Luxembourg

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1 Relevant Authorities and Legislation

1.1 What regulates M&A?

M&A transactions involving public companies are, in most cases, likely to take the form of a takeover bid.

Luxembourg has implemented the European Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids (the "Takeover Bid Directive") with the enactment of the law of 19 May 2006 published in the *Mémorial* (Luxembourg Official Journal) A-N° 86 of 22 May 2006 (the "Takeover Bid Law").

A takeover bid means a public offer (other than by the offeree company itself) made to the holders of the securities of a company to acquire all or some of those securities, whether mandatory or voluntary, which follows or has as its objective the acquisition of control of the offeree company in accordance with national law.

The rules of mandatory takeover bids set out under the Takeover Bid Law apply where a natural or legal person, as a result of its own acquisition or the acquisition by persons acting in concert with it, holds securities of a company which, added to any of its existing holdings of those securities and the holdings of those securities of persons acting in concert with it, directly or indirectly, give it a specified percentage of voting rights in that company, giving it control of that company.

In case of companies having their registered office in Luxembourg, the percentage of voting rights which confers control is set at 33 1/3 %. For the purpose of calculating that percentage, account shall be taken of all the securities of the company excluding securities carrying a right to vote only in particular circumstances.

The obligation to make a bid does not apply where control has been acquired following a voluntary bid made in accordance with the Takeover Bid Law to all the holders of securities for all their holdings.

In all instances where the member state of the registered office is not the Member State of the regulated market(s) on which the securities are admitted to trading, matters relating to the consideration offered in the case of a bid, in particular the price and matters relating to the bid procedure, are dealt with in accordance with the rules of the member state of the competent authority (as determined pursuant to the provisions of the Takeover Bid Law). In matters relating to the information to be provided to the employees of the offeree company and in matters relating to company law, the applicable rules and competent authority are those of the member state in which the offeree company has its registered office.

The Luxembourg supervisory authority of the financial sector (the Commission de Surveillance du Secteur Financier, hereafter the "Commission") is competent to supervise a bid if the offeree company has its registered office in Luxembourg and the company's securities are admitted to trading on a regulated market in Luxembourg. Other relevant sources of law and regulation applicable to M&A transactions include the law on commercial companies of 10 August 1915 as amended, the Labour Code, the law of 10 July 2005 on the prospectus for securities governing the public offering of securities in Luxembourg, as well as admissions for trading on the regulated market of the Luxembourg Stock Exchange (subject to the rules and regulations of the Luxembourg Stock Exchange Rules), the law of 9 May 2006 on market abuse, as amended, as well as the law of 11 January 2008 on transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market as amended (the "Transparency Law").

Anti-trust regulation may be handled at the level of the Luxembourg authorities or more likely in case of cross-border transactions by the European Commission.

Furthermore, companies may be subject to specific regulatory controls or approvals relating to their specific industry or activity. For example, credit institutions, investment firms, insurance companies and companies operating in the telecommunications business are subject to specific approval and notification requirements in case of significant change in their shareholding.

1.2 Are there different rules for different types of company?

The Takeover Bid Law shall apply as to the takeover bids for the securities of a company governed by the law of a member state of the European Union or of the European Economic Area, where all or some of those securities are admitted to trading on a regulated market in one or more member states.

However, bids for securities issued by companies, the object of which is the collective investment of capital provided by the public, which operate on the principle of risk-spreading and units of which are, at the holders' request, repurchased or redeemed, directly or indirectly, out of the assets of those companies, as well as by member states' central banks are expressly excluded from the scope of the Takeover Bid Law.

1.3 Are there special rules for foreign buyers?

While there are some sector-related restrictions (see question 1.1) on the acquisition and disposal of shares/voting rights, none of them is specifically aimed at foreigners.

1.4 Are there any special sector-related rules?

See question 1.1.

1.5 Does protectionism operate in favour of local owners?

No, it does not.

1.6 What are the principal sources of liability?

In the event of an infringement of the Takeover Bid Law liable to impair the general principles set out therein (e.g. the principles of equivalent treatment of all holders of securities of an offeree company of the same class, of sufficient time and information provided to the holders of securities to reach a properly informed decision on the bid, of ensuring that the offeror can fulfil in full any cash consideration and of taking all reasonable measures to secure the implementation of any other type of consideration), the Commission may impose a fine on the parties to the bid.

Furthermore, the Takeover Bid Law imposes criminal sanctions *inter alia* for persons omitting to give the Commission prior notice of a bid or refusing to give the Commission information which they are required to give it pursuant to the Takeover Bid Law or knowingly providing incorrect/incomplete information.

Other possible sources of liability may be prospectus liability (for incorrect, inaccurate or incomplete information contained in the prospectus), insider trading and market manipulation that may give rise to contractual or civil liability in court, financial penalties or, in extreme cases, criminal sanctions.

2 Mechanics of Acquisition

2.1 What alternative means of acquisition are there?

As mentioned under question 1.1, a takeover bid is the most common method to acquire control over a public company.

Legal mergers may also be used as an acquisition mechanism. They are governed by the Luxembourg law on commercial companies of 10 August 1915, as amended, and include, among others, the possibility of creating a *societas europea* and proceeding to cross-border mergers.

2.2 What advisers do the parties need?

The parties (the offeror, the target and sometimes the major shareholders of the target) will generally require assistance from legal counsels, financial advisers, settlement/listing agents and public relation consultants.

2.3 How long does it take?

The Takeover Bid Law contains rules impacting on the timetable of a bid. The decision to make a bid must be made public by the offeror without delay following the taking of the decision by the offeror and the Commission must be informed of the bid before such decision is made public. The offeror is required to draw up and make public, in good time, an offer document containing the information necessary to enable the holders of securities in the offeree company to reach a properly informed decision on the bid.

Before the offer document is made public, the offeror has to submit it to the Commission for its approval within 10 working days from the day on which the bid was made public. The Commission then notifies the offeror of its decision concerning the approval of the offer document within 30 working days following the presentation of the draft offer document.

The Commission has to inform the offeror within 10 working days of the presentation for approval of the offer document, whether the document submitted to it is incomplete or requires additional information. In this case, the 30-day period shall not begin to run until the day on which the required information is provided by the offeror.

The time allowed for acceptance of a bid may not be less than 2 weeks nor more than 10 weeks from the date of publication of the offer document. The period of 10 weeks may, however, be extended as long as the offeree company is not hindered by the bid in the conduct of its affairs for longer than is reasonable. The Commission may grant a derogation from the period referred to above in order to allow the offeree company to call a general meeting of shareholders to consider the bid.

In the event of competing bids, the period of accepting the initial bid shall be automatically extended and shall expire only when the period for accepting the competing bid expires.

The exact timetable may, furthermore, be impacted if the offer is to be followed by a squeeze-out or if litigation is introduced by minority shareholders.

2.4 What are the main hurdles?

The main hurdles (besides, in the case of a hostile offer, the negative reaction of the board of directors of the target and/or of the controlling shareholders) may be the timing for approval of the offer document by the competent authority and potential shareholders' litigation.

Obtaining competition clearance may also impact on the timing of an offer procedure.

2.5 How much flexibility is there over deal terms and price?

Shareholder equality. According to the general principles that must be complied with in the case of a takeover bid, all holders of securities of an offeree company of the same class must be afforded equivalent treatment and if a person acquires control of a company, the other holders of securities must be protected.

Equitable price. In case of a mandatory bid over securities (see question 1.1), such a bid shall be addressed at the earliest opportunity to all the holders of these securities for all their holdings at the equitable price. According to the Takeover Bid Law the highest price paid for the same securities by the offeror or by persons acting in concert with it over a period of 12 months before the bid shall be regarded as the equitable price. If after the bid has been made public and before the offer closes for acceptance, the offeror or any person acting in concert with it purchases the securities at a price higher than the offer price, the offeror shall increase its offer so that it is not less than the highest price paid for the securities so acquired.

Adjustment of the price. The Commission is authorised, in certain circumstances, to adjust the price as described above. The highest price may, in particular, be adjusted either upwards or downwards only when the highest price was set by agreement between the purchaser and a seller or where the market price of securities in question has been manipulated or where market prices in general or certain market prices in particular have been affected by exceptional occurrences or in order to enable a financially distressed firm to be rescued.

A Grand-Ducal Regulation may provide for other circumstances in which the dysfunctioning of the market might have an effect on the establishment of the price. Any decision of the Commission modifying the equitable price must be reasoned and made public.

Consideration in securities or cash. By way of consideration, the offeror may offer securities, cash or a combination of both. However, if the consideration offered by the offeror does not consist of liquid securities admitted to trading on a regulated market, the offer shall include a cash alternative. In any event, the offeror shall offer at least a cash consideration as an alternative where it, or persons acting in concert with it, over a period beginning 12 months before the bid and ending when the offer closes for acceptance, have purchased cash securities carrying 5% or more of the voting rights in the offeree company.

Terms of the offer document. According to the Takeover Bid Law, the offer document shall *inter alia* include at least the terms of the bid; the identity of the offeror and, if applicable: the identities of the persons acting in concert with the offeror or with the offeree company; the securities for which the bid is made; the consideration offered for each security or class of securities and, in the case of a mandatory bid, the measures employed in determining it, with particulars of the way in which that consideration is to be paid; the compensation offered for the rights which might be removed in application of the breakthrough rule, as well as the means of payment of this compensation and the calculation method used in determining it; the maximum and minimum percentage or quantities of securities which the offeror undertakes to acquire; details of any existing holdings of the offeror and of the persons acting in concert with him/her in the offeree company; all the conditions to which the bid is subject; the offeror's intentions regarding the future business of the offeree company and, in so far as it is affected by the bid, the offeror, and regarding the safeguarding of the jobs of their employees and management, including any material change in the conditions of employment, and, in particular, the offerors' strategic plans for the two companies and the likely repercussions on employment and the locations of the companies' places of business; the time allowed for acceptance of the bid; information concerning the financing for the bid; where the consideration offered by the offeror includes securities of any kind, information concerning those securities; and the national law which will govern the contracts concluded as a result of the bid and the competent courts.

Change of information. As from the moment information on the offer is provided by the offeror to the Commission (see question 2.3), the conditions of the bid may no longer be changed, save for any change which is more favourable for the holders of the securities of the offeree company. Any increase in the bid price must benefit the holders of the securities who accepted the bid before the said increase and acceptances of the bid made before the publication of the offer document shall not be binding on the holders of securities. In the event that such a change in the conditions has taken place, the bid cannot be closed until a reasonable time has elapsed since the changes were published.

Squeeze-out. After a successful takeover bid the offeror is entitled to squeeze-out remaining minority shareholders if the bidder holds at least 95% of the capital carrying voting rights and of the voting rights. (See also questions 2.15 and 7.4.)

If the offeror wishes to exercise this right of squeeze-out following a bid, the Commission has to ensure that a fair price is guaranteed and that the price takes the same form as the consideration offered in the bid or is in cash. Cash must indeed be offered at least as an alternative.

In case of a squeeze-out following a voluntary bid, the consideration offered in the bid is presumed to be fair as regards the securities where, through acceptance of the bid, the offeror has acquired securities representing not less than 90% of the capital carrying voting rights comprised in the bid. Following a mandatory bid, the consideration offered for the securities in the bid is presumed to be fair.

2.6 What differences are there between offering cash and other consideration?

Where the consideration offered by the offeror includes securities of any kind, information concerning those securities needs to be given in the offer document (see question 2.5).

Also, in the offer document, the offeror will, in particular, have to pay attention to the valuation of the shares offered as consideration.

He will have to demonstrate either that he already disposes of, or will dispose of, the shares upon successful completion of the offer.

In case of mandatory bids where the consideration offered by the offeror does not consist of liquid securities admitted to trading on a regulated market, the offeror shall include a cash alternative. The offeror's securities are presumed to be sufficiently liquid either where those securities are disseminated among the public to the extent of at least 25% of the offeror's subscribed capital represented by that class of securities or where, on account of the high number of securities of a single class and the extent of their dissemination among the public, the proper functioning of the market is ensured with a lower percentage.

2.7 Do the same terms have to be offered to all shareholders?

See question 2.5.

2.8 Are there obligations to purchase other classes of target securities?

No, there is no such obligation by virtue of Luxembourg regulations on takeovers. However, such requirements can result from contractual obligations or from provisions contained in the company's constitutional documents.

2.9 Are there any limits on agreeing terms with employees?

As soon as the bid has been made public and when the offer document is made public, the board of the offeree company and of the offeror shall communicate it to the representatives of their respective employees or where there are no such representatives, to the employees themselves. The representatives of the employees shall subsequently be involved by the boards in their work, which is to result in the reasoned opinion on the bid required by the Takeover Bid Law.

The board shall inform and require the opinion of the representatives of the employees, in particular as regards the repercussions of the bid on all the interests of the company and, in particular, on employment.

The board of the offeree company shall draw up and make public a document setting out its opinion of the bid and the reasons on which it is based, including its views on the effects of implementation of the bid on all the company's interest and specifically employment. Where the board of the offeree company receives in good time a separate opinion from its employee representatives on the effects of the bid on employment, that opinion shall be appended to the document.

If specific deal-related packages are to be agreed upon with employees or management, specific attention should be paid if directors, managers or employees are also shareholders of the target, both in view of the principle of equal treatment of all shareholders and in the light of the law of 9 May 2006 on market abuse, as amended.

2.10 What role do employees play?

See question 2.9.

2.11 What documentation is needed?

The principal documentation involved in a takeover bid is:

- the offer document approved by the Commission;
- the advertisements announcing the start of the bid, its results and, if applicable, the re-opening of the bid and/or a squeeze-out offer;
- the forms of acceptance by which the offer can be accepted; and
- the share and purchase agreement with the controlling shareholder of the target or irrevocable commitment of such controlling shareholders to tender its shares under the offer.

2.12 Are there any special disclosure requirements?

There are no particular financial disclosure, valuation and reporting procedures foreseen under the Takeover Bid Law.

2.13 What are the key costs?

The key costs incurred consist of:

- advisers' and agents' fees;
- publication fees;
- translation and printing fees for the offer document (the offer document shall be drawn up in a language accepted by the Commission – drafting of the offer document in French, German or English is accepted in all cases); and
- handling fees due to the Commission.

2.14 What consents are needed?

In addition to target shareholders' acceptance (and bidder's corporate authorisations) the principal consents that may be required depending on the target's activities will be regulatory (anti-trust and other regulatory approvals, if any).

2.15 What levels of approval or acceptance are needed?

The offer document shall state the maximum and minimum percentages or quantities of securities which the offeror undertakes to acquire, as well as all the conditions to which the bid is subject.

If the bidder wants to acquire sufficient shares through the offer to enable it to exercise the right to squeeze-out any minority who will not accept the offer, the bidder will have to acquire securities representing not less than 95% of the capital carrying voting rights and 95% of the voting rights in the offeree company. Where the offeree company has issued more than one class of securities, the right of squeeze-out may be exercised only in the class in which the threshold mentioned above has been reached.

2.16 When does cash consideration need to be committed and available?

The offer document will have to indicate the particulars of the way in which the consideration is to be paid. An offeror must announce a bid only after ensuring that he/she can fulfil in full any cash consideration (if such is offered).

3 Friendly or Hostile

3.1 Is there a choice?

There are no legal or regulatory impediments to hostile bids in Luxembourg.

3.2 Are there rules about an approach to the target?

There are no specific rules provided by the Takeover Bid Law, but general regulations applicable to public companies including insider trading, market manipulation and transparency rules shall be considered.

3.3 How relevant is the target board?

The board of the offeree company shall draw up and make public a document setting out its opinion of the bid and the reasons on which that opinion is based, including its views on the effects of the implementation of the bid on all the company's interests and specifically employment, and on the offeror's strategic plans for the offeree company and their likely repercussions on employment and the locations of the places of business as set out in the offer document. Where the company has a two-tier board structure, "board" shall mean both the management board and the supervisory board.

Furthermore, companies whose registered office is in Luxembourg shall have the reversible choice, to make themselves subject to the frustrating action provisions referred to in the Takeover Bid Law.

If a Luxembourg company has decided to opt in for the board passivity rule, the management body of the company must receive the prior authorisation of the general meeting of shareholders prior to undertaking any actions likely to frustrate the offer, with the exception of searching for other offers, and, in particular, prior to issuing any shares which may result in a lasting impediment to the offeror's acquiring control of the offeree company.

3.4 Does the choice affect process?

A friendly bid will run more smoothly and efficiently than a hostile transaction. In the case of a friendly bid, the target will usually provide for some level of due diligence information (subject to confidentiality obligations and fiduciary duties of the target's board). In the end, hostile transactions can always become friendly and, in fact, they often do.

4 Information

4.1 What information is available to a buyer?

For listed companies subject to the Takeover Bid Law, besides the information that is publicly available (such as annual or periodic financial reports, disclosures of major shareholdings, all official

publications required pursuant to applicable corporate and securities laws including articles of association and amendments thereto, corporate governance related information, press releases and analyst reports), the Takeover Bid Law requires that these companies must publish detailed information on the following:

- the structure of their capital;
- any restrictions on the transfer of securities;
- significant direct and indirect shareholdings;
- the holders of any securities with special control rights and a description of these rights;
- the system of control of any employee share scheme where the control rights are not exercised directly by the employees;
- any restrictions on voting rights;
- any agreements between shareholders which are known to the company and may result in restrictions on the transfer of securities and voting rights;
- the rules governing the appointment and the replacement of board members and the amendment of the articles of association;
- the powers of board members, and, in particular, the power to issue or buy back shares;
- any significant agreements to which the company is a party and which take effect, alter or terminate upon a change of control of the company following a takeover bid; and
- any agreements between the company and its board members or employees providing for compensation if they resign or are made redundant without valid reason or if their employment ceases because of the takeover bid.

In the case of companies whose registered office is in Luxembourg, the information referred to above shall be published in the company's annual report and the board of such company shall present an explanatory board to the annual general meeting of shareholders thereon.

In case of a friendly bid, the target will usually provide for some level of due diligence information (subject to confidentiality obligations and fiduciary duties of the target's board).

4.2 Is negotiation confidential?

Negotiations with the target or its shareholders can be kept confidential provided the parties comply, in particular, with insider trading rules that require *inter alia* listed companies to make public as soon as possible any insider information which directly concerns them.

4.3 What will become public?

The major features of the offer and the agreement reached between the target, its shareholders and employees/management and the bidder will, in principle, have to be made public in the offer document.

4.4 What if the information is wrong or changes?

As from the prior information provided by the offeror to the Commission, the conditions of the bid may no longer be changed, saving any change which is more favourable for holders of securities of the offeree company. As from the publication of the offer document, the bid may be withdrawn only in the following cases:

- in the event of a competing bid;
- in the event of a lack of administrative authorisation required to acquire the securities which are the subject of the bid (e.g. from authorities responsible for ensuring free competition);
- in the event that, independently of the will of the offeror, a condition of the bid is not satisfied; or
- subject to the reasoned authorisation of the Commission, in case of exceptional circumstances not allowing the bid to be carried out for reasons beyond the control of the offeror.

5 Stakebuilding

5.1 Can shares be bought outside the offer process?

Shares can be bought outside the offer process. Pursuant to the Transparency Law, a holder of shares shall notify the company of the percentage of voting rights in the company held by such person, where as a result of an acquisition or disposal, the percentage held by such person reaches, exceeds or falls below any of the following thresholds: 5%, 10%, 15%, 20%, 25%, 33 1/3%, 50% and 66 2/3%. The holding of financial instruments giving the holder the right, on his initiative alone, to acquire shares in the company is assimilated to the holding of shares.

The threshold is calculated by reference to the total number of shares with voting rights in the company, including those shares where voting rights are suspended (e.g. shares held in treasury by the company or group companies).

A holder of shares must also notify the company in case it reaches, exceeds or falls below any of the above thresholds outside any acquisition or disposal but where this is due to a modification of the number of voting rights in the company. Holders will need to determine whether they reach or cross those thresholds "passively" on the basis of the regular information to be published by the company under the Transparency Law.

Such purchases may have an effect on the terms that must be offered in the takeover bid (see question 2.5).

5.2 What are the disclosure triggers?

See questions 1.1, 2.5 and 5.1.

5.3 What are the limitations?

See questions 1.1, 2.5 and 5.1.

6 Deal Protection

6.1 Are break fees available?

Break or inducement fees can be obtained from the target and/or its controlling shareholders, but they will have to justify such fees as being in their corporate interest.

6.2 Can the target agree not to shop the company or its assets?

The offeror can obtain a commitment of the target not to shop the company or its assets or not to seek alternative bidders subject to the general obligations of the board of the offeree company, as set out under the Takeover Bid Law (see question 3.3).

6.3 Can the target agree to issue shares or sell assets?

See question 3.3 on frustrating action.

6.4 What commitments are available to tie up a deal?

See questions 2.5, 2.7 and 3.3.

7 Bidder Protection

7.1 What deal conditions are permitted?

See questions 2.4, 2.5, 2.14 and 4.4.

7.2 What control does the bidder have over the target during the process?

The bidder has control over the target only by stipulated conditions agreed with the target and/or its shareholders.

7.3 When does control pass to the bidder?

Control will, in principle, pass to the bidder when the consideration is settled and the result/success of the bid has been announced.

7.4 How can the bidder get 100% control?

The offeror may be entitled to exercise, in certain conditions, the right of squeeze-out within 3 months of the end of the time allowed for acceptance of the bid (see questions 2.5 and 2.15). Furthermore, the Takeover Bid Law grants a right of sell-out to shareholders in certain circumstances. Indeed, where following a bid made to all the holders of securities of an offeree company, a person holds alone, or with persons acting in concert with it, securities conferring on that person more than 90% of the voting rights in an offeree company, a holder of securities may require that person to buy its securities at a fair price duly paid in cash or in liquid securities with an option for the holder that the price be paid in cash.

8 Target Defences

8.1 Does the board of the target have to publicise discussions?

See questions 2.3, 3.3 and 4.2.

8.2 What can the target do to resist change of control?

See question 3.3 on frustrating action provisions.

Besides the possibility for a Luxembourg company to opt in for the board passivity rule, the Takeover Bid Law provides for breakthrough rules that apply if an offer has been made public and where a company has decided to make itself subject to such rules. In case the company has opted for the application of breakthrough rules, all restrictions on the transfer of securities provided for in the articles of association of the offeree company and any restrictions on the transfer of securities provided for in contractual agreements between the offeree company and the holders of its securities or in contractual agreements between holders of the offeree company's securities entered into after 21 April, 2004, shall not apply *vis-à-vis* the offeror during the time allowed for acceptance of the bid.

Furthermore, restrictions on voting rights provided for in the articles of association of the offeree company shall not have effect at the general meeting of shareholders which decides on any defensive measures. The same applies for the contractual agreements set out in the paragraph above.

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

If further to an offer the offeror holds more than 75% of the issued share capital carrying voting rights, the transfer restrictions and the voting restrictions referred to above, as well as extraordinary rights of shareholders in relation to the appointment and removal of board members provided for in the articles of association, do not apply.

Companies which have opted for the board passivity and the breakthrough rules shall, however, be exempt from applying those if they become the subject of an offer launched by a company which does not apply the same articles as they do.

8.3 Is it a fair fight?

Ultimately, the success of the bid will depend on the offeror's ability to convince the shareholders of the target of the value of their offer.

The Takeover Bid Law provides for a level playing field between alternative bids and the general principles set out therein are aiming to provide effective protection of shareholders (who are to be given sufficient information on the bids and benefit from equal treatment during the bid process) and to ensure that the board of the target facilitates the decision-making process by acting in the interest of the target (and within the limits of the target's defences, as detailed above) and enable the shareholders to decide on the bid based upon its merits.

9 Other Useful Facts

9.1 What are the major influences on the success of an acquisition?

The decisive factor in relation to a bid will most likely be value and the ability of the offeror to convince the shareholders thereof and get the support of the controlling shareholders, the board of directors and the management of the target.

9.2 What happens if it fails?

See question 4.4 for the possibility to withdraw an offer.

The Takeover Bid Law does not prevent an offeror from launching a new bid if its offer failed.

10 Updates

10.1 Please provide a summary of any relevant new law or practices in M&A in Luxembourg.

Draft legislation. A draft bill of law is currently being discussed in Luxembourg that may, if approved, provide for squeeze-out and sell-out provisions, unrelated to a takeover bid, when a shareholder holds securities representing not less than 95% of the capital carrying voting rights and 95% of the voting rights of a public

limited company whose securities carrying voting rights are, or have been (and are no longer), admitted to trading on a regulated market. Further details with respect to the implementation status of the draft bill of law are likely to be available later in 2012.

Discussions are still ongoing on a draft bill which aims at thoroughly amending the law on commercial companies of 10 August 1915, as amended, and continuing the process of modernisation of Luxembourg corporate law and corporate governance rules. Furthermore, a draft bill aimed at transposing the European Directive 2010/73 and amending the Luxembourg prospectus and transparency regulations has been prepared by the Luxembourg government.

Recent legislation. The European Directive 2007/36 has been transposed through the law of 24 May 2011 on the exercise of certain rights of shareholders in general meetings of listed companies and provides for enhanced information of shareholders, their involvement in the setting of agendas and draft resolutions, and the facilitation of their active participation to the general shareholders' meetings, either by their physical presence or by the use of modern technologies.

Guidance by the Commission. The Commission has in several cases clarified the construction of change of control in connection with restructuring or reorganisation operations. The Commission considers in its decisions the nature of the change i.e. whether the change consists of a material change of the control situation in the company or is limited to a purely formal change in the situation of the shareholding that does not affect the minority shareholders. In this context, the Commission confirmed its position that the two conditions set out in Article 5.1 of the Takeover Bid Law i.e. the acquisition and the gaining of control, have to be met cumulatively for a mandatory offer to be triggered. In a first case, the Commission held that the restructuring of a company limited to a purely formal change in the situation of shareholding did not give rise to a mandatory offer obligation and hence no derogation was required under the Takeover Bid Law. In another case, the Commission granted an exemption from the obligation to launch a mandatory bid in the context of a reorganisation of a Luxembourg company, considering that the intended operation was not affecting the rights or interests of the minority shareholders of the company and considered that the transaction was not requiring a specific protection of the minority shareholders under the Takeover Bid Law.

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François Felten became a partner of Elvinger, Hoss & Prussen in January 2005 and is an active member of the corporate, banking and finance group of the firm.
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Partners of the firm participate at industry and governmental level in the development of the legal and regulatory environment of the financial services sector in Luxembourg. The firm has a long standing experience and a strong track record in advising on cross-border transactions such as concurrent multi-jurisdictional public exchange offers, secured and unsecured financing transactions, mergers and acquisitions, corporate restructurings as well as in national and international litigation and arbitration. The firm assists clients in relation to all other legal matters they are faced with including, among others, issues pertaining to administrative law and labour law.

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