

In case of discrepancies between the French and the English text, the French text shall prevail.

Law of 21 July 2012 on mandatory squeeze-out and sell-out of securities of companies currently admitted or previously admitted to trading on a regulated market or having been offered to the public and amending the law of 23 December 1998 establishing a financial sector supervisory commission.

Art. 1. - Definitions

For the purposes of this law, the following definitions shall apply:

- (1) "majority shareholder" means any natural or legal person, holding alone or with persons acting in concert with it, directly or indirectly, at least 95 percent of a company's capital carrying voting rights and 95 percent of a company's voting rights;
- (2) "CSSF" means the Commission de surveillance du secteur financier;
- (3) "Member State" means a Member State of the European Union. The States that are contracting parties to the Agreement of the European Economic Area ("EEA") other than the Member States of the European Union, within the limits set forth by this agreement and related acts, shall be considered as equivalent to Member States of the European Union.
- (4) "persons acting in concert" means natural or legal persons which cooperate with a holder of securities on the basis of an agreement, either express or tacit, either oral or written, aimed at controlling the company;
- (5) "securities" means transferable securities carrying voting rights in a company, including depositary receipts in respect of shares carrying the possibility to give voting instructions.

Art. 2. - Scope

(1) This law governs the mandatory squeeze-out, the mandatory sell-out and certain notification and disclosure obligations, where 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 several Member States; or
- (ii) were admitted on a regulated market in one or several Member States, but are no longer admitted, provided that the date on which the withdrawal from trading on such a regulated market has become effective not more than five years earlier; or
- (iii) were offered to the public, which triggered the obligation to publish a prospectus in accordance with Article 3 of Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 or for which the obligation to publish a prospectus did not apply in accordance with Article 4(1) of this Directive, where the offer did not start more than five years earlier.

(2) This law shall not apply to companies the object of which is the collective investment of capital raised from the public, which operate on the principle of risk-spreading and the units of which are, at the holders' request, repurchased, 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.

(3) This law shall not apply to takeover bids made in accordance with Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 concerning takeover bids, until expiry of any deadline laid down for any ensuing rights resulting from such a bid and for a period of six months as from the expiry of such deadline.

Art. 3. - Notification and information requirements

(1) A holder of securities shall notify the information set out in paragraph (3) to the company concerned and to the CSSF where:

- (i) s/he becomes a majority shareholder within the meaning of this law;
- (ii) s/he is a majority shareholder within the meaning of this law and falls below one of the thresholds laid down in Article 1(1);
- (iii) s/he is a majority shareholder within the meaning of this law and acquires additional securities of the company concerned.

(2) The notification referred to in paragraph (1) shall be effected as soon as possible but not later than four working days, the first of which shall be the working day after that on which the holder of securities learns of the effective acquisition or disposal, or of the possibility of exercising or not the voting rights, or on which s/he should have learnt of it, having regard to the circumstances, regardless of the date on which the acquisition, disposal or possibility of exercising the voting rights takes effect.

(3) The notification shall at least include the following information:

- (a) the exact percentage of the holding;
- (b) a description of the transaction that triggered the notification requirement;
- (c) the date on which the operation became effective;
- (d) the identity of the shareholder; and
- (e) the way securities are held.

The CSSF may require the holder of securities to provide the CSSF as well as the company concerned with any other useful information that allows it to exercise its mission imposed by this law. Paragraphs (4) and (5) also apply to this kind of information.

(4) Upon receipt of the notification but not later than three working days thereafter, the company concerned shall make public all the information contained in the notification in a manner ensuring fast access to such information and on a non-discriminatory basis. The company shall ensure that the information is also communicated or sent to the holders of securities that are not admitted to trading on a regulated market in one or several Member States through the usual channels of communication or dispatch to these holders.

(5) The CSSF shall publish on its website, during a period of at least twelve months, a list of the companies for which this information has been validly notified.

Art. 4. – Mandatory squeeze-out

(1) Where a holder of securities of a company referred to in this law is or becomes a majority shareholder within the meaning of this law, s/he may require all the holders of the remaining securities to sell him/her their securities, provided that the conditions referred to in Article 2(1) are fulfilled at the time the CSSF is informed as required under paragraph (3). A majority shareholder that decides to exercise his/her mandatory squeeze-out right must ensure that s/he can fulfil in full any cash consideration.

(2) Where the company concerned has issued more than one class of securities, the mandatory squeeze-out right may be exercised only in the class in which the threshold of 95% of securities held in this class has been reached, provided however that the thresholds referred to in Article 1(1) have also been reached for all the securities issued, irrespective of the class. Where, for a given class of securities, the company concerned or an entity belonging to the group of this company issued transferable securities negotiable on the capital market that give the right to acquire a security of this class or which allow access to a security of this class as a consequence of their being converted or the rights conferred by them being exercised, the majority shareholder may at the same time require all the remaining holders of those transferable securities to sell him/her their securities following the mandatory squeeze-out relating to the class of securities concerned.

(3) As soon as a majority shareholder decides to exercise his/her right of mandatory squeeze-out, s/he must inform the CSSF in the first instance and beforehand and commit to bringing this mandatory squeeze-out to conclusion. The majority shareholder shall then inform the company

concerned thereof and make his/her decision public without delay in a manner ensuring fast access to this decision and on a non-discriminatory basis. The company concerned shall ensure that the information is also communicated or sent to the holders of transferable securities covered by the mandatory squeeze-out and that are not admitted to trading on a regulated market in one or several Member States through the usual channels of communication or dispatch to these holders. The CSSF shall define the content and the form of the required information which shall include at least the following elements:

- (a) identity and contact details of the majority shareholder;
- (b) the name of the expert the majority shareholder intends to appoint to determine the fair price in accordance with paragraph (5);
- (c) the methods of payment laid down; and
- (d) the other conditions governing the mandatory squeeze-out.

(4) The mandatory squeeze-out must be exercised at a fair price according to objective and adequate methods applying to asset disposals.

(5) Within the month following the notification of the exercise of the right of mandatory squeeze-out in accordance with paragraph (3), the majority shareholder shall communicate to the CSSF the proposed price and a valuation report of the securities and, where applicable, of the other transferable securities covered by the mandatory squeeze-out. The majority shareholder shall then provide the company concerned with and make public without delay the proposed price with the valuation report in a manner ensuring fast access to this information and on a non-discriminatory basis. The company concerned shall ensure that the information is also communicated or sent to the holders of transferable securities covered by the mandatory squeeze-out and that are not admitted to trading on a regulated market in one or several Member States through the usual channels of communication or dispatch to these holders.

This valuation report, the costs of which shall be borne by the majority shareholder, shall be drawn up by an expert of his/her choice, independent from any party concerned, and who is not involved in any conflict of interest. The independent expert shall have professional experience in the field of valuing transferable securities and draw up his/her valuation report according to objective and adequate methods.

The CSSF may require the management or executive body of the company concerned to take up a position on the price proposed by the majority shareholder. The CSSF may also require the publication of this position.

(6) Every remaining holder of securities or of other transferable securities concerned by the mandatory squeeze-out may oppose this mandatory squeeze-out project. The deadline to file an opposition is one month as from the date on which the proposed price was made public in accordance with paragraph (5). The opposition, setting out the reasons thereof, shall be made by registered letter with acknowledgement of receipt sent to the CSSF and within one month from the date on which the proposed price was made public in accordance with paragraph (5). A copy of the letter shall be sent within the same time period *via* registered letter with acknowledgement of receipt to the majority shareholder and to the company concerned.

In the absence of any opposition made in accordance with this paragraph, the CSSF accepts the proposed price as fair price and informs the majority shareholder and the company concerned thereof. After having been informed by the CSSF, the majority shareholder shall, as soon as possible and in a manner ensuring fast access to this information and on a non-discriminatory basis, make public the information on the final date and payment conditions. The company concerned shall ensure that the information is also communicated or sent to the holders of transferable securities covered by the mandatory squeeze-out and that are not admitted to trading on a regulated market in one or several Member States through the usual channels of communication or dispatch to these holders.

The price accepted by the CSSF as fair price is validly published on its website.

(7) Where one or several remaining holders of the securities or of other transferable securities file opposition in accordance with paragraph (6), the CSSF may, based on reasons stated in the opposition(s), require the company concerned to propose five experts fulfilling each the

requirements of paragraph (5), subparagraph 2.

The CSSF shall appoint one of the proposed experts to submit a second valuation report of the class(es) of securities, and, where applicable, of the other transferable securities concerned by the opposition. Such expert shall refer to the publication date of the proposed price by the majority shareholder in accordance with paragraph (5) of this Article to value the fair price. The expert shall provide the CSSF, the company concerned and the majority shareholder with the valuation report by the deadline set by the CSSF. The majority shareholder shall then make public without delay the second valuation report in a manner ensuring fast access to this information and on a non-discriminatory basis. The company concerned shall ensure that the information is also communicated or sent to the holders of transferable securities covered by the mandatory squeeze-out and that are not admitted to trading on a regulated market in one or several Member States through the usual channels of communication or dispatch to these holders. The costs of drawing up the valuation report shall be borne by the majority shareholder.

In the event of an opposition, the CSSF shall decide on the price to be paid by the majority shareholder within three months from the expiry of the opposition deadline or, if the CSSF requires a second valuation report, within three months following receipt of this second report. The CSSF shall notify its decision to the majority shareholder and to the company concerned. Following the CSSF's decision, the majority shareholder shall, as soon as possible and in a manner ensuring fast access to such information and on a non-discriminatory basis, make public the information on the final date and payment conditions. The company concerned shall ensure that the information is also communicated or sent to the holders of transferable securities covered by the mandatory squeeze-out and that are not admitted to trading on a regulated market in one or several Member States through the usual channels of communication or dispatch to these holders.

The CSSF's decision is validly published on its website.

(8) The securities and the other transferable securities concerned by the mandatory squeeze-out that have not been presented at the latest on the final payment date referred to in the previous paragraph, whether the owner came forward or not, are deemed transferred *ipso jure* to the majority shareholder with the consignment of the price on the first working day following that date.

(9) Where the mandatory squeeze-out is under way, no sell-out procedure shall be made before the squeeze-out procedure has been finalised.

Art. 5. - Mandatory sell-out

(1) Where, through the acquisition of securities made alone or by persons acting in concert with her/him, a holder of securities of a company referred to in this law becomes a majority shareholder within the meaning of this law, or, if s/he is already a majority shareholder, acquires additional securities of the company concerned, one or several holders of the remaining securities may require this majority shareholder to buy these securities on the condition however that the date on which the CSSF is informed in accordance with paragraph (2) of the exercise of the right of mandatory sell-out is at a time where:

- (i) the conditions laid down in Article 2(1) are fulfilled;
- (ii) the publication of the acquisition in accordance with Article 3 has not been made more than three months earlier; and
- (iii) the last mandatory sell-out initiated by a holder of the securities of the company concerned must have been at least two years earlier than the publication on its website of the CSSF's decision taken in accordance with Article 5(6).

(2) A holder of securities that decides to exercise his/her right of mandatory sell-out must inform the majority shareholder *via* registered letter. A copy of the letter must be sent to the CSSF and to the company concerned. The transmitted information must include the following elements:

- (a) the identity and the contact details of the holder of securities that exercises the right of mandatory sell-out; and

(b) evidence of the quality of the holder of securities, the number of securities held, as well as the class of securities to which these securities belong.

(3) The mandatory sell-out must be exercised at a fair price according to objective and adequate methods applying to asset disposals.

(4) Within the month following the notification of the exercise of the right of mandatory sell-out in accordance with paragraph (2), the majority shareholder shall communicate to the CSSF the proposed price and a valuation report on the securities covered by the mandatory sell-out. The majority shareholder shall then provide the company concerned with and make public without delay the fact that s/he received information relating to the mandatory sell-out and the proposed price with the valuation report in a manner ensuring fast access to this information and on a non-discriminatory basis. The company concerned shall ensure that the information is also communicated or sent to the holders of securities that are not admitted to trading on a regulated market in one or several Member States through the usual channels of communication or dispatch to these holders.

This valuation report, the costs of which shall be borne by the majority shareholder, shall be drawn up by an expert of his/her choice, independent from any party concerned, and who is not involved in any conflict of interest. The independent expert shall have professional experience in the field of valuing transferable securities and draw up his/her valuation report according to objective and adequate methods.

The CSSF may require the management body or the executive body of the company concerned to take up a position on the proposed price by the majority shareholder. The CSSF may also require the publication of this position.

(5) The holder(s) of remaining securities that exercised the right of mandatory sell-out, as well as any other holder of remaining securities that wishes to present his/her securities to the mandatory sell-out, may oppose the proposed price for the mandatory sell-out. All the holders of remaining securities that oppose the price proposed for the mandatory sell-out are required to take part in the mandatory sell-out. The deadline to file an opposition is one month as from the date on which the proposed price was made public in accordance with paragraph (4). The opposition, setting out the reasons thereof, shall be made by registered letter with acknowledgement of receipt sent to the CSSF and within one month from the date on which the proposed price was made public in accordance with paragraph (4). A copy of the letter shall be sent within the same time period *via* registered letter with acknowledgement of receipt to the majority shareholder and to the company concerned.

In the absence of any opposition made in accordance with this paragraph, the CSSF accepts the proposed price as fair price and informs the majority shareholder and the company concerned thereof. After having been informed by the CSSF, the majority shareholder shall, as soon as possible and in a manner ensuring fast access to such information and on a non-discriminatory basis, make public the information on the final date and payment conditions. The company concerned shall ensure that the information is also communicated or sent to the holders of securities covered by the mandatory sell-out and that are not admitted to trading on a regulated market in one or several Member States through the usual channels of communication or dispatch to these holders.

The price accepted by the CSSF as fair price is validly published on its website.

(6) Where one or several holders of remaining securities file opposition in accordance with paragraph (5), the CSSF may, based on reasons stated in the opposition(s), require the company concerned to propose five experts fulfilling each the conditions of paragraph (4), subparagraph 2.

The CSSF shall appoint one of the proposed experts to submit a second valuation report of the class(es) of securities concerned by the opposition. Such expert shall refer to the publication date of the proposed price by the majority shareholder in accordance with paragraph (4) of this Article to value the fair price. Such expert shall provide the CSSF, the company concerned and the majority shareholder with the valuation report by the deadline set by the CSSF. The majority

shareholder shall then make public without delay the second valuation report in a manner ensuring fast access to this information and on a non-discriminatory basis. The company concerned shall ensure that the information is also communicated or sent to the holders of securities covered by the mandatory sell-out and that are not admitted to trading on a regulated market in one or several Member States through the usual channels of communication or dispatch to these holders. The costs of drawing up the valuation report shall be borne by the majority shareholder.

In the event of an opposition, the CSSF shall decide on the price to be paid by the majority shareholder within three months from the expiry of the opposition deadline or, if the CSSF requires a second valuation report, within three months following receipt of this second report. The CSSF shall notify its decision to the majority shareholder and to the company concerned. Following the CSSF's decision, the majority shareholder shall, as soon as possible and in a manner ensuring fast access to such information and on a non-discriminatory basis, make public the information on the final date and payment conditions. The company concerned shall ensure that the information is also communicated or sent to the holders of securities covered by the mandatory sell-out and that are not admitted to trading on a regulated market in one or several Member States through the usual channels of communication or dispatch to these holders.

The CSSF's decision is validly published on its website.

(7) The holders of securities that have not exercised their right of mandatory sell-out at the latest on the final payment date referred to in the previous paragraph, may present their securities for the mandatory sell-out at the fair price published by the CSSF in the context of the mandatory sell-out within a time period that the CSSF decides upon. This time period shall not be shorter than one month nor longer than six months. A holder of securities that presents his/her securities to the mandatory sell-out shall present all the securities s/he is holding.

A holder of securities that has not exercised his/her right of mandatory sell-out nor presented his/her securities to the mandatory sell-out under the terms of the previous indent, shall not take part in the mandatory sell-out.

(8) The majority shareholder, to whom the information relating to the exercise of the right of mandatory sell-out is addressed, may exercise his/her right of mandatory squeeze-out until the publication of the fair price by the CSSF. Where a right of mandatory squeeze-out is exercised before the publication of the fair price by the CSSF, the mandatory sell-out and the relevant procedure become devoid of purpose.

Art. 6. - Competent authority

(1) The CSSF is the competent authority to ensure that the provisions of this law are applied.

(2) The CSSF shall have all the powers necessary for the performance of its duties provided for by this law. The CSSF shall be empowered to:

- (a) require a holder of securities or of other transferable securities or a company referred to in this law, the persons acting in concert and the persons controlling them or controlled by them, to provide information and documents;
- (b) require *réviseurs d'entreprises agréés* (approved statutory auditors), statutory auditors and managers of a company referred to in this law, to provide information and documents;
- (c) suspend a mandatory squeeze-out transaction or a mandatory sell-out transaction on any single occasion if it has reasonable grounds for suspecting that provisions of this law have been infringed;
- (d) prohibit or suspend advertisements relating to a mandatory squeeze-out or mandatory sell-out transaction on any single occasion if it has reasonable grounds for suspecting that the provisions of this law have been infringed;
- (e) prohibit a mandatory squeeze-out or a mandatory sell-out transaction if it finds that the provisions of this law have been infringed;
- (f) make public the fact that a holder of securities or of other transferable securities or a company referred to in this law are failing to comply with their obligations;

- (g) order a holder of securities or of other transferable securities or a company referred to in this law to cease any practice that is contrary to this law; and
- (h) order a holder of securities or of other transferable securities or a company referred to in this law to comply with the relevant obligations.

Art. 7. – Sanctions

(1) The CSSF may impose a fine of between EUR 125 to 125,000 on the persons referred to in Article 6(2):

- (a) if they do not comply with the notification and information requirements;
- (b) if they infringe Articles 4 or 5;
- (c) if they do not comply with the CSSF's requests for information;
- (d) if they fail to act in response to orders of the CSSF.

(2) The CSSF is authorised to disclose to the public the measures, opinions or penalties that have been taken or imposed for infringement of the provisions adopted pursuant to this law, unless the disclosure would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.

(3) Those who knowingly give false or incomplete information in relation with their shareholdings or with a mandatory squeeze- or sell-out transaction shall incur a term of imprisonment of between eight days and five years and a fine of between EUR 251 and 125,000 or only one of these sanctions.

Art. 8. - Remedies

The decisions taken by the CSSF under Article 7(1) may be referred to the *Tribunal administratif* (administrative court) which deals with the substance of the case. The action shall be filed within three months from the date of notification of the challenged decision, or else shall be time-barred.

Art. 9. - Amending provision

Article 24(1) of the amended law of 23 December 1998 establishing a financial sector supervisory commission (Commission de surveillance du secteur financier) shall be supplemented by adding a new fourth subparagraph which shall read as follows:

"The CSSF shall be authorised to collect the sums required to meet its operating costs through fees payable by issuers of securities in the event of mandatory squeeze-out or sell-out transactions."

Art. 10. - Transitional provisions

(1) A shareholder who, at the date of entry into force of this law, is a majority shareholder of a company referred to in Article 2, shall notify to the company concerned and to the CSSF the information set out in Article 3(3)(a), (d) and (e) not later than two months following the entry into force of this law.

(2) The company that receives the notification made in accordance with paragraph (1) shall make public all the information contained in the notification in a manner ensuring fast access to such information and on a non-discriminatory basis and not later than three months following the entry into force of this law. The company shall ensure that the information is also communicated or sent to the holders of securities that are not admitted to trading on a regulated market in one or several Member States through the usual channels of communication or dispatch to these holders.

(3) The CSSF shall publish on its website, during a period of at least twelve months, a list of the companies for which this information has been validly notified.

(4) For a period of three years after the entry into force of this law and by way of derogation from Article 4(1), a majority shareholder may exercise his/her right of mandatory squeeze-out for the securities referred to in Article 2(1)(ii) whose date of withdrawal from trading from a regulated market goes back to 1 January 1991.

(5) For a period of three years as from the entry into force of this law and by way of derogation

from Article 5(1), the holder(s) of remaining securities may require the majority shareholder to buy their securities even if the latter does not come to hold additional securities of the company concerned, including on the securities referred to in Article 2(1)(ii) whose date of withdrawal from trading on a regulated market goes back to 1 January 1991.

(6) For withdrawals referred to in paragraphs (4) and (5) and previous to 15 July 2005, the reference to the withdrawal from trading on a regulated market shall be replaced by a reference to the withdrawal from the listing of a stock exchange or of a market operator the home Member State of which is Luxembourg.

Art. 11. - Entry into force

This law shall enter into force on the first day of the third month following its publication in the *Mémorial*.