markets; banking financial services; corporate; M&A; investment funds.

Recent transactions

- Representing Mittal Steel in its successful takeover of Arcelor.
- Representing Italy1 Investments SA in the cross-border merger process with IVS Group Holding SpA.
- Representing several underwriters in connection with the set up and IPO of several SPAC.

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