
Latvia

Takeover Guide

Contacts

Dace Silava-Tomsone and Martins Alijens

Lejins Torgans & Partners

martins.aliens@lt-v.lv

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THE REGULATION OF TAKEOVERS

Takeovers are regulated in Latvia by the Financial Instruments Market Law (Finanšu instrumentu tirgus likums), effective as from 1 January 2004. Since Latvia is a member state of the European Union, the Financial Instruments Market Law implements, inter alia, the Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids (the "Takeover Directive").

The Financial Instruments Market Law provides a detailed legal framework for takeovers. In line with the Takeovers Directive The Financial Instruments Market Law primarily aims to protect the minority shareholders of the target companies. Nevertheless, the Financial Instruments Market Law also provides some instruments which are favourable to the majority shareholders such as the right of squeeze-out.

The regulation of takeovers under the Financial Instruments Market Law extends only to companies with shares admitted to trading on a regulated market. There are no specific provisions relating to takeovers with respect to companies the shares of which are not admitted to trading on a regulated market.

Takeovers are supervised in Latvia by the Financial and Capital Market Commission (Finanšu un kapitāla tirgus komisija, the "Commission"), a governmental body that regulates and supervises the financial instruments market in Latvia. The Commission is given a wide range of rule-making, investigatory and enforcement powers in order to meet its statutory objectives. For more information regarding the Commission, visit its website at www.fktk.lv.

The Riga Stock Exchange (Rīgas Fondu birža) is the only regulated financial instruments market in Latvia. For more information regarding the Riga Stock Exchange, visit its website at www.rfb.lv.

THE SUPERVISORY AUTHORITY AND THE APPLICABLE LAW

Determination of the supervisory authority

As a general rule, the making of a takeover bid will be supervised by the Commission if the shares of the target company are admitted to trading on a regulated market in Latvia. This rule applies irrespective of whether the target company has a registered office in Latvia or abroad.

Where the shares of the target company are admitted to trading on regulated markets in Latvia and in one or several other member states of the European Union or the European Economic Area, the making of a takeover bid is supervised by the Commission, if the shares were first admitted to trading on the regulated market in Latvia.

Where the shares of the target company are simultaneously admitted to trading on a regulated market in Latvia and in one or several other member states of the European Union or the European Economic Area, the target company is to determine which of the supervisory authorities of the relevant member states will supervise the bid. The target company must notify its selection to the relevant supervisory authorities on the first day of trading.

Determination of the applicable law

Matters relating to the consideration offered in the case of a bid and matters relating to the bid procedure are governed by the law of the member state of the competent authority. Accordingly, these issues will be governed by the Financial Instruments Market

Law if the supervision of the relevant takeover bid falls within the competence of the Commission.

Matters relating to the information to be provided to the employees of the target company and matters relating to company law are governed by the law of the member state in which the target company has its registered office. Accordingly, these issues will be governed by the respective Latvian laws if the target company has its registered office in Latvia.

THE MANDATORY BID

Triggering conditions

The requirement to make a mandatory takeover bid applies to:

- any natural or legal person or persons acting in concert which has or have acquired, directly or indirectly, shares of the target company representing 50 or more percent of the voting power in the company; and
- any natural or legal person which at the shareholders meeting of the target company has voted for the exclusion of the company from the regulated market.

Should more than one shareholder have voted for the exclusion of the target company from the regulated market, all such shareholders must appoint one of them to make the mandatory takeover bid on behalf of such shareholders.

The requirement to make the mandatory takeover bid does not extend to any person or persons acting in concert who has or have acquired shares of the target company reaching or exceeding the threshold referred to above if the acquisition is a result of a voluntary takeover bid.

Indirectly acquired voting power

To determine a person's indirect holding in a given company, the person is deemed to have the following voting rights:

- attaching to shares which have been acquired by any third party in its own name but, at the instructions of the person;
- attaching to shares which have been acquired by a company controlled by the person;
- granted to the person under a written agreement with a third party on a lasting or systematic joint action basis in respect of the management of the company;
- of a third party which the person itself or a company controlled by the person is entitled to use under a written agreement for a definite period or without limitation of the period against a consideration or without consideration;
- attaching to shares held by the person which the person is entitled to use at his or her own discretion without any separate instructions from the party to which the shares belong;
- attaching to shares which the person has transferred to a third party as a collateral without losing the voting rights;

- attaching to shares which the person is entitled to acquire under a written agreement, the performance of which depends solely on the person itself;
- attaching to shares which the person has acquired under loan, reverse purchase or any similar transactions; and
- attaching to shares acquired by the person indirectly by any other means.

Consequences of breach

A person is prohibited from using the voting rights attaching to the shares owned by such person or any voting rights acquired indirectly if:

- that person has failed to make the mandatory takeover bid when required by the law;
- the mandatory takeover bid made by that person does not comply with the law; or
- that person has failed to perform settlement with the shareholders which have accepted the bid.

Any decisions of the shareholders meeting which have been passed by use of any voting rights in violation of the prohibition referred to above are void and no records may be made with any public registries based on such decisions.

The failure of a person to make a mandatory takeover bid when required by the law may additionally result in the Commission issuing a warning to, or imposing a penalty of up to LVL 10000 on, such person.

Determination of price

The mandatory takeover bid must be made at a price not lower than any of the following:

- the price at which the offerer or persons acting in concert with the offerer has or have acquired the shares of the target company within the last twelve months, provided that, where the shares have been acquired at different prices, the price of the bid may not be lower than the highest of such prices;
- the average weighted price of the shares on the regulated market within the last twelve months; and
- the value of the shares calculated by dividing the net assets of the company (that is, total assets minus the company's shares owned by the company itself and liabilities) by the number of the issued shares.

For the purposes of calculation of the value of the shares, the net assets of the company must be determined in accordance with the company's last audited annual report approved by the shareholders meeting. As a general rule, the period of time between the end of the financial year for which the annual report has been prepared and the filing of the prospectus with the Commission may not exceed sixteen months. By way of exception, should the company be allowed by the law to prepare its annual report within seven months after the end of the financial year, such period may not exceed nineteen months.

Should the value of the shares determined on the basis of the company's quarterly report exceed the value determined on the basis of the company's annual report for at least ten percent, the quarterly report must be used to determine the value of the shares.

Should the company prepare consolidated annual reports, the value of the shares must be determined on the basis of the relevant consolidated annual report. Should the company prepare its reports both in accordance with the laws of its country of incorporation and the International Financial Reporting Standards, the value of the shares must be determined on the basis of the report prepared in accordance with the International Financial Reporting Standards.

Should the offerer enter, prior to the expiry of the time allowed for acceptance of the bid, into a transaction for the acquisition of the company's shares at a price which exceeds the price at which the bid is made, the latter price is deemed to be automatically increased to become equal with the price at which the offerer has agreed to purchase the shares under such transaction.

Moreover, within six months after expiry of the time allowed for acceptance of the bid, the offerer is entitled to purchase any new shares of the target company at a price which exceeds the price at which the bid was made, provided that the offerer pays the difference between the prices to all persons which sold to the offerer any shares as a result of accepting the bid.

THE VOLUNTARY BID AND THE COMPETING BID

The voluntary bid

A person is allowed to make a voluntary takeover bid if, as a result of acquisition of the shares for which the bid is made, the person would have acquired at least ten percent of the voting power in the target company.

In contrast with the mandatory takeover bid where the offerer is required to make the bid in respect of all of the shares of the remaining shareholders, a person who makes a voluntary takeover bid may fix the minimum or maximum number of shares which he/she is willing to purchase.

Should the total number of shares that the shareholders have offered for sale in response to the bid exceed the maximum number of shares fixed in the bid prospectus, the offerer is required to purchase a proportional number of shares from all shareholders which accepted the bid. The total number of shares purchased by the offerer may not, in such case, be less than the maximum number of shares fixed in the bid prospectus.

Should the total number of shares which the shareholders have offered for sale in response to the bid be less than the minimum number of shares fixed in the bid prospectus, the offerer is required to purchase all such shares. By way of exception, the offerer may in such case withdraw from the bid if the bid prospectus provides for such a right.

The competing bid

A voluntary takeover bid which has been made with respect to the shares of a company is considered to be a competing bid if, at the time it is made, another bid exists with respect to the shares of the same target company.

A person is prohibited from making a competing bid if such person:

- forms part of the same group of companies as the offerer which has made the existing bid;
- has entered into an agreement with the offerer which has made the existing bid on concerted activities in relation to the bid; or

- has received an authorisation of the offerer which has made the existing bid to vote at the shareholders meetings of the target company.

A competing bid may only be made if the notice on the competing bid is published in the official gazette, Latvijas Vestnesis, not less than five business days before expiry of the time for acceptance of the bid being in force.

THE TAKEOVER PROSPECTUS

Filing the prospectus

The making of a takeover bid is subject to the permission of the Commission to make the bid. To that end, the offerer must prepare and file with the Commission a takeover bid prospectus. The prospectus needs to be filed with the Commission within ten business days following the occurrence of the circumstances triggering the obligation to make the mandatory takeover bid or the offerer's decision to make the voluntary takeover bid.

The prospectus must be accompanied by:

- calculation of the price (with respect to mandatory takeover bids only);
- a copy of the offerer's registration certificate (if the offerer is a non-resident legal entity) or of the offerer's passport (if the offerer is a natural person); and
- documents evidencing the availability to the offerer of funds sufficient for the fulfilment of the offerer's obligations under the bid.

Should the obligation to make a mandatory takeover bid be triggered by the offerer voting at the shareholders meeting of the target company for the exclusion of the company from the regulated market, the prospectus must be additionally accompanied by:

- an extract from the minutes of the relevant shareholders' meeting indicating the shareholders which have voted for the exclusion of the company from the regulated market; and
- documents evidencing the authorisation of the offerer to make the mandatory takeover bid on behalf of the shareholders which have voted for the exclusion of the company from the regulated market.

The availability to the offerer of funds sufficient for the fulfilment of the offerer's obligations under the bid may be proved by:

- a statement that the offerer has been granted funds for the fulfilment of his obligations under the takeover bid issued by a credit institution, investment brokerage company or an insurance company incorporated in:
 - Latvia;
 - a member state of the European Union or the European Economic Area; or
 - another foreign country provided that the Commission has entered into an agreement with the supervisory authority of such country on the exchange of information; or
- a statement that the offerer has a target deposit which can only be used for fulfilment of his obligations under the takeover bid issued by:

- a credit institution incorporated in Latvia;
- a credit institution or an investment brokerage company licensed to accept deposits and incorporated in a member state of the European Union or the European Economic Area; or
- a credit institution or an investment brokerage company licensed to accept deposits and incorporated in another foreign country provided that the Commission has entered into an agreement with the supervisory authority of such country on the exchange of information.

Contents of the prospectus

The prospectus must include the following information:

- the name, registration number, legal address, telephone number, fax number, email address (if any) and website address (if any) of the target company;
- the following information regarding the offerer and the persons which act in concert with the offerer or the target company indicating their relationship with the offerer and the target company:
 - for natural persons – first name, surname, identity code (if any) or year and date of birth;
 - for legal entities – name, registration number, date and place of registration and registered office;
- the type of bid (that is, mandatory or voluntary);
- the ISIN code of the shares and, if the bid is voluntary, the maximum and minimum number of shares which the offerer commits to purchase;
- the price per one share and the methods for determination thereof (in case of a mandatory or final takeover bid only);
- information regarding the procedures and time periods for the payment and exchange of shares and, where other financial instruments are offered as consideration, information on such financial instruments;
- the time for acceptance of the bid;
- the procedure by which the shareholders of the target company can accept the bid, indicating separately the procedure for acceptance of the bid by:
 - persons who own shares of the target company that are in public circulation; and
 - persons who own shares of the target company that are not in public circulation;
- the plans of the offerer with respect to the further operation of the target company, maintenance of the places of employment, any material changes in the terms of employment, the further operation of the offerer (if it is a legal entity) and the strategic plans with respect to both companies;
- any other relevant information directly applicable to the bid and considered necessary by the offerer;

- the offered amount of compensation of losses incurred by the shareholders of the target company the rights of which are restricted during the period of the bid, indicating the procedure for payment of the compensation and the method applied to determine the amount of the compensation;
- information on the sources of financing of the bid; and
- the law applicable to the agreements between the offerer and the shareholders of the target company in relation to the bid and the courts which will have jurisdiction to settle any disputes.

Decision to allow the making of the bid

Upon receipt of the prospectus, the Commission is required to immediately notify the organiser of the regulated market of:

- the identity of the offerer;
- the price per one share;
- the time for acceptance of the bid.

The organiser of the regulated market is required to immediately publish the aforesaid information on its website.

Within ten days following receipt of the prospectus and the accompanying documents, the Commission is required to review the prospectus and determine whether or not to permit the making of the bid. Should not all of the necessary documents be submitted to the Commission together with the prospectus, the Commission may postpone the decision until receipt of such documents. Should the missing documents not be submitted within the period fixed by the Commission, the prospectus is deemed as not filed.

Once the Commission has made its decision, it is required to immediately notify the decision to the offerer. Should the decision be to allow the making of the bid, the Commission is required to immediately notify the decision also to the organiser of the regulated market and to provide it with a copy of the prospectus in electronic form. The organiser of the regulated market is in turn required to immediately publish the prospectus on its website.

TIME ALLOWED FOR ACCEPTANCE

The time allowed for acceptance of the bid may not be less than thirty days and more than seventy days from the date of making of the bid. Should, during the time for accepting the bid, a decision be made to hold the shareholders meeting of the target company, the agenda of which includes the issue of the takeover bid, the time allowed for acceptance is extended for a period necessary to hold the meeting, provided however that the total time for acceptance may not exceed 70 days.

Should the target company have publicly announced, before the making of a mandatory takeover bid, the distribution of dividends, the change of the nominal value of the shares or the merger or split of an issue of shares, the Commission is required to determine the starting date of the bid after the respective activity has been accomplished. The price of the shares is in such case adjusted after the respective activity has been accomplished.

DISCLOSURE OF INFORMATION

The offerer is required to notify the management board of the target company of the occurrence of circumstances triggering the obligation to make the mandatory takeover bid or the decision to make the voluntary takeover bid immediately following the occurrence of the circumstances or the making of the decision respectively. The offerer is, however, entitled to make the takeover bid only after the Commission has decided to allow the making of the bid.

Upon receipt of the decision of the Commission to allow the making of the bid, the offerer is required to immediately notify the management board of the target company of the terms of the bid and to ensure the availability to the management board of the target company of the prospectus. The offerer is further required to publish, within five business days after it has received the decision of the Commission to allow the making of the bid, the following information in the official gazette, Latvijas Vestnesis:

- the name, registration number, legal address, telephone number, fax number, email address (if any) and website address (if any) of the target company;
- the following information regarding the offerer and the persons who act in concert with the offerer or the target company indicating their relationship with the offerer and the target company:
 - for natural persons – first name, surname, identity code (if any) or year and date of birth;
 - for legal entities – name, registration number, date and place of registration and registered office;
- the price per one share and the methods for determination thereof (in case of a mandatory or final takeover bid only);
- the time for acceptance of the bid;
- the place and time at which the prospectus is available for review.

The information published in the case of a voluntary takeover bid must additionally include:

- the minimum or maximum number of shares for which the bid is made;
- if applicable, that the offerer reserves the right to withdraw from the bid if the total number of shares which the shareholders have offered for sale in response to the bid is less than the minimum number of shares fixed in the bid prospectus.

OBLIGATIONS OF THE TARGET COMPANY

The members of the management board and the supervisory board of the target company are prohibited from causing frustration of the bid by their activities or inactivity.

As from the time the notice on the takeover bid has been published in the official gazette, Latvijas Vestnesis, or as from the time the target company has become aware of the offerer's obligation to make the mandatory bid, and until the expiry of the settlement period specified in the bid, the target company may not issue any new shares or convertible bonds as a result of which the distribution of voting rights in the shareholders meeting changes or may change.

Similarly, as from the time a mandatory or a final takeover bid has become effective and until the expiry of the settlement period specified in the bid, the target company may not:

- distribute dividends;
- change the nominal value of the shares; or
- merge or split the issues of shares.

Within five business days following publication of the notice on the bid, the management board of the target company is required to draw up a document setting out its opinion on the bid and the reasons on which it is based, including its views on the effects of implementation of the bid on the company's interests and specifically employment, and on the offerer's strategic plans for the target company and their likely repercussions on employment and the locations of the company's places of business.

The management board of the target company must express its views on the bid through such mass media which allow it to provide the information to as wide as possible range of persons whose interests are affected by the bid. The management board of the target company must also notify its views to the organiser of the regulated market which is further required to publish such information on its website or to make it available to the public in another manner determined by the organiser of the regulated market.

The management board of the target company is further required to communicate its views on the bid to the employees of the target company or their representatives. Where the management board of the target company receives by the publication of the views of the management board a separate opinion from the representatives of its employees on the effects of the bid on employment, such opinion must be appended to the opinion of the management board.

During the period after the offerer has informed the management board of the target company of its intention to make the voluntary takeover bid, until the end of the time allowed for acceptance of the bid, the management board of the target company must obtain the prior authorisation of the shareholders meeting before taking any action, other than seeking alternative bids, which may result in the frustration of the bid.

In regards to decisions made before the time the management board of the target company learned about the voluntary takeover bid that has not yet been partly or fully implemented, the shareholders meeting of the target company must approve any decision which does not form part of the normal course of the company's business and the implementation of which may result in the frustration of the bid.

BREAKTHROUGH

Any restrictions on the transfer of shares provided for in the articles of association of the target company or in contractual agreements between the shareholders of the target company do not apply vis-a-vis the offerer during the time for acceptance of the bid.

Where the target company has issued any shares with multiple voting rights, the number of voting rights of each shareholder corresponds to its investment in the capital of the target company:

- at the shareholders meeting at which the issue of defensive measures against a voluntary takeover is decided;
- at the first shareholders meeting following closure of the bid and called by the offerer in order to amend the articles of association of the target company or to

remove or appoint members of the management board or the supervisory board of the target company.

Where, following a bid, the offerer holds 75% or more of the capital carrying voting rights, no restrictions on the transfer of the shares or on voting rights provided for in the articles of association of the target company nor any extraordinary rights of the shareholders concerning the appointment or removal of members of the management board or the supervisory board of the target company apply.

In certain cases, where rights are removed on the basis of the breakthrough provisions described above, the offerer is required to provide an equitable compensation for any loss suffered by the shareholders affected by such removal. Should the parties be unable to come to an agreement on the amount of the compensation, it must be determined by a court.

NOTIFICATION OF THE BID RESULTS AND SETTLEMENT

Notification of the bid results

The offerer is required, within five business days following the expiry of the time allowed for acceptance of the bid, to file with the Commission, the organiser of the regulated market and the target company a report on the results of the bid indicating:

- the name, registration number, legal address, telephone number, fax number, email address (if any) and the website address (if any) of the target company;
- the following information regarding the offerer and the persons which act in concert with the offerer or the target company indicating their relationship with the offerer and the target company:
 - for natural persons – first name, surname, identity code (if any) or year and date of birth;
 - for legal entities – name, registration number, date and place of registration and registered office;
- the number of shares offered for sale; and
- the number of shares which the offerer will have acquired upon settlement.

Should the shareholders of the target company have accepted a voluntary takeover bid for a number of shares, which exceeds the maximum number of shares that the offerer has committed to purchase, the offerer is required to additionally indicate the quota at which the shares will be purchased.

The offerer is also required to publish, within five business days following the expiry of the time allowed for acceptance of the bid, the above information on the results of the bid in the official gazette, *Latvijas Vestnesis*. The organiser of the regulated market is required to publish the notification on its website.

Settlement

The offerer may provide for settlement of the shares in cash or against other transferable securities or rights to acquire such securities. Should the offerer exercise such right, he must so provide in the prospectus. The prospectus additionally needs to state the terms of exchange of the securities provided that the terms may not create a risk that the shareholders having accepted the bid do not receive the securities against which the shares are exchanged.

The settlement of the shares must take place within five days following the expiry of the time allowed for acceptance of the bid. The exchange of the shares against cash or, where applicable, other transferable securities must take place in accordance with the delivery versus payment or delivery versus delivery principle, respectively. The payment for any shares of closed issues must take place in accordance with the terms of the prospectus.

THE RIGHT OF SQUEEZE-OUT

Triggering conditions

An offerer may require the remaining shareholders to sell him their shares in any of the following situations:

- where the offerer holds shares representing 95 percent or more of voting power in the target company; or
- where, following acceptance of a voluntary bid, the offerer has contracted to acquire shares representing 95 percent or more of the voting power in the target company.

A bid for the acquisition of the remaining shares in the situations described above is referred to as the final takeover bid.

Time for exercise of the right of squeeze-out

If the offerer wishes to make the final takeover bid, he must do so within three months following the acquisition by the offerer of shares representing 95 percent or more of voting power in the target company. The final takeover bid may only be made after the shareholders meeting of the target company has decided to remove the shares from the regulated market.

Determination of price

The final bid must be made at a price which is determined in the same manner as for a mandatory takeover bid. Should the offerer have acquired the shares as a result of a voluntary takeover bid, he may make the final takeover bid at the same price as for the voluntary takeover bid.

Procedure for making the bid

The procedure for making the final takeover bid is similar to that of the other types of bids, that is, the making of the bid is subject to the offerer filing a prospectus with the Commission and the Commission granting its permission to make the bid. Once the Commission has made its decision, it is required to immediately notify the decision to the offerer. The offerer is required to publish a notice on the final bid in the official gazette, *Latvijas Vestnesis*.

Where the Commission has passed a decision to allow the bid, the Commission is further required to immediately notify the decision to the organiser of the regulated market and to the Latvian Central Depository. The decision needs to be accompanied by a copy of the prospectus in electronic form. The organiser of the regulated market is required to immediately publish the prospectus on its website. The Latvian Central Depository is in turn required to send the prospectus to all custodians which hold the shares.

Settlement

Should one or more shareholders not have accepted the final takeover bid during the time allowed for acceptance thereof, on the next day following the expiry of the time allowed for acceptance, the shares of such shareholders are automatically blocked in their accounts with the custodians. The offerer is further required to deposit, within five days following the expiry of the time allowed for acceptance, the price of all such shares to the account of the Latvian Central Depository with the Bank of Latvia. Upon receipt of the purchase price, the Latvian Central Depository transfers the shares to the offerer's account and instructs the custodians to cancel the shares in the shareholders' accounts against simultaneous transfer of the purchase price to the custodians' cash accounts. The custodians are required to distribute the purchase price to the shareholders not later than on the next business day after receipt thereof from the Latvian Central Depository.

THE RIGHT OF SELL-OUT

Where a person owns, directly or indirectly, shares of the target company representing 90 or more percent of the company's share capital, each of the remaining minority shareholders may require that such person purchases their shares. The price may not be less than that determined as for a mandatory takeover bid. The entitlement of the minority shareholders to exercise the right of sell-out expires upon the majority shareholder making the final takeover bid.