Ratio
Legal News from Luxembourg

Luxembourg Implements European Takover Bids Directive

In early May 2006 Luxembourg's Parliament passed a law implementing Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on Takeover Bids.

This legislation has attracted considerable interest in the light of the ongoing takeover battle between the Anglo-Dutch Mittal Steel and Luxembourg-based Arcelor.

The law is currently awaiting publication in the Official Journal and will only come into force the day of its publication.

According to the transitional provisions in the law, the new rules will apply to the ongoing bid for Arcelor, even though that bid was initiated by Mittal Steel before the vote of the law.

In general, the new law remains very close to the Directive. A number of proposed amendments were abandoned after the *Conseil d'Etat*, a consultative body with powers to delay the legislative process by forcing a more complex voting procedure, had voiced concerns. One of the amendments that hasn't made it to the final text would have introduced a grace period of 12 month that would have protected a company having just fought off a takeover bid against a renewed attack.

The Act sets out the principle that all shareholders of the same category must be treated equally. It also provides that the offer must be published immediately and that the shareholders must receive adequate information.

In order to protect minority shareholders, the law mandates that a public bid must be made by any person who, alone or through persons acting together with them, acquire a controlling stake of more that $33^1/_3\%$ of the company's equity.

Under the new legislation, a shareholder holding at least 90% of a company's equity may be forced to buy the remaining 10%. Reversely, an offeror who has acquired 95% or more of a company's stock may force the holders of the remaining equity to sell at an equitable price.

The new law regulates that the consideration offered may consist of securities, cash or a combination of the two. However, a cash alternative is compulsory if the securities offered are deemed not to be liquid (i.e. if less than 25% of the offeror's share capital is publicly traded on a regulated exchange).

The law allows the targeted company to take defensive measures. Such measures do not require the shareholders' approval, unless the company's articles of incorporation provide otherwise.

The Takeover Act designates the *Commission de Surveillance du Secteur Financier (C.S.S.F.)* as the regulatory authority, with powers to declare a takeover bid invalid if the fundamental rules set out in the legislation have been violated.

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