PUBLIC TAKEOVERS IN GERMANY

How to acquire a publicly listed company in Germany

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INTRODUCTION

PUBLIC TAKEOVERS IN GERMANY

For the successful acquisition of a publicly listed company in Germany, a bidder must carefully consider legal and strategic implications at each stage of the takeover process. This white paper explains the legal framework within which takeovers occur, and describes strategies for the effective implementation of a takeover bid.

Throughout the EU, takeovers of publicly listed companies are governed by the European Takeover Directive (2004/24/EC). In Germany, the Takeover Act (Takeover Act, or *Wertpapiererwerbs- und Übernahmegesetz, WpÜG*) implements the European Takeover Directive. It applies to public offers for German target companies whose shares are listed in Germany. Rules on the obligation to make a bid, permitted actions of the management board of the target and other corporate law questions also apply to public offers for German Companies whose shares are listed on the Stock exchange of another member state of the EU or the European Economic Area (which includes Norway, Iceland and Liechtenstein in addition to the member states of the European Union, but excludes Switzerland). Minimum price rules and rules on the offer procedure of the Takeover Act are also applicable on offers for non-German target companies that are listed in Germany. Note, however, that the Takeover Act only applies to offers for targets which are listed on a regulated market, and in Germany these would include in particular the Prime and General Standard of the Frankfurt Stock Exchange. In contrast, the Open Market (*Freiverkehr*) is not a regulated market and offers for target companies traded on the Open Market are neither governed by the European Takeover Directive nor the German Takeover Act, and are therefore simpler to implement.

Takeovers under the Takeover Act are conducted under the surveillance of the German Financial Services Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht, **BaFin***).

In Germany, takeovers are typically friendly and supported by the target. In hostile takeover bid situations, the target companies often ultimately come to support the offer. Only in a few cases competing bids were launched by competing bidders and prices increased in the course of the offer.

HOW TO IMPLEMENT A TAKEOVER IN GERMANY

PREPARATION

INFORMATION ON THE TARGET

A takeover requires thorough preparation. Key information on the target is publicly available. In particular, financial statements and mandatory publications, such as ad hoc disclosures on important developments, can be obtained from the target's homepage. Targets which are listed on the Prime Standard of the Frankfurt Stock Exchange must publish this information in English; targets which are listed on the General Standard market segment need, however, only publish in German.

INFORMATION ON THE TARGET'S SHAREHOLDER STRUCTURE

Typically, German stock corporations issue bearer shares so that their holders are not known to the company. Some companies issue registered shares and must keep a share register with the names of the shareholders. However, the share register is not public and even shareholders are only entitled to receive information on the data registered in respect of themselves.

The German Securities Trading Act (*Wertpapierhandelsgesetz, WpHG*) contains notification obligations for holders of major stakes of voting rights in publicly listed companies, triggered by the following thresholds: 3 percent, 5 percent, 10 percent, 15 percent, 20 percent, 25 percent, 30 percent, 50 percent or 75 percent of the company's voting rights. Any person whose voting interest (either directly or by way of attribution, for example due to an acting in concert with another shareholder) reaches, exceeds or falls below any of these thresholds must inform BaFin and the company of the exact number of voting rights that such shareholder holds or are attributed to it, which notification must be published by the company.

Notification obligations also exist for financial instruments which entitle their holders to acquire shares with voting rights in the future or which result in the possibility to acquire shares with voting rights. Not only call options and all contingent agreements but also cash settled swaps must be notified. These notification obligations begin at a threshold of 5 percent and also apply where shares with voting rights and financial instruments together reach or exceed the 5 percent threshold.

Any shareholder whose voting rights reach or exceed the threshold of ten percent must additionally notify the company of its intentions with respect to the company and the source of the funds used for the acquisition. The company must publish the information so notified.

DUE DILIGENCE

If a bidder wants to obtain non-public information from the target, it must enter into negotiations with the target. The management board of a target company can provide due diligence information without breaching its confidentiality obligations, if a bidder is seriously interested in an acquisition, the acquisition is in the best interest of the company, and the bidder agrees to keep the information obtained in the course of the due diligence confidential. Therefore, target companies normally require bidders to enter into a confidentiality agreement and, additionally, a letter of intent or memorandum of understanding, in order to be able to demonstrate that the bidder is seriously interested in the acquisition, before due diligence starts.

AGREEMENTS WITH MAJOR SHAREHOLDERS

In order to increase a takeover's chances of success, it is advisable for bidders to enter into agreements with a target's major shareholders in advance of the bid. In such agreements, major shareholders can either directly sell their shares to the bidder (possibly subject to certain conditions, such as a minimum acceptance rate in the offer), or major shareholders can obligate themselves to accept the offer for their shares (so called irrevocable undertaking). Such agreements with major shareholders trigger the above described notification obligations. Therefore, it is advisable to enter into such agreements at the same time at which the takeover is made public (see below under "Offer Phase").

AGREEMENTS WITH THE TARGET COMPANY

Bidder and target company may be interested in concluding an agreement in connection with the takeover. The bidder may want to ensure that the target supports the offer. In a merger situation, bidder and target company are interested in agreeing on the business strategy and corporate governance going forward. The future composition of the boards may be very important for both sides. German law generally allows the conclusion of such *Investment Agreements* or *Business Combination Agreements* within certain limits. The management board of the target company must ensure that it acts in the best interest of the company at all times and it may not submit itself to instructions from the bidder, unless and until a domination agreement (see below) is concluded. The Takeover Act prohibits the bidder from offering unjustified benefits to board members of the target. Agreements between the bidder and the target must be described in the offer document and in the reasoned statement on the offer to be published by the board members of the target (see below).

STAKE BUILDING

Bidders can build stakes in the target by stock exchange or off-stock exchange acquisitions in advance of the bid. In connection with such efforts, the bidder must comply with the above mentioned notifications obligations for shares and financial instruments. As soon as a bidder acquires at least three percent of the shares with voting rights, or financial instruments relating to at least five percent of the voting rights, it must inform the target and BaFin. Due to the broad definition of financial instruments that need to be notified, hidden stake building is difficult. In calculating the five percent minimum threshold that triggers notification obligations for financial instruments, shares with voting rights already held must be taken into account. Therefore, if an investor holds two percent of the shares in a company and acquires cash settled swaps for an additional three percent, a notification must be made. Voting rights notifications can alert investors of the fact that an investment in the target is occurring, can trigger speculation and increase stock exchange prices.

Additionally, bidders must observe insider trading rules. These rules prohibit the use of inside information by acquiring (or disposing) financial instruments. Inside information is any non-public information which would be likely to have a significant effect on the price of the financial instrument, if it were made public. This is the case for information which a reasonable investor would be likely to use as part of his or her investment or divestment decision.

The intention of the bidder to buy shares in the target is not deemed to be inside information for the bidder itself. Although the fact that a subsequent public tender offer at a higher price is in process can be inside information, the bidder itself may generally acquire shares and implement its acquisition decision. However, if the bidder obtained inside information in the due diligence process, further purchases by the bidder may be regarded as insider trading. Therefore, the stake building process should be thoroughly considered in order to avoid any legal risks. Insider trading is a criminal offence which can be punished by fines or imprisonment.

During the offer phase, the bidder can make alongside purchases over the stock-exchange or in private transactions. Such alongside purchases must be included in the bidder's regular reporting on the number of shares held which reporting is obligatory during the offer phase. If alongside purchases are implemented above the offer price, this results in a respective increase of the offer price.

OFFER PHASE

PUBLICATIONS BY THE BIDDER, PROCEDURE AND TIMELINE

The offer phase begins with the publication of the intention of the bidder to launch an offer. The bidder can control the timing of its decision and thereby the point in time when the bid becomes public. However, once the decision is passed, the publication must be made immediately and cannot wait until the stock exchange closes on that day. The publication must be made via an electronic system for the systematic distribution of information (such as Reuters or Bloomberg). Bidders typically use service providers that organize the proper distribution of such publications. The bidder must subsequently inform the management board of the target company of its intention, and the target in turn informs its works council, or if no works council exists, its employees. A German bidder must also inform its works council or employees. Also, the publication must be sent to BaFin. All communication with BaFin is made via an electronic filing portal to which the bidder or its advisors must have organized access sufficiently in advance.

Once the publication is made, a point of no return is reached. Within a period of four weeks from the publication of the intention to make an offer, the bidder must submit the so called offer document to BaFin based on which the offer to the shareholders will be made. If the bidder does not comply with this obligation, BaFin will prohibit the offer and the bidder and persons acting jointly with the bidder may generally only launch a new offer after a one year waiting period. In addition, BaFin can impose a fine on the bidder for failure to complete the submission of the offer document within the prescribed time period. Also, BaFin may investigate if the bidder has misled the market by announcing but not implementing an offer which may result in severe consequences.

BaFin has ten business days to review the offer document which review period can be extended by up to five business days. Once BaFin has approved the offer document, it must be published without undue delay on the internet. The offer must be open for acceptance by the target's shareholders for a period of four to ten weeks. Generally, a longer acceptance period does not increase the acceptance rate. In particular, financial investors tend to only make their decisions during the last days of the acceptance period. Therefore, an offer phase of four to six weeks is advisable.

After termination of the offer phase and satisfaction of all offer conditions, the offer is settled, i.e. the shares which were tendered by shareholders are transferred to the bidder in exchange for payment of the offer price.

PUBLICATIONS BY THE TARGET

AD HOC-DISCLOSURES UNDER MAR

The fact that an offer is upcoming can substantially affect the target's share price. It is therefore inside information, as soon as the offer becomes sufficiently likely. The European Market Abuse Regulation ("MAR") requires listed companies to publicly disclose inside information that directly concerns them as soon as possible after such information has arisen. Therefore, the target company is generally obligated to make public the fact that an offer will be made. However, the target company may be permitted to delay such disclosure if the delay is required to protect its interests, if there is no risk of the market being misled and if the target can ensure confidentiality. These rules generally permit a delay of the disclosure until the bidder announces the offer while making it key to protect confidentiality. The EU Listing Act amends MAR rules on ad hoc-publications with effect as of 5 June 2026 such that in a protracted process, only the final event but not intermediate steps needs to be made public. This has the effect that a target company can generally wait with its publication until it has reached an agreement with the bidder or the bidder has made its final decision. However, intermediate steps may still constitute inside information. Once the bidder has made public its intention to launch a bid, this fact is no longer inside information.

REASONED STATEMENT

The management board members and the supervisory board members of the target are obligated to publish a reasoned statement on the offer. In this statement, they must comment on the adequacy of the offer price, the consequences of the offer for the target and its employees, the goals of the bidder, and their intention to accept the offer for shares they own. Usually, the statement contains a recommendation of the board members to accept or not to accept the offer. It is common practice and good corporate governance for board members to obtain a fairness opinion from a third party with regard to the adequacy of the offer price and to refer to such fairness opinion in the statement.

The statement is generally published within a period of two weeks after publication of the offer document.

OFFER DOCUMENT

The offer document contains all information that is necessary in order to enable shareholders to decide whether to accept or reject the offer. In particular, it contains information concerning:

- the offer (offer price, including explanation of the adequacy of the offer price, offer period, details on how to accept the offer and payment of the offer price by the bidder),
- prior purchases of target shares made by the bidder or a person acting jointly with the bidder during the last six months prior to the publication of the intention to make the bid or the publication of the offer document, including information on purchase prices for such target shares,
- offer conditions,
- financing of the offer and consequences of the offer on balance sheet and profit and loss situation of the bidder and the bidder group,
- details on the bidder and the target,

- plans of the bidder regarding the target, its business, its seat, major business operations, employees, employee representation, the assets of the target, and its future liabilities,
- plans for the composition of management and supervisory board, and benefits to board members in connection with the offer,
- consequences of the offer for target shareholders who do not accept the offer.

The bidder is liable for the completeness and accuracy of the offer document.

OFFER STRUCTURES

VOLUNTARY AND MANDATORY OFFERS

The German Takeover Act differentiates between voluntary takeover offers which are directed at the acquisition of control, i.e. at least 30 percent of the voting rights in the target, and mandatory takeover offers, which must be made as soon as a bidder has acquired at least 30 percent of the voting rights.

Voluntary takeover offers are more flexible, can be made subject to conditions, allow better control over the minimum offer price and are therefore often preferable from the bidder's perspective. However, in many respects, voluntary and mandatory offers are governed by the same rules and the most suitable structure should be developed on a case by case assessment.

In a voluntary offer structure, the conclusion of irrevocable undertakings or SPAs that are subject to certain conditions (such as regulatory clearances) with major shareholders is advisable to increase the chance of success of the offer. The bidder typically publishes its intention to make an offer on the day on which irrevocable undertakings or SPAs are concluded. Any conditions to closing of SPAs with major shareholders must be aligned with the offer conditions. The voluntary offer replaces a mandatory offer, which would have to be made once SPAs for at least 30 percent of the target shares are closed.

A mandatory offer must be made if a bidder acquires 30 percent or more of the voting rights in the target, either directly or by way of attribution of voting rights. Financial instruments (cash settled swaps, contingent call options, acquisition possibilities under put option) which may have to be notified are irrelevant in calculating the 30 percent threshold that triggers the mandatory offer, until they are exercised and voting rights are acquired. Conditional SPAs for 30 percent or more of the target's shares trigger the mandatory offer once all conditions are fulfilled and the SPAs are closed. The mandatory offer must be unconditional. Once a bidder acquires 30 percent or more of the target's voting rights, it must publish this fact without undue delay (in the same way as the intention to make an offer is published, see above) and submit an offer document to BaFin within four weeks from the publication. After BaFin approval has been received, the offer document must be published. The content of the offer document is identical for mandatory and voluntary offers.

CASH AND SHARE OFFER

In Germany, takeover offers are mostly cash offers. Share offers are admissible, provided that the shares offered in exchange are listed on a regulated market of a member state of the European Economic Area and are sufficiently liquid. Thus, shares of a company listed on a stock exchange in the US or in Asia can only be offered in addition to cash (i.e. shareholders would be given the opportunity to select cash or shares listed on a stock exchange outside of the EEA). In addition, BaFin and courts impose high standards on the required liquidity of shares offered as compensation. This makes share offers difficult in practice.

If shares are offered as consideration, the offer document must contain information on the offered shares and the issuer required for documents to be published for a prospectus exemption pursuant to Commission Delegated Regulation (EU) 2021/528.

MINIMUM PRICE RULES

The Takeover Act contains rules on minimum prices that must be paid in the offer. These minimum prices depend on both, (a) the average stock exchange price of the target shares before the offer, and (b) purchase prices previously paid or agreed by the bidder for shares in the target. The consideration to be paid by the bidder must at least be the higher of:

- the average weighted stock exchange price of the shares of the target company during the three months prior to the publication
  - of the decision to issue a *voluntary* takeover offer (not the publication of the detailed offer document itself), or
  - in case of a *mandatory* takeover offer, of the acquisition of control (30 percent of the voting rights), and
- the highest consideration paid or agreed upon by the bidder, or any entity related to the bidder or acting jointly with the bidder for the acquisition of shares in the target, during the six months prior to the publication of the offer document. This includes option agreements for the acquisition of shares and principally also the acquisition of convertible instruments.

Alongside purchases made by the bidder during the offer phase at prices above the offer price will result in an increase of the offer price. For a period of one year after the offer, purchases by the bidder in off stock-exchange transactions at prices above the offer price will result in an obligation of the bidder to pay the difference to those shareholders who tendered into the offer. This post offer increase obligation does, however, not apply to mandatory compensation payments made by the bidder in the context of a squeeze-out or domination/profit and loss pooling agreement (see below).

The minimum pricing rules are also applicable in exchange offers.

OFFER CONDITIONS

Voluntary offers can be made subject to conditions, provided that the fulfillment of these conditions is outside the influence of the bidder. It is therefore possible to make an offer subject to the conditions that a minimum acceptance rate is achieved (for example, 75 percent of all outstanding shares). Thereby, a bidder can ensure that the offer is only implemented if it results in a majority which enables the bidder to implement planned restructuring measures at target level.

It is also possible to make an offer subject to material adverse changes (MAC), provided that the MAC event is defined by objective criteria that cannot be controlled by the bidder.

In mandatory offers, conditions are not permissible.

FINANCING OF THE OFFER

In the offer document, the bidder must describe how it finances the offer, i.e. from its own cash reserves, by a bank financing, or by any other means. The offer document must set out which effects the financing and the acquisition of the target has on the balance sheet and the profit and loss statement of the bidder and the bidder group (if it prepares group financial statements).

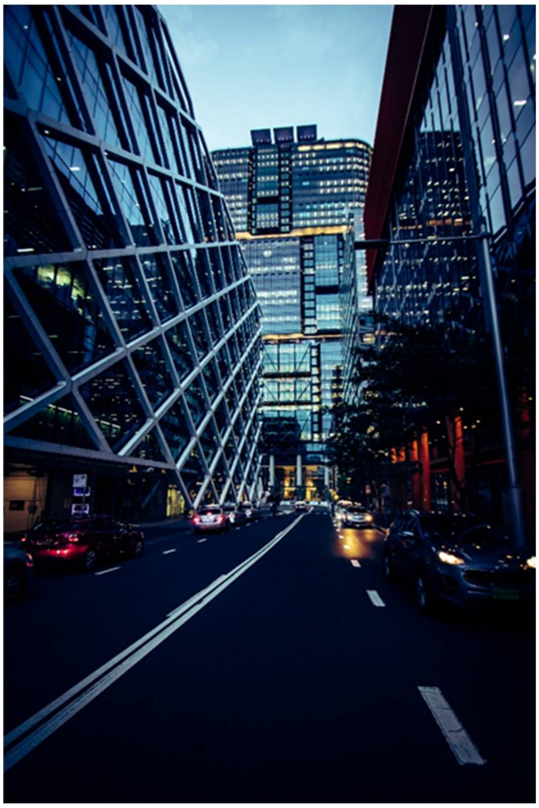
Additionally, the bidder must provide a bank confirmation that states that the bidder has taken all measures required to ensure that it can pay the purchase price under the offer when it becomes due. This bank confirmation must cover the purchase price for the acquisition of all outstanding shares that the bidder does not yet own when the offer is made. This includes shares that are subject to an irrevocable undertaking, shares that the bidder may purchase outside of the offer during the offer phase, and shares for which shareholders have declared that they are not willing to accept the offer, unless specific measures are implemented in order to prevent shareholders from accepting the offer. Thus, in a voluntary offer situation, where the bidder did not make any advance purchases, the bank confirmation would have to cover 100 percent of the outstanding shares.

The bank confirmation must be submitted to BaFin together with the offer document and must also be published as an annex to the offer document. The bank would be liable to outstanding shareholders if the confirmation proved to be incorrect. Therefore, banks must generally comply with standards for issuing guarantees before issuing the confirmation. The timetable for a public takeover should ensure that agreements with the bank that finances the offer and with the bank that issues the confirmation (often, but not necessarily identical) are in place when the offer is made public.

AMENDMENTS TO THE OFFER

The bidder can increase the offer price, waive offer conditions or decrease a minimum acceptance threshold until one day before the offer closes. In such case, shareholders who already tendered have a right to withdraw their tendered shares. If the amendment is announced during the last two weeks of the offer, the offer period is automatically extended by two weeks. A further amendment during the extended offer period is not permissible, unless a competing bid situation arises.

The bidder must make the amendments and resulting shareholder rights pubic. In case of an increase of the offer price, a financing confirmation covering also the increase amount is required. However, amendments do not require advance notice to BaFin.



COMPETING BIDS

It is possible that a third party will make a competing bid during the offer phase. In that case, the offer period for the first offer is automatically extended until the expiration date of the competing bid. Shareholders who already tendered before the offer document for the competing bid was published, have a right to withdraw and can instead tender into the competing bid.

The first bidder can react by increasing the offer price for its bid. A bidder can also increase the offer price by acquiring additional shares in the market at prices above the offer price because such acquisition will automatically result in an obligation to pay the higher price to all shareholders who tendered.

Competing bids have not been frequent in Germany.

EXEMPTIONS FROM THE OBLIGATION TO MAKE A TAKEOVER BID

Any person acquiring at least 30 percent of the voting rights in a German listed company must make a mandatory offer to the other shareholders. In specific cases, BaFin can exempt the bidder from this obligation. The most important exemption applies in restructuring cases. If the target company is in financial distress and the bidder presents a plausible restructuring concept and makes a substantial contribution, BaFin can grant the exemption. According to BaFin's administrative practice, a company is in distress if "existence threatening risks" exist. It is not necessary that insolvency is immediately impending. The bidder must present a restructuring concept to BaFin together with an auditor's opinion on the suitability of the concept. BaFin neither requires proof that the restructuring has a high probability of success nor the examination of alternative concepts. The contribution by the bidder to the restructuring can, for example, consist of a subscription of new shares in a capital increase, the provision of loans, or a waiver of claims. The required amount and form of the contribution depends on the situation of the target. It must be adequate to achieve a restructuring of the target (possibly together with measures of other parties).

The application for exemption can and should be submitted to BaFin prior to the acquisition of control. In order not to burden the bidder with the risk of having to implement a mandatory offer, it is advisable to execute share purchase agreements subject to the condition that BaFin issues the exemption.

STRATEGIES AFTER THE OFFER

CONTROL AND INCREASE OF SHAREHOLDING

After the completion of a takeover offer, the bidder does not yet own 100 percent of the target shares. Depending on the number of shares that were tendered or sold in connection with the offer, the bidder controls resolutions of the general meeting which require a simple majority or also a super majority of 75 percent of the votes cast. It should be noted that in a German stock corporation, ordinary decisions, such as the election of supervisory board members, distribution of dividends, or election of auditors, are passed with a simple majority of the votes cast, whereas corporate restructuring measures and capital increases in which subscription rights of shareholders are excluded, or capital decreases, generally require a majority of 75 percent of the votes cast, but not of the existing votes. Since not all free float shares are represented at general meetings (because the shareholders neither participate nor grant proxies), a majority shareholder can normally control these decisions before it owns 75 percent of the shares. If, for example, the majority shareholder owns 60 percent of the shares, it would control decisions which require a majority of 75 percent of the votes cast so long as no more than 80 percent of the shares are represented at the general meeting.

If the bidder acquired shares within one year following the expiration of the offer period in an off-stock exchange transaction and for a price above the offer price, it would be obligated to pay the difference between the offer price and this higher purchase price to all shareholders that accepted the offer. In contrast, stock exchange purchases do not trigger a subsequent increase of the offer price.

Bidders can increase their stake in the target company by way of a capital increase, provided that either shareholders' subscription rights (entitling them to participate on a pro-rata basis) are validly excluded or outstanding shareholders do not participate in the capital increase. An exclusion of subscription rights is principally permissible in the context of cash capital increases by up to 20 percent and capital increases against contribution in kind. An allocation of new shares to a specific shareholder must, however, comply with the equal treatment principle.

DOMINATION AND PROFIT AND LOSS POOLING AGREEMENTS

In order to increase its influence in the target, the bidder can enter into a so called domination agreement with the target. A majority shareholder can, pursuant to German law, not give binding instructions to the target company or its management. Shareholders' rights are exercised in general meetings. However, the general meeting has only limited powers and does not, in particular, make decisions regarding the day to day management of the company. The majority shareholder can indirectly influence the management board by electing, in general meetings, the supervisory board that controls, elects, and removes the management board in the German two tier board system. However, the supervisory board also cannot issue binding instructions to the management board, and supervisory board members must act in the best interest of the company rather than in the best interest of the majority shareholder.

A domination agreement between a majority shareholder and its subsidiary allows the majority shareholder to give binding instructions to the management board of the target. The target's management board must follow these instructions, even if they are disadvantageous to the target company. A domination agreement therefore allows the integration of the target company into the bidder group before the bidder owns 100 percent in the target.

Domination agreements are typically concluded alongside with profit and loss pooling agreements. Under a profit and loss pooling agreement, all profits and losses of the subsidiary are assumed by the majority shareholder, without profit participation of the minority shareholders. Such agreements result in the creation of a tax group if the majority shareholder is a German entity, and thus allow the set-off of profits and losses within a German group of companies.

The conclusion of a domination agreement and/or profit and loss pooling agreement requires a resolution of the general meeting passed with a majority of 75 percent of the votes cast at such meeting.

In addition, the majority shareholder is required to offer protection to the minority shareholders as follows: it must (1) offer to buy the shares of the minority shareholders at an adequate price, (2) pay, for the lifetime of the agreement, a fixed annual dividend to those minority shareholders who stay in the target company, and (3) compensate all annual losses of the target company.

The three months average stock exchange price of the target shares before the publication of the fact that a domination and/or profit and loss pooling agreement shall be concluded is the minimum price to be offered to the minority shareholders. This price can be above (or below) the offer price. The adequacy of the offer price and of the fixed annual dividend must be confirmed by an independent, court appointed auditor. Minority shareholders can challenge the adequacy in court, but such proceedings do not delay the domination and profit and loss pooling agreement from entering into force.

SQUEEZE-OUT

The bidder can conduct a squeeze-out of the minority shareholders of the target company once it has acquired 90 percent of the share capital of the target company. In the squeeze-out, minority shareholders are forced to sell their shares in exchange for adequate compensation. Again, the three months average stock exchange price of the target shares before the squeeze-out is publicly announced is the minimum price. The adequacy of the compensation is confirmed by an independent, court-appointed auditor. Minority shareholders can challenge the adequacy in court, but such proceedings do not delay the squeeze-out from becoming effective.

If the bidder owns between 90 and 95 percent of the target shares, it can only implement the squeeze-out if it is combined with a merger of the target company on the majority shareholder. The majority shareholder must be a German stock corporation. If the bidder owns at least 95 percent of the target shares, the squeeze-out is simpler and does not require combination with a merger.

Simplified squeeze-out proceedings are available if the bidder holds 95 percent of the share capital after the takeover offer and if in addition, the offer was accepted for at least 90 percent of the shares that were subject to the offer. If both thresholds are met, the bidder can apply to the court in order to resolve on the squeeze-out of minority shareholders in exchange for payment of the compensation offered in the prior takeover offer. Past experience demonstrates that it is difficult to reach these thresholds.

DELISTING AND DELISTING OFFER

By way of delisting, the trading of the target (issuer) shares on the stock exchange can be terminated. As a consequence, obligations resulting from the listing, such as disclosure obligations, become obsolete. The delisting itself does, however, not result in a change of the shareholder structure.

A delisting requires an application to the stock exchange by the issuer. The stock exchange allows the delisting only if it is accompanied by an offer to the outstanding shareholders to acquire their shares (so called "*delisting offer*"). The offer price is determined pursuant to the above mentioned minimum price rules under the Takeover Act; however, in deviation from those rules, the weighted average stock exchange price of the target shares during the six months, not three months, before publication of the intention to make the delisting offer is minimum offer price. The delisting offer cannot be made subject to any conditions, but otherwise follows the rules of the Takeover Act.

Typically, delisting offers are implemented subsequently to a prior takeover offer. Alternatively, it is possible to combine a takeover and delisting offer. In that case, all minimum price rules must be complied with in one offer and the offer cannot be subject to any conditions. If regulatory approvals, such as merger control clearance, are required, it would be necessary to obtain those before the offer commences. As only the issuer can apply to the stock exchange for a delisting, bidder and issuer can enter into an agreement on the implementation of the delisting.

Shareholders that do not accept the delisting offer will remain shareholders of the issuer and be entitled to all shareholder rights, in particular participating in annual general meetings. Third parties could arrange trading of the issuer's shares in unregulated market segments. Such trading would create a market place for shareholders but would not result in publication obligations for the issuer.

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