

Law of 19 May 2006 transposing Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids

(Mém. A 2006, No 86)

as amended by:

- the Law of 18 December 2015 on the resolution, reorganisation and winding up measures of credit institutions and certain investment firms and on deposit guarantee and investor compensation schemes,
 1. transposing Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council;
 2. transposing Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on Deposit Guarantee Schemes;
 3. amending:
 - a) the Law of 5 April 1993 on the financial sector, as amended;
 - b) the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended;
 - c) the Law of 5 August 2005 on financial collateral arrangements:
 - transposing Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements;
 - amending the Commercial Code;
 - amending the Law of 1 August 2001 on the circulation of securities and other fungible instruments;
 - amending the Law of 5 April 1993 on the financial sector;
 - amending the Grand-ducal Regulation of 18 December 1981 on fungible deposits of precious metals and amending Article 1 of the Grand-ducal Regulation of 17 February 1971 on the circulation of securities;
 - repealing the Law of 21 December 1994 concerning repurchase agreements;
 - repealing the Law of 1 August 2001 on the transfer of ownership for security purposes;
 - d) the Law of 19 May 2006 transposing Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids; and
 - e) the Law of 24 May 2011 on the exercise of certain rights of shareholders in general meetings of listed companies.

(Mém. A 2015, No 246)

- the Law of 20 July 2022
 - 1° amending:
 - (a) the Law of 15 March 2016 on OTC derivatives, central counterparties and trade repositories and amending different laws relating to financial services, as amended;
 - (b) the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended;
 - (c) the Law of 5 August 2005 on financial collateral arrangements, as amended;
 - (d) the Law of 19 May 2006 transposing Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids, as amended;
 - (e) the Law of 24 May 2011 on the exercise of certain rights of shareholders in listed companies, as amended;
 - (f) the Law of 18 December 2015 on the failure of credit institutions and certain investment firms, as amended; and
 - (g) Grand-ducal Regulation of 18 December 1981 on fungible deposits of precious metals and amending Article 1 of Grand-ducal Regulation of 17 February 1971 on the circulation of securities; and
 - 2° implementing Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010, (EU) No 648/2012, (EU) No 600/2014, (EU) No 806/2014 and (EU) 2015/2365 and Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132

(Mém. A 2022, No 371)

Article 1. Scope

- (1) This law applies to takeover bids for the securities of companies governed by the laws of a Member State of the European Union or the European Economic Area (hereinafter referred to as a "Member State") where all or some of those securities are admitted to trading on a regulated market in one or more Member States (hereinafter referred to as a "regulated market").
- (2) This law shall not apply to takeover bids for securities issued by companies, the object of which is the collective investment of capital provided by the public, which operate on the principle of risk-spreading and the units of which are, at the holders' request, repurchased or redeemed, directly or indirectly, out of the assets of those companies. Action taken by such companies to ensure that the stock exchange value of their units does not vary significantly from their net asset value shall be regarded as equivalent to such repurchase or redemption.
- (3) This law shall not apply to takeover bids for securities issued by the Member States' central banks.

Article 2. Definitions

- (1) For the purposes of this law, the following definitions shall apply:
 - (a) "takeover bid" or "bid" shall mean a public offer (other than by the offeree company itself) made to the holders of the securities of a company to acquire all or some of those securities, whether mandatory or voluntary, which follows or has as its objective the acquisition of control of the offeree company in accordance with national law;
 - (b) "offeree company" shall mean a company, the securities of which are the subject of a bid;
 - (c) "offeror" shall mean any natural or legal person governed by public or private law making a bid;
 - (d) "persons acting in concert" shall mean natural or legal persons who cooperate with the offeror or the offeree company on the basis of an agreement, either express or tacit, either oral or written, aimed either at acquiring control of the offeree company or at frustrating the successful outcome of a bid;
 - (e) "securities" shall mean transferable securities carrying voting rights in a company, including depositary receipts in respect of shares carrying a possibility to give instruction for a vote;
 - (f) "parties to the bid" shall mean the offeror, the members of the offeror's board if the offeror is a company, the offeree company, holders of securities of the offeree company and the members of the board of the offeree company, and persons acting in concert with such parties;
 - (g) "multiple-vote securities" shall mean securities included in a distinct and separate class and carrying more than one vote each;
 - (h) "representatives of the employees" shall mean the authority given to employee representatives [*les instances de représentants de travailleurs*] in accordance with:
 - the Law of 18 May 1979 on the reformation of personnel delegations, as amended;
 - the Law of 6 May 1974 regarding the establishment of mixed committees in undertakings of the private sector and organising the representation of employees in public limited companies (*sociétés anonymes*);
 - the Law of 28 July 2000 regarding the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees.

- (2) For the purposes of paragraph 1(d), persons controlled by another person within the meaning of Directive 2004/109/EC shall be deemed to be persons acting in concert with that other person and with each other.

Article 3. General principles

The following principles shall be complied with in case of a takeover bid:

- (a) 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;
- (b) 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;
- (c) 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;
- (d) false markets must not be created in the securities of the offeree company, of the offeror company or of 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;
- (e) an offeror must announce a bid only after ensuring that he/she can fulfil in full any cash consideration, if such is offered, and after taking all reasonable measures to secure the implementation of any other type of consideration;
- (f) an offeree company must not be hindered in the conduct of its affairs for longer than is reasonable by a bid for its securities. In any event this period shall not exceed 6 months from the date when the decision to make a takeover bid was made public by the offeror.

Article 4. Supervisory authority and applicable law

- (1) The Commission de surveillance du secteur financier (hereinafter referred to as the "CSSF"¹) is the competent authority to supervise bids for the purposes of the rules which they make or introduce pursuant to this law. It shall exercise its functions impartially and independently of all parties to a bid.
- (2)
 - (a) 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 a regulated market in Luxembourg.
 - (b) 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.

If the offeree company's securities are admitted to trading on regulated markets in more than one Member State, the authority competent to supervise the bid shall be that of the Member State on the regulated market of which the securities were first admitted to trading.
 - (c) If the offeree company's securities were first admitted to trading on regulated markets in more than one Member State simultaneously, the offeree company shall determine which of the supervisory authorities of those Member States shall be the authority competent to supervise the bid by notifying those regulated markets and their supervisory authorities on the first day of trading.

¹ Article II(a)(i) of the Law of 28 April 2011 (Mém. A 2011, No. 81) replaces the term "Commission" by the term "CSSF"

If the offeree company's securities have already been admitted to trading on regulated markets in more than one Member State on 20 May 2006 and were admitted simultaneously, the supervisory authorities of those Member States shall agree which one of them shall be the authority competent to supervise the bid within four weeks of 20 May 2006.

Otherwise, the offeree company shall determine which of those authorities shall be the competent authority on the first day of trading following that four-week period.

- (d) The CSSF shall ensure that the decisions referred to in (c) are made public.
 - (e) In the cases referred to in (b) and (c), matters relating to the consideration offered in the case of a bid, in particular the price, and matters relating to the bid procedure, in particular 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 Member State of the competent authority. In matters relating to the information to be provided to the employees of the offeree company and in matters relating to company law, in particular the percentage of voting rights which confers control and any derogation from the obligation to launch a bid, as well as the conditions under which the board of the offeree company may undertake any action which might result in the frustration of the bid, the applicable rules and the competent authority shall be those of the Member State in which the offeree company has its registered office.
- (3) All persons performing a duty for the CSSF shall, for the purposes of this law, be bound by the obligation of professional secrecy. This obligation continues beyond the cessation of their duties. No information covered by professional secrecy may be divulged to any person or authority except under provisions laid down by law under the conditions as defined in Article 16 of the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier").
 - (4) The CSSF as well as the supervisory authorities of the Member States for the purposes of this law and other authorities supervising capital markets, in particular in accordance with Directive 2004/39/EC, Directive 2001/34/EC, Directive 2004/109/EC, Directive 2003/6/EC and Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading shall cooperate and supply each other with information wherever necessary for the application of the rules drawn up in accordance with this law and in particular in cases covered by paragraph 2(b), (c) and (e). Information thus exchanged shall be covered by the obligation of professional secrecy to which persons employed or formerly employed by the supervisory authorities receiving the information are subject. Cooperation shall include the ability to serve the legal documents necessary to enforce measures taken by the competent authorities in connection with bids, as well as such other assistance as may reasonably be requested by the supervisory authorities concerned for the purpose of investigating any actual or alleged breaches of the rules made or introduced pursuant to Directive 2004/25/EC.
 - (5) Provided that the general principles laid down in Article 3 are respected, the CSSF is authorised, in the field of competence defined by this law, not to apply, in particular circumstances, the provisions of Articles 3(f), in fine; Article 5(1) and (3), Article 6(1) and (3), Article 7(1), Article 11(1) and Article 13, subparagraph (1)(d). A specially reasoned decision is required in this case.

Article 5. Protection of minority shareholders, the mandatory bid and the equitable price

- (1) Where a natural or legal person, as a result of his/her own acquisition or the acquisition by persons acting in concert with him/her, obtains securities of a company as referred to in Article 1(1), which, added to any existing holdings of those securities of his/hers and the holdings of those securities of persons acting in concert with him/her, directly or indirectly give him/her a specified percentage of voting rights in that company, giving him/her control of that company, such a person is required to make a bid as a means of protecting the minority shareholders of that company. Such a bid shall be addressed at the earliest opportunity to all the holders of those securities for all their holdings at the equitable price as defined in paragraph 4.

- (2) Where control has been acquired following a voluntary bid made in accordance with this law to all the holders of securities for all their holdings, the obligation laid down in paragraph 1 to launch a bid shall no longer apply.
- (3) The percentage of voting rights which confers control for the purposes of paragraph 1 and the method of its calculation shall be determined by the rules of the Member State in which the offeree company has its registered office.

For companies whose registered office is located in Luxembourg, the percentage of voting rights is set at 33 1/3%. When calculating this percentage, all the securities of the company shall be taken into account excluding the securities carrying voting rights only in specific circumstances.

- (4) The highest price paid for the same securities by the offeror, or by persons acting in concert with him/her, over a period of twelve months before the bid referred to in paragraph 1 shall be regarded as the equitable price. If, after the bid has been made public and before the offer closes for acceptance, the offeror or any person acting in concert with him/her purchases securities at a price higher than the offer price, the offeror shall increase his/her offer so that it is not less than the highest price paid for the securities so acquired.

Provided that the general principles laid down in Article 3 are respected, the CSSF is authorised to adjust the price referred to in the first subparagraph. The highest price may only be adjusted either upwards or downwards where the highest price was set by agreement between the purchaser and a seller, or where the market prices of the securities in question have been manipulated, where market prices in general or certain market prices in particular have been affected by exceptional occurrences, or in order to enable a firm in difficulty to be rescued. The CSSF shall in such cases apply clearly defined criteria which can be the average market value over a particular period, the break-up value of the company or other objective valuation criteria generally used in financial analysis.

A grand-ducal regulation may provide other circumstances in which market errors could have an impact on the setting of the price according to the first subparagraph of this paragraph.

Any decision by the CSSF to adjust the equitable price shall be substantiated and made public.

- (5) By way of consideration the offeror may offer securities, cash or a combination of both.

However, where the consideration offered by the offeror does not consist of liquid securities admitted to trading on a regulated market, it shall include a cash alternative. The liquidity of the securities of the offeror is deemed sufficient if at least 25% of the subscribed capital of the offeror represented by this class of securities are distributed to the public or where, due to the large number of securities of a same class and the extent of their spread in the public, a regular functioning of the market can be ascertained through a lesser percentage.

In any event, the offeror shall offer a cash consideration at least as an alternative where he/she or persons acting in concert with him/her, over a period beginning at the same time as the period in accordance with paragraph 4 and ending when the offer closes for acceptance, has purchased for cash securities carrying 5% or more of the voting rights in the offeree company.

(Law of 18 December 2015)

- (6) The obligation to launch a bid laid down in paragraph 1 shall not apply in the case of the use of resolution tools, powers and mechanisms provided for in Part I, Title II, Chapters III to XI of the Law of 18 December 2015 on the failure of credit institutions or certain investment firms "or under Title V of Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010, (EU) No 648/2012, (EU) No 600/2014, (EU) No 806/2014 and (EU) 2015/2365 and Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132 (hereinafter referred to as "Regulation (EU) 2021/23")"²."

² Law of 20 July 2022

Article 6. Information concerning bids

- (1) The decision to make a bid shall be made public by the offeror immediately after the decision has been taken by the offeror and the CSSF shall be informed of this bid before such decision is made public. As soon as the bid has been made public, the boards of the offeree company and of the offeror shall inform the representatives of their respective employees or, where there are no such representatives, the employees themselves.
- (2) The offeror is required to draw up and make public in good time an offer document containing the information necessary to enable the holders of the offeree company's securities to reach a properly informed decision on the bid. Before this document is made public, the offeror shall communicate it to the CSSF for approval within ten working days from the day on which the bid has been made public.

The CSSF notifies its decision concerning the approval of the offer document within thirty working days following the submission of the draft offer document.

If there are reasonable grounds for the CSSF to consider that the document submitted is incomplete or that additional information is necessary, the CSSF shall inform the offeror within ten working days following the day the offer document has been submitted for approval. In this case, the time delay set out in the second subparagraph of this paragraph only runs from the date on which the offeror provides the required information.

The offer document is drawn up in a language accepted by the CSSF. An offer document drawn up in Luxembourgish, French, German, or English is acceptable in any case.

By approving the offer document, the CSSF is not bound by the economical and financial soundness of the operation or the quality or solvability of the offeror or the offeree company.

When the bid is made public, the boards of the offeree company and of the offeror shall communicate it to the representatives of their respective employees or, where there are no such representatives, the employees themselves.

The representatives of the employees, or where there are no such representatives, the employees themselves shall then be involved by the boards in their analysis which shall lead to the drawing up of an opinion on the bid in accordance with Article 10(5) of this law.

The board shall inform and require the advice of the representatives of the employees, or where there are no employee representatives, the employees themselves, in particular as regards the effects of the bid on all the company's interests specifically as regards employment.

In the event of a bid for which the CSSF is not competent in accordance with Article 4, the offer document shall be recognised in Luxembourg, subject to its approval by the competent authority and a translation into Luxembourgish, French, German or English, where the securities of the offeree company are admitted to trading in Luxembourg, without it being necessary to obtain the approval of the CSSF. The CSSF may require the inclusion of additional information in the offer document only if such information is specific to the Luxembourg market and relates to the formalities to be complied with to accept the bid and to receive the consideration due at the close of the bid as well as to the tax arrangements to which the consideration offered to the holders of the securities will be subject.

- (3) The offer document referred to in paragraph 2 shall state at least:
 - (a) the terms of the bid;
 - (b) the identity of the offeror and, where the offeror is a company, the type, name and registered office of that company;
 - (c) the securities or, where appropriate, the class or classes of securities for which the bid is made;
 - (d) the consideration offered for each security or class of securities and, in the case of a mandatory bid, the method employed in determining it, with particulars of the way in which that consideration is to be paid;

- (e) the compensation offered for the rights which might be removed as a result of the breakthrough rule laid down in Article 12(4), with particulars of the way in which that compensation is to be paid and the method employed in determining it;
 - (f) the maximum and minimum percentages or quantities of securities which the offeror undertakes to acquire;
 - (g) details of any existing holdings of the offeror, and of persons acting in concert with him/her, in the offeree company;
 - (h) all the conditions to which the bid is subject;
 - (i) the offeror's intentions with regard to the future business of the offeree company and, in so far as it is affected by the bid, the offeror company and with regard to the safeguarding of the jobs of their employees and management, including any material change in the conditions of employment, and in particular the offeror's strategic plans for the two companies and the likely repercussions on employment and the locations of the companies' places of business;
 - (j) the time allowed for acceptance of the bid;
 - (k) where the consideration offered by the offeror includes securities of any kind, information concerning those securities;
 - (l) information concerning the financing for the bid;
 - (m) the identity of persons acting in concert with the offeror or with the offeree company and, in the case of companies, their types, names, registered offices and relationships with the offeror and, where possible, with the offeree company;
 - (n) the national law which will govern contracts concluded between the offeror and the holders of the offeree company's securities as a result of the bid and the competent courts.
- (4) The parties to a bid are required to provide the supervisory authorities of their Member State at any time on request with all the information in their possession concerning the bid that is necessary for the supervisory authority to discharge its functions.

Article 7. Time allowed for acceptance

- (1) The time allowed for the acceptance of a bid may not be less than two weeks nor more than 10 weeks from the date of publication of the offer document. Provided that the general principle laid down in Article 3(f) is respected, the period of 10 weeks may be extended on condition that the offeror gives at least two weeks' notice of his/her intention of closing the bid.
- (2) The CSSF may grant a derogation from the period referred to in paragraph 1 in order to allow the offeree company to call a general meeting of shareholders to consider the bid.
- (3) Where the offeror acquires control of the offeree company, the holders of securities that have not accepted the bid until the closing of the acceptance period of the bid have the opportunity to accept this bid within fifteen days from the date of publication laid down in the first subparagraph of Article 13, point (d)(iii), except in the case of a mandatory offer referred to in Article 5(1).

Article 8. Information concerning bids

- (1) The disclosure of the bid shall ensure market transparency and integrity for the securities of the offeree company, of the offeror or of any other company affected by the bid, in particular in order to prevent the publication or dissemination of false or misleading information.
- (2) The CSSF shall determine how to carry out the disclosure of all information and documents required by Article 6 in such a manner as to ensure that they are both readily and promptly available to the holders of securities at least in those Member States on the regulated markets of which the offeree company's securities are admitted to trading and to the representatives of the employees of the offeree company and the offeror or, where there are no such representatives, to the employees themselves.

Article 9. Optional arrangements

- (1) The companies which have their registered office within the territory of Luxembourg have the option, which shall be reversible, of submitting to the provisions of Article 10(2) and (3) and Article 12, or only to one of both, without prejudice to Article 12(7).
- (2) The decision of the company shall be taken by the general meeting of shareholders, in accordance with the rules applicable to amendment of the articles of association. The decision shall be communicated to the CSSF and to all the supervisory authorities of Member States in which its securities are admitted to trading on regulated markets or where such admission has been requested.
- (3) The companies which apply Article 10(2) and (3), or Article 12 are exempt from applying Article 10(2) and (3), or Article 12 if they become the subject of an offer launched by a company which does not apply the same articles as they do, or by a company controlled, directly or indirectly, by the latter, pursuant to Article 1 of Directive 83/349/EEC.
- (4) The CSSF shall ensure that the provisions applicable to the respective companies are disclosed without delay.
- (5) Any measure applied in accordance with paragraph 3 shall be subject to the authorisation of the general meeting of shareholders of the offeree company, which must be granted no earlier than eighteen months before the bid was made public in accordance with Article 6(1).

Article 10. Obligations of the board of the offeree company

- (1) The rules laid down in paragraphs 2 and 3 have to be complied with where a company has voluntarily submitted to them in accordance with Article 9, without prejudice to the provisions relating to a possible exemption in accordance with Article 9.
- (2) During the period referred to in the second subparagraph, the board of the offeree company shall obtain the prior authorisation of the general meeting of shareholders given for this purpose before taking any action, other than seeking alternative bids, which may result in the frustration of the bid and in particular before issuing any shares which may result in a lasting impediment to the offeror's acquiring control of the offeree company.

Such authorisation shall be mandatory from the time the board of the offeree company receives the information referred to in the first sentence of Article 6(1) concerning the bid and until the result of the bid is made public or the bid lapses.

- (3) As regards decisions taken before the beginning of the period referred to in the second subparagraph of paragraph 2 and not yet partly or fully implemented, the general meeting of shareholders shall approve or confirm any decision which does not form part of the normal course of the company's business and the implementation of which may result in the frustration of the bid.
- (4) For the purpose of obtaining the prior authorisation, approval or confirmation of the holders of securities referred to in paragraphs 2 and 3, a general meeting of shareholders may be called, by a single notice published in the Mémorial and a Luxembourg newspaper at least two weeks prior to the meeting. The same also applies to a postponement of the general meeting.
- (5) The board of the offeree company shall draw up and make public a document setting out its opinion of the bid and the reasons on which it is based, including its views on the effects of implementation of the bid on all the company's interests and specifically employment, and on the offeror's strategic plans for the offeree company and their likely repercussions on employment and the locations of the company's places of business as set out in the offer document in accordance with Article 6(3)(i). Before setting out its opinion, the board shall consult with the representatives of the employees of the company or, where there are no such representatives, with the employees themselves. Where the board receives in good time a separate opinion from the representatives of its employees on the effects of the bid on employment, that opinion shall be appended to the document.

- (6) For the purposes of paragraph 2, where a company has a two-tier board structure “board” shall mean both the management board and the supervisory board.

Article 11. Information on companies as referred to in Article 1(1)

- (1) The companies listed in Article 1(1) shall publish detailed information on the following:
- (a) the structure of their capital, including securities which are not admitted to trading on a regulated market in a Member State, where appropriate with an indication of the different classes of shares and, for each class of shares, the rights and obligations attaching to it and the percentage of total share capital that it represents;
 - (b) any restrictions on the transfer of securities, such as limitations on the holding of securities or the need to obtain the approval of the company or other holders of securities, without prejudice to Article 46 of Directive 2001/34/EC;
 - (c) significant direct and indirect shareholdings (including indirect shareholdings through pyramid structures and cross-shareholdings) within the meaning of Directive 2004/109/EC;
 - (d) the holders of any securities with special control rights and a description of those rights;
 - (e) the system of control of any employee share scheme where the control rights are not exercised directly by the employees;
 - (f) any restrictions on voting rights, such as limitations of the voting rights of holders of a given percentage or number of votes, deadlines for exercising voting rights, or systems whereby, with the company’s cooperation, the financial rights attaching to securities are separated from the holding of securities;
 - (g) any agreements between shareholders which are known to the company and may result in restrictions on the transfer of securities or voting rights within the meaning of Directive 2004/109/EC;
 - (h) the rules governing the appointment and replacement of board members and the amendment of the articles of association;
 - (i) the powers of board members, and in particular the power to issue or buy back shares;
 - (j) any significant agreements to which the company is a party and which take effect, alter or terminate upon a change of control of the company following a takeover bid, and the effects thereof, except where their nature is such that their disclosure would be seriously prejudicial to the company; this exception shall not apply where the company is specifically obliged to disclose such information on the basis of other legal requirements;
 - (k) 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.
- (2) The companies with registered office in Luxembourg shall publish the information referred to in paragraph 1 in the company’s management report pursuant to Article 68 of the Law of 19 December 2002 concerning the trade and companies register, as well as the accounting and annual accounts of companies, and in the consolidated management report pursuant to Article 339 of the Law of 10 August 1915 on commercial companies as amended.
- (3) The board of such companies shall present an explanatory report to the annual general meeting of shareholders on the matters referred to in paragraph 1.

Article 12. Breakthrough

- (1) Without prejudice to the other rights and obligations provided for in the current laws and regulations for companies referred to in Article 1(1), the provisions laid down in paragraphs 2 and 7 apply when a bid has been made public and when a company has voluntarily submitted to them in accordance with Article 9, without prejudice to the provisions relating to a possible exemption in accordance with Article 9.

- (2) Any restrictions on the transfer of securities provided for in the articles of association of the offeree company shall not apply vis-à-vis the offeror during the time allowed for acceptance of the bid laid down in Article 7(1).

Any restrictions on the transfer of securities provided for in contractual agreements between the offeree company and holders of its securities, or in contractual agreements between holders of the offeree company's securities entered into after 21 April 2004, shall not apply vis-à-vis the offeror during the time allowed for acceptance of the bid laid down in Article 7(1).

- (3) Restrictions on voting rights provided for in the articles of association of the offeree company shall not have effect at the general meeting of shareholders which decides on any defensive measures in accordance with Article 10.

Restrictions on voting rights provided for in contractual agreements between the offeree company and holders of its securities, or in contractual agreements between holders of the offeree company's securities entered into after 21 April 2004, shall not have effect at the general meeting of shareholders which decides on any defensive measures in accordance with Article 10.

Multiple-vote securities shall carry only one vote each at the general meeting of shareholders which decides on any defensive measures in accordance with Article 10.

- (4) Where, following a bid, the offeror holds 75% or more of the capital carrying voting rights, no restrictions on the transfer of securities or on voting rights referred to in paragraphs 2 and (3) nor any extraordinary rights of shareholders concerning the appointment or removal of board members provided for in the articles of association of the offeree company shall apply; multiple-vote securities shall carry only one vote each at the first general meeting of shareholders following closure of the bid, called by the offeror in order to amend the articles of association or to remove or appoint board members.

To that end, the offeror shall have the right to convene a general meeting of shareholders under the same conditions as those laid down in Article 10(4).

- (5) Where rights are removed on the basis of paragraphs 2, 3 or 4 of this article or Article 9, equitable compensation shall be provided for any loss suffered by the holders of those rights. The CSSF shall approve the terms for determining such compensation and the arrangements for its payment.
- (6) Paragraphs 3 and 4 shall not apply to securities where the restrictions on voting rights are compensated for by specific pecuniary advantages.
- (7) This article shall not apply either where Member States hold securities in the offeree company which confer special rights on the Member States which are compatible with the Treaty on European Union, or to special rights provided for in national law which are compatible with the Treaty or to cooperatives.

Article 13. Other rules applicable to the conduct of bids

The following rules relating to the lapsing of bids, the revision of bids, competing bids, disclosure of the results of bids and the irrevocability of bids respectively, shall apply and the CSSF shall ensure that they are complied with.

- (a) The bid lapses where the CSSF notes that the general principles laid down in Article 3 of this law are manifestly not being complied with within the scope of that bid and where one of the conditions precedent of the bid has not been satisfied.
- (b) From the prior information provided by the offeror to the CSSF in accordance with Article 6(1) of this law, the terms of the bid can no longer be amended, except in a more profitable way for the holders of securities of the offeree company. Any price increase of the bid shall mandatorily benefit the holders of securities who have accepted the bid prior to such increase and the acceptances of the bid prior to the publication of the offer document shall not bind the holders of securities. Where such an amendment to the terms has taken place, the closing of the bid shall only be possible following a reasonable time period after the publication of the amendments.

- (c) Where a competing bid is made, the acceptance period of the initial bid shall be automatically extended and expire at the same time as the acceptance period of the competing bid. The holders of securities that have accepted an offer are automatically released from their acceptance in case of a competing offer.
- (d) The offeror is required to communicate to the CSSF and to disclose the number of securities, specifying the number of inherent voting rights, for which his/her bid has been accepted or which belong to him/her, in one way or in another, or to the persons acting in concert respectively:
 - (i) every 7 days from the publication of the offer document;
 - (ii) every morning of the last 7 days of the acceptance period; and
 - (iii) on the evening of the last day of the acceptance period.
- (e) The offeror, on his part, commits to bringing the bid to its close in accordance with the terms approved by the CSSF. From the date of publication of the offer document, the bid can only be withdrawn in the following cases:
 - (i) where there is a competing bid;
 - (ii) where the administrative authorisation required for the acquisition of the securities which are the subject matter of the bid is missing and in particular assuming the transaction could not take place following a decision by the authorities responsible for ensuring free competition;
 - (iii) where, independently of the offeror's intention, one of the terms of the bid is not fulfilled;
 - (iv) subject to the duly motivated authorisation by the CSSF, in case of exceptional circumstances which do not allow the bid to be completed independently of the offeror's intention.

The holders of securities who have accepted the offer can validly withdraw in case one of the provisions of this law has not been complied with by the offeror or a person acting in concert with the latter.

The withdrawal of the bid shall be notified to the CSSF. The CSSF shall publish this withdrawal at the latest on the day after receipt of such notification, at the cost of the offeror and in accordance with the procedures it shall determine.

These rules can be specified by grand-ducal regulation.

Article 14. Information for and consultation of employees' representatives

This law shall be without prejudice to the rules relating to information and to consultation of representatives of and, where appropriate, co-determination with the employees of the offeror and the offeree company governed by the relevant national provisions, and in particular those adopted pursuant to Directives 94/45/EC, 98/59/EC, 2001/86/EC and 2002/14/EC.

Representatives within the meaning of this article shall also include the authority of employee representatives defined in Article 2(1)(h).

Article 15. The right of squeeze-out

- (1) Following a bid made to all the holders of the offeree company's securities for all of their securities, paragraphs 2 to 5 shall apply.
- (2) An offeror is able to require all the holders of the remaining securities to sell him/her those securities at a fair price where the offeror holds securities representing not less than 95% of the capital carrying voting rights and 95% of the voting rights in the offeree company.
- (3) The CSSF shall ensure that rules are in force that make it possible to calculate when the threshold is reached.

Where the offeree company has issued more than one class of securities, the right of squeeze-out can be exercised only in the class in which the threshold laid down in paragraph 2 has been reached.

- (4) If the offeror wishes to exercise the right of squeeze-out, he/she shall do so within 3 months of the end of the time allowed for acceptance of the bid referred to in Article 7.
- (5) The CSSF shall ensure that a fair price is guaranteed. That price shall take the same form as the consideration offered in the bid or shall be in cash. Cash shall be offered at least as an alternative.

Following a voluntary bid, in the case referred to in paragraph 2, the consideration offered in the bid shall be presumed to be fair for the securities where, through acceptance of the bid, the offeror has acquired securities representing not less than 90% of the capital carrying voting rights comprised in the bid.

Following a mandatory bid, the consideration offered in the bid shall be presumed to be fair for the securities.

Article 16. The right of sell-out

- (1) Where a natural or legal person, as a result of an offer to all holders of securities of an offeree company, holds alone or together with persons acting in concert with him/her, securities carrying more than 90% of the voting rights in a company to which this law applies, a holder of securities may require such person to buy his/her securities at a fair price as defined in Article 15(5), payable in cash or liquid securities as provided in Article 5(5) with an option for the holder that such price be settled in cash.
- (2) Article 15(3) to (5) shall apply mutatis mutandis.

Article 17. Sanctions

- (1) In case of infringements of this law which are likely to breach the general principles set out in Article 3(a) to (e), the CSSF can impose a fine between EUR 125 and EUR 12,500.
- (2) A term of imprisonment of between 8 days and five years and a fine of between EUR 251 and EUR 125,000 or only one of these sanctions shall apply:
 - 1° to such persons who omit to notify the CSSF prior to a bid in accordance with Article 6(1) of this law,
 - 2° to such persons who refuse to provide the CSSF with the information they are required to submit in accordance with the third subparagraph of Article 6(2) of this law or who knowingly provide incorrect or incomplete information,
 - 3° to such persons who omit to provide the offer document to the representatives of the employees or, where there are no such representatives, to the employees themselves in accordance with subparagraph (5) of Article 6(2) of this law.

Article 18. Remedies

An action for annulment may be brought in the Administrative Tribunal [*Tribunal Administratif*] against decisions taken by the CSSF pursuant to this law. However, a full review of the merits of the decision may be sought against decisions by the CSSF imposing a sanction.

Article 19. Amending provision³

Article 20. Transitional provisions

- (1) This law applies to all bids for which an offer document was published prior to the entry into force of this law without having to repeat those steps validly completed. In particular, the offer document that has already been published does not need to be redone, provided that its content complies with the minimum requirements prescribed by this law.

³ This provision is not included in this coordinated version

- (2) The sanctions laid down in Article 17(2) only apply to such offences committed after the entry into force of this law.

Article 21. Entry into force

This law shall enter into force on the day of its publication in the Mémorial.