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# Czech Republic Takeover Guide

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## INTRODUCTION

### History

Czech law did not contain any special provisions on takeover bids before 1996 and takeover bids were subject to general provisions on public offers to enter into a contract. The Czech Commercial Code (which constitutes a general commercial law codex and applies primarily to business entities, commercial companies and the so-called commercial relationships) was amended in 1996 and new provisions on the so-called public offer for a share purchase agreement was inserted to the section applicable to joint-stock companies (Section 183a through 183c). In addition to formal requirements for takeover bids, the new provisions also imposed a duty to make a mandatory takeover bid in circumstances in which a shareholder acquires a 1/2, 2/3 or 3/4 share in the voting rights of a listed company.

The provisions on takeover bids have undergone several amendments since. The most important one was the 2000 amendment which took effect on January 1, 2001 that substantially changed the takeover legislation and introduced the term “takeover bid” in the Commercial Code among other things. The major changes include, without limitation, the requirement of prior consent from the Securities Commission (a special supervisory authority) to publish takeover bids involving listed companies, the linking of the duty to make a takeover bid to acquiring control over a company, and a newly constructed requirement regarding the amount of the price upon a mandatory takeover bid. This amendment gave the provisions on takeover bids the form, which they have basically held until the April 1, 2008. The following amendments only brought less significant technical changes.

On April 1, 2008, the new Takeover Act (No. 104/2008 Coll.) entered into force. Its main goal is to transpose the Takeover Directive 2004/25/EC. However, it has brought also other substantial changes of the takeover regulation.

### Takeover Bids under Czech Law – general introduction

The Takeover Act defines a takeover bid as a public offer 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. Section 276 of the Commercial Code defines a takeover bid as a “manifestation of will whereby the offerer addresses unspecified parties for the purpose of concluding a contract”. Takeover bids are therefore bids made to an unlimited group of parties. If the takeover bid is made to a particular addressee, it cannot be deemed to constitute either a public offer to conclude a contract or a takeover bid.

Pursuant to Section 4 of the Takeover Act, any conduct qualifying as conduct whose objective is the acquisition of participation securities in a target company shall be deemed to constitute a takeover bid, provided that it has “significant attributes of a takeover bid”. These provisions are designed to cover even conduct that cannot be classified as a public offer to conclude a contract if the nature (primarily economic) of the conduct is close to the nature of a public offer to conclude a contract. The significant attributes in this respect include, without limitation, a wide group of addressees (all or a majority of company shareholders) and the objective of such conduct (control over the target company). It must be pointed out in this regard that the actual impact of this rule shall depend on the application practice that is adopted by the Czech National Bank and Czech courts.

The provisions of the Czech Takeover Act only apply to takeover bids for participation securities issued by public limited liability companies with registered offices in the Czech Republic (“target companies”), provided that the target company issued securities listed

on a regulated market in the Czech Republic. Pursuant to Sections 5 and 6 of the Takeover Act that reflect article 4 of the Takeover Directive, the Takeover Act regulates certain aspects of takeover bids with a foreign element. The Takeover Act sets forth in accordance with the requirements of the Takeover Directive that its provisions applicable to the procedure of the bid shall also apply to takeover bids for securities of companies having their registered office in another Member State admitted to trading on a Czech regulated market (provided that the terms and conditions of Art. 4 of the Takeover Directive apply), and its company law provisions shall apply in circumstances where securities of a company having its registered office in the Czech Republic are admitted to trading on a regulated market of another Member State.

Mandatory takeover bids are takeover bids made by the offerers because they are subject to a statutory duty to do so. In comparison to voluntary takeover bids, mandatory takeover bids apply only to *listed* securities issued by the target company, as opposed to any securities. Given the low number of voluntary takeover bids, the provisions on mandatory takeover bids are the most important for practical application.

Public offers to purchase voting securities of a non-listed Czech joint-stock (target) company or public offers that do not have as their objective the acquisition of control of the offeree company, are not regulated as takeover bids and are subject to the more liberal regulation of public offers in the Commercial Code (Art. 183a et seq.). It can be summed-up that the only requirements are that the offer shall be accompanied by the opinion of the governing bodies of the target company on the offer pursuant to the relevant parts of the Takeover Act and the minimum requirements on the content of the offer. However the Takeover Act governs the technical procedure of forming contract also in such cases.

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## VOLUNTARY TAKEOVER BIDS

### Formal Requirements

In addition to the identification of the offerer, the target company and the securities subject to the takeover bid, the offer document must indicate the following:

- the direct or indirect holding of the offerer and the co-operating parties in the target company and the description of their inter-relations;
- consideration offered for each security (in cash or in securities);
- the information on the average price for the shares in the target company on regulated markets for the most recent 6 months;
- bid acceptance period;
- securities transfer procedure and the terms and condition for payment of the price;
- manner of notifying that a contingent or limited (by a certain number of securities) takeover bid was accepted;
- offerer's intentions regarding the company's future operations, employees and bodies, including any planned changes which may have any impact on employment rate;
- resources and the manner of financing the price;
- the jurisdiction of the bid and the supervisory authority.

If securities, the public offer of which would otherwise require a prospectus under the Capital Market Trading Act applicable to public offers of securities, are offered as consideration, the offer document shall further contain information required by the Capital Market Trading Act. The offer document may be supplemented by declaration of a trustworthy party other than the offerer setting forth that to his/her knowledge, the contents of the takeover bid are in compliance with law. Such party is then liable for the contents of the offer document together with the offerer.

The offer document for a mandatory takeover bid shall further set forth the basis on which the bid is launched, a description of methods applied to determine the amount of the consideration, information on the type and amount of the consideration provided or agreed for each acquisition of securities in the target company by the offerer or a party co-operating with the offerer and the number of securities acquired in individual transactions, if they had been agreed within twelve months prior to the making of the offer, or a declaration that no such transaction has been agreed.

If an offer document is approved by a takeover supervisory authority in another Member State in accordance with governing law, the takeover bid may be disclosed in the Czech Republic, provided that:

- an official translation into Czech is attached; the original text of the takeover bid may only be disclosed by a long-distance access method if information where the original version is available is disclosed together with the official translation;
- it contains information on tax treatment to be applied to the consideration under the agreement to be entered into as a result of the takeover bid;
- it contains information on procedures to be applied for the acceptance of the takeover bid and the exercise of rights associated therewith if the bid differs from the procedures described in the initial text thereof due to the cross-border nature of the bid.

The offerer shall present the offer document to the Czech National Bank prior to disclosure thereof (including the official translation into Czech).

Takeover bids under laws of another, non-Member, State may be launched in the Czech Republic, unless in conflict with the general principles of takeover bids. However, prior consent from the Czech National Bank is required.

The offerer may alter the amount of the consideration at any time but only upward to make it more beneficial for the addressees of the bid. The bid may be altered or withdrawn in other circumstances unless such procedure is in conflict with the general principles applicable to the takeover bids and in materially justified events that are independent to the will of the offerer or parties co-operating with the offerer. If the takeover bid is altered, substantially changing the current terms and conditions thereof to the benefit of the addressees, such changes shall be reflected in agreements that have already been entered into on the basis of the bid.

The offerer shall inform the Czech National Bank of its intention to change or withdraw a takeover bid at least 5 business days before the change is disclosed or the bid withdrawn. If the Czech National Bank discovers that the procedure suggested in the notice is in breach of law, it shall prohibit the change or withdrawal of the bid. The offerer shall disclose the change or withdrawal of the bid in the same manner as the takeover bid; the binding term of the bid must continue for at least five business days after the change is disclosed. Takeover bids may be limited to a certain number of securities only. If the number of securities offered to an offeree who is to accept such offer exceeds the pre-determined limit, the offerer shall satisfy the offerees proportionally.

## Acceptance period

The binding term of the takeover bid shall not be less than four weeks. If the binding term is longer than ten weeks the offerer shall disclose a notice of the deadline two weeks prior to the expiration thereof (Section 24, subsection 1 of the Takeover Act).

The offerer may extend the binding term of the takeover bid if such possibility has been explicitly referred to in the takeover bid and unless such procedure is in conflict with the principles of the takeover bid. This may also apply if a competing takeover bid has been disclosed or if the offerer has altered the amount of the consideration. However, no extension limiting the operation of the target company more than practicably reasonable, taking into account the aims of the takeover bid, is admissible. Neither extension nor reduction of the takeover bid binding term is permissible if the offerer has explicitly stated in the takeover bid that it will not alter the takeover bid binding term. The Act makes it also possible for the offerer under special circumstances – this does not apply to mandatory takeover bids – to reduce the takeover bid binding term, taking into account the needs of the target company. The takeover bid binding term cannot be reduced to less than 2 weeks. Any change of the binding term must first be communicated to the Czech National Bank, which may prohibit such change.

If a competing takeover bid is disclosed, the binding term shall automatically extend to not expire before ten days following the disclosure of the competing takeover bid.

## Offerer's Obligations

Prior to the bid:

The offerer shall, without undue delay, publish that it has decided to launch a takeover bid. No special form is prescribed for the disclosure. However, the disclosure must not result in the creation of a false market and must avoid unequal distribution of information or insider trading. In the case of a legal entity, the relevant moment for establishment of the duty is when the relevant managing body adopts such decision. The offerer may address the CNB, which may postpone the establishment of the duty on serious grounds. However, if there have already been any irregularities on the market possibly arising from the contemplated takeover bid, the offerer must disclose its intention before it has definitively decided to go for the takeover, i.e. even if the CNB approved the postponement of the duty.

During the bid:

During the bid (the binding term thereof), neither the offerer nor parties co-operating with the offerer may carry out any legal acts that have as their objective the contractual acquisition of participation securities in the target company under any terms and conditions other than those of the takeover bid, unless:

- they acquire participation securities through exercising exchange rights attached to securities they had acquired before the offerer decided to launch the takeover bid;
- they acquire participation securities through exercising priority rights or option and/or contract rights, provided that they had acquired such rights in good faith before the offerer decided to proceed with conduct leading to the establishment of the offer duty or, if applicable, before the offerer decided to launch the takeover bid;
- they acquire participation securities through exercising third-party rights that the offerer or a party co-operating with the offerer established before the offerer decided to proceed with conduct leading to the establishment of the offer duty or, if applicable, before the offerer decided to launch the takeover bid;

- they acquire participation securities by performing an obligation due to a non-engaged shareholder under a profit transfer agreement or a controlling agreement as per special law; or
- these parties are a security broker or a bank carrying out such legal acts within their standard, day-to-day business operations when rendering investment services (managing investment instruments) or when performing their obligations resulting from their status of market makers under special law or from a comparable position on the public securities market.

If the offerer or a party co-operating with the offerer breaches the afore-mentioned prohibition, they shall be subject to a three-year ban on exercising the rights attached to participation securities they acquired as the result of such conduct.

During the bid (the binding term thereof), neither the offerer nor parties co-operating with the offerer may carry out any legal acts that have as their objective the disposal of participation securities in the target company, unless the following situations are the case:

- exercise of a priority right or option and/or contract rights, provided that neither the offerer nor parties co-operating with the offerer had acquired such rights in good faith after the offerer decided to proceed with conduct leading to the establishment of the offer duty or, if applicable, after the offerer decided to launch the takeover bid;
- exercise of a third-party right that the offerer or a party co-operating with the offerer established before the offerer decided to proceed with conduct leading to the establishment of the offer duty or, if applicable, before the offerer decided to launch the takeover bid;
- the offerer or parties co-operating with the offerer are a security broker or a bank carrying out such legal acts within their standard, day-to-day business operations when rendering investment services (managing investment instruments) or when performing their obligations resulting from their status of market makers under special laws or from a comparable position on the public securities market.

The offerer or parties co-operating with the offerer are obliged to inform the Czech National Bank of any acquisition or disposal of participation securities during the bid within five business days. The Czech National Bank may, upon request from the offerer or parties co-operating with the offerer, approve an exemption from the prohibition to acquire or dispose of participation securities during the bid. If the obliged party or a party co-operating with the obliged party acquires participation securities subject to the takeover bid under terms and conditions better than those set forth in the takeover bid in the period between the date of the disclosure of the bid and the last day of the binding period of the bid, such change shall result in relevant alteration of and amendment to the takeover bid and agreements already entered into on the basis of the bid.

After the bid:

The offerer shall publish the results of the takeover bid and inform the board of directors and the supervisory board of the target company thereof in writing.

After the binding term expires, the offerer or parties co-operating with the offerer may not launch a takeover bid for acquisition of securities in the same target company for one year following disclosure of the results. However, this prohibition does not apply if the offerer is subject to the offering duty or if a competing offer is involved. Similar prohibition applies to anyone who disclosed an intention to launch a takeover bid but did not complete it. In this event, the Czech National Bank may approve an exemption from such restriction.

Neither the offerer nor parties co-operating with the offerer may acquire by transfer participation securities in the target company for consideration higher than that set forth in the takeover bid for 6 months after the binding term expired. This shall not apply if:

- the transaction is entered into on a regulated market on the substantial particulars of which the parties agreed through an automated trading system;
- the value of the consideration does not exceed (at the moment it is rendered or agreed upon) the up-to-date price of the security at the regulated market;
- the acquisition is the result of fulfilling a statutory duty or due to exercise of a right to purchase participation securities; or
- if any circumstances are involved allowing the offerer to acquire participation securities even during the binding term.

The Czech National Bank may approve acquisition of participation securities for higher consideration in other instances as well but the offerer shall reimburse the difference between the consideration set forth in the takeover bid and the actual consideration to parties who accepted the original takeover bid.

### **Target Company's Obligations**

The target company is, as the offerer, also obliged to prevent the market from disturbance which could occur as a result of leaked non-public information on the takeover bid. The members of the board of directors and the supervisory board of the target company and its shareholders and employees shall keep such information confidential. However, the Commercial Code imposes a duty on the board of directors of the target company to inform employee representatives without undue delay of its becoming aware of any planned takeover bid and to provide them with all documents it has received in this connection.

The offerer shall be obliged to deliver the offer document to the members of the board of directors and the supervisory board of the target company at least 10 business days prior to the disclosure thereof. The members of the bodies are obliged to draft a joint written statement thereon within 5 business days following the delivery thereof setting forth their opinion whether the takeover bid is in line with the interests of the target company, shareholders, employees and creditors of the target company, including the impact thereof on employment at the location of the company's business. The body members must also comment in the statement as to whether the transaction may give rise to any doubts regarding conflict of interest with the interests of the target company or its shareholders and whether or not they themselves accept the takeover bid and to what extent. If a competing takeover bid is involved (see below), the statement by the bodies of the target company must also provide a summary of the competing takeover bid and the comparison thereof with the original one.

If the members of the bodies of the target company receive a statement on the takeover bid from the employees of the target company (see below), they shall attach the employee statements to their statement.

### **Defence Mechanisms and Other Restrictions**

The Takeover Act stipulates that members of the target company's board shall not carry out any act which may restrict the ability of bid addressees to freely decide on the takeover bid. The board may take measures to frustrate the bid only if:

- the general meeting approves such particular conduct during the bid (within the binding term thereof) (for this purpose, the Takeover Act reduces the deadline for

notice of the general meeting by approximately one half, i.e. the deadline shall be 14 days);

- the company has complied with duties imposed by law ; or
- it is within standard, day-to-day operations.

The afore-mentioned restriction does not apply (as per explicit provisions) to indispensable measures to find a competing takeover bid; members of the board of directors and the supervisory board of the target company may also launch a competing takeover bid.

## **Publication**

The offerer shall, within 15 days following the notification of the intention to launch a takeover bid, submit an offer document to the CNB whereafter the CNB has 15 days to examine the offer document and prohibit the takeover bid if the offer document fails to comply with all requirements imposed by the Takeover Act or if it provides apparently untrue or misleading information. In addition, the Czech National Bank may give notice to the offerer to prove that it has sufficient funds to finance the bid. If the offerer fails to prove it has sufficient funds, the Czech National Bank may prohibit the takeover bid. If the Czech National Bank does not prohibit the takeover bid, the offerer shall disclose (after a deadline determined by the Czech National Bank for issue of the potential decision to prohibit the bid) the offer document in at least one nationwide daily newspaper and simultaneously on the Internet. Disclosing the offer document on the Internet is not required if the offer document is freely available to the public at the offerer's registered office in a hardcopy.

If a mandatory takeover bid is involved, the CNB must directly approve the publication thereof. In these circumstances, the mandatory takeover bid may be disclosed only after the CNB has approved the disclosure thereof.

For the purpose of the takeover bid, an offerer with a place of residence or registered office outside the Czech Republic must authorize an attorney-at-law (advocate) or a company authorized to provide investment services in the Czech Republic to represent them, in particular to receive mail. This duty shall not apply if the offerer has a branch office in the Czech Republic.

## **Supervisory Authority**

Takeover bids were not subject to any supervision between 1996 and 1998. The Securities Commission supervised compliance with all obligations associated with takeover bids (both voluntary and mandatory) between 1998 and 2006. The Securities Commission was abolished on April 1, 2006 and its powers passed over to the Czech National Bank (CNB) which had been in charge of supervising banks before (the so-called integrated financial market supervision).

The CNB supervises takeover bids also pursuant the new Takeover Act, in addition to being the only authority supervising the financial market in the Czech Republic. The CNB is thus comparable to German BaFin or British FSA. A special aspect of the CNB is that it simultaneously functions as the central bank of the Czech Republic (i.e. it is primarily in charge of taking care of price stability) and the bank's independence is directly guaranteed by the Constitution. The CNB's powers in the capital market area are set forth in Act no. 15/1998 Sb., the Capital Market Supervision Act. The Act applies to the confidentiality duty imposed on the Bank's current and former employees in respect of all information they receive in connection with any decision on, or supervision over, takeover bids.

The Takeover Act covers a number of administrative torts that the Czech National Bank is authorised to penalise. When exercising its powers of the supervisory authority, the CNB has the position of an administrative authority and is required to follow general rules applicable to administration proceedings (in particular Act no. 500/2004 Coll., the Code of Administrative Procedure). In addition, the Takeover Act authorises the CNB to carry out on-site inspections of target companies or parties on whom certain obligations have been imposed by law in accordance with Act no. 552/1991 Coll., the State Inspection Act. As far as concerns the takeover process, the CNB has the power to prohibit a takeover bid, including any changes thereof, approve disclosure of a takeover bid and decide on a number of exemptions from generally formulated bans (see below). In addition, the CNB has the right to change the price offered for a takeover bid at its own discretion (see below).

An appeal can be lodged against a decision of the CNB. The appellate authority is the Bank Board (a steering authority of the CNB, the members of which are appointed by the President of the Czech Republic). Pursuant to the Takeover Act, lodged appeals have no suspensory effect (i.e. the decision is enforceable) save for decisions on administrative torts or, if applicable, penalties. All decisions by the CNB are essentially reviewable by the court within the administrative court system. The Czech Republic is the party liable for any damage resulting from an unlawful decision by the Czech National Bank or for any other intervention with other parties' rights in accordance with Act no. 82/1998 Coll.

## Penalties

In general, the Czech National Bank may impose a penalty up to CZK 50 million (i.e. approximately EUR 1.8 million) for a breach of basically every substantial duty. Decisions on penalties or remedies are subject to court review.

If the offerer makes the takeover bid in conflict with law, the damaged parties may claim compensation for damage or conclusion of a purchase contract under terms and conditions as if the takeover bid were made in accordance with law. Czech law fails to regulate class actions, which limits the practical usability of such lawsuits. If the offerer commits a major breach of law, whoever who has accepted the offerer's bid may rescind from the contract entered into on the basis of the bid.

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## MANDATORY TAKEOVER BID

### Obligation to launch a bid

Pursuant to Section 35 of the Takeover Act, the duty to launch a takeover bid is established when a certain party acquires a "decisive share in the voting rights". The decisive share in the voting rights is deemed to be at least 30% of all votes attached to the participation securities of the target company. When calculating the share in the voting rights, everyone should have, in addition to the voting rights attached to securities they hold, all voting rights the exercise of which they are able to (at their own discretion) influence directly or indirectly. Voting rights of controlled parties shall be attributed to the controlling party at all times.

The so-called co-operating parties are subject to a special procedure. Co-operating parties are defined as parties that, in mutual concert, cooperate to acquire or enforce joint influence in a target company. Controlling and controlled parties or members of a corporate group are at all times deemed to be co-operating parties. For the purpose of establishment of the duty to launch a takeover bid, the Takeover Act treats a group of co-operating parties as a single unit where the members' shares in the voting rights of the target company are consolidated. If the group of co-operating parties acquires a decisive share jointly or if a group of co-operating parties is established to acquire a decisive share in the voting rights, all members thereof who are obliged to jointly comply with the duty to make a takeover bid are subject to the duty. Transfers of shares between members of co-

operating groups cannot result in the duty to launch a takeover bid. However, if any such group breaks up and the break-up results in a particular member independently acquiring a decisive share (which the member did not hold prior to the establishment of the group), this former member of the group of co-operating parties shall be obliged to launch a takeover bid.

### **Exemptions from the duty to launch a takeover bid**

The major exemption from the general duty to launch a take over bid applies to situations when the party involved does not gain control over the target company although it acquires 30% share in the voting rights thereof. Control is defined in Section 66a, subsection 2 of the Commercial Code as a relationship in which a certain party *de facto* or legally exercises, directly or indirectly, a decisive influence on the control or operation of another party's business. A party that acquires a decisive share in the voting rights of the target company shall not be subject to the duty to launch a takeover bid unless it is simultaneously a controlling party.

In addition, the offer duty does not apply to:

- heirs of persons who have already fulfilled the offer duty;
- situations in which the acquisition of the decisive share is the result of a transformation of a company under special law, provided that all parties involved were members of one corporate group or if a controlling company and its controlled companies were involved;
- a party that acquired the decisive share as a result of a transfer of participation securities between members of a corporate group;
- a party that acquired the decisive share as a result of an unconditional and unlimited takeover bid or in circumstances in which the acquisition of the decisive share is the result of conclusion of a controlling agreement; and
- where parties are involved who did not acquire the decisive share as a result of their own conduct and could not have been reasonably expected to acquire a decisive share upon acquisition of their own share in the voting rights.

The duty to launch a takeover bid shall cease to exist if the Czech National Bank so decides or if the decisive share was acquired on a temporary basis only or if it was acquired as a result of conduct the objective of which was to prevent the target company from going bankrupt or leading to the fulfilment of a statutory duty.

### **Price**

The amount of the consideration offered must correspond at least to the highest price for which the obliged party or a party co-operating with him/her acquired participation securities that are subject to the takeover bid during the twelve months prior to establishment of the offer duty (the "premium price"). If the premium price cannot be determined, the amount of the consideration must correspond to at least the weighted average of prices for which these securities were traded on a regulated market during the six months prior to establishment of the offer duty (the "average price").

Should the premium or average price be unfair due to:

- the amount of premium price being substantially influenced by a biased rate, other market distortion or any other extraordinary circumstances;
- the amount of average price being substantially influenced by extraordinarily low liquidity of securities;

- the premium price was agreed outside of the regulated market due to special economic relationships between the parties; or
- the economic situation of the target company changed substantially during the most recent twelve months,

the Czech National Bank may alter the amount of the price at its own discretion (compare Art. 5(4) Dir.)

If the Czech National Bank opts to alter the amount of the price at its own discretion, it shall take into account the following in particular:

- influence of the afore-mentioned facts on the creation of the premium or average price;
- the up-to-date rate for the securities at the regulated market; and
- the value of the securities to which the bid applies.

### Penalties

If the offerer makes a takeover bid in conflict with law, the damaged parties may claim compensation for damage or conclusion of a purchase contract under terms and conditions as if the takeover bid were made in accordance with law. If the mandatory takeover bid price is inadequate the parties that accepted such bid have the right to claim a refund of the balance. In such event the merits of the court decision awarding refunding of the balance shall be binding on all other damaged parties.

If a shareholder acquires shares in the target company and such acquisition gives rise to the shareholder's duty to make the takeover bid, and the shareholder defaults on the duty to make the takeover bid, the Takeover Act prohibits such shareholder from exercising the voting rights in the target company for three years.

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## COMPETING BIDS

Any takeover bid disclosed during the binding period of another takeover bid is deemed to constitute a competing takeover bid. The Takeover Act does not impose any special requirements for the contents and, therefore, no limits in the amount of the price. The Takeover Act prohibits takeover bids from disclosure later than at least 5 business days prior to the expiration of the binding term of the takeover bid. The binding term of the competing bid must continue until at least the end of the binding term of the original; in no event shall it be shorter than 10 business days. Should the binding term of the original takeover bid expire earlier, it shall be automatically extended.

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## TAKEOVERS AND MINORITY SHAREHOLDERS

### Squeeze-out

The Commercial Code (Sections 183i through 183n) regulates the so-called squeeze-out. The Commercial Code treats the squeeze-out procedure as a general institution of company law. Pursuant to general provisions, a party that holds securities in a public limited liability company representing not less than 90% of the voting rights and 90% of the share capital of the company may initiate a general meeting where it can decide that all remaining shares in the company shall be transferred to it. However, minority shareholders shall receive fair consideration, the amount of which must be supported by an expert report.

If the squeeze-out involves listed securities, the Commercial Code does not require that the fairness of the consideration be always supported by an expert report. It is up to the majority shareholder to document the fairness of the consideration offered by any means. Unlike the general provisions applicable to squeeze-outs the Commercial Code requires in such event that the CNB approve the general meeting's decision on the squeeze-out. The CNB grants the approval in special proceedings (initiated upon request by the majority shareholder) during which it reviews whether or not the fairness of the consideration was duly documented and supported.

Section 183n, subsection 3 of the Commercial Code sets forth (in line with Art. 15 of the Takeover Directive) that the price offered in a takeover bid shall be considered fair for the purpose of squeeze-out where, through acceptance of the bid, the offerer has acquired securities representing not less than 90% of the capital carrying voting rights comprised in the bid. Squeeze-out is a general provision of company law which is not directly bound to the takeover bids regulation.

## **Sell-Out**

Article 16 of the Takeover Directive was transposed through a new institution of the so-called additional takeover bid. Pursuant to the Takeover Act, the offer duty shall be established in instances where, following acceptance of the bid, the offerer has acquired or has firmly contracted to acquire securities representing not less than 90% of the target company's capital carrying voting rights and 90% of the voting rights comprised in the bid. If this condition is complied with, the offerer shall launch a takeover bid to all remaining shareholders in the target company within 30 days. The following shall apply:

- the acceptance period of such takeover bid must amount to at least 90 days; and
- the amount of the price must correspond to the amount of the price for the takeover bid by the acceptance of which the offerer acquired an interest as a result of which the offerer became subject to the additional offer duty.

This alternative is designed to achieve the objective required by the Takeover Directive.