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TAKEOVER BID PRICE REGULATION IN SPAIN

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1

Takeover bid price regulation in Spain



INDEX

1. Regulation
2. Scope of application of the Spanish regulation on takeover bids
3. Price requirements depending on the type of takeover bid
 - Mandatory takeover bids
 - Voluntary takeover bids
 - De-listing takeover bids
4. Consideration offered
5. Determining squeeze out and sell out prices
6. CNMV supervision of the bid price
7. Practical cases

2

1. Regulation

- ✓ **Directive 2004/25/CE, approved on April 21st 2004, on takeover bids**

- ✓ **Securities Market Law- arts. 34 (de-listing), 60 (Mandatory takeover bid) and 61 (Voluntary takeover bid)**
(Law 24/1988, approved on July 28th. Last amendment on takeover bids, Law 6/2007, approved on April 12nd, in force since August 13th, 2007)

- ✓ **Takeover bids Royal Decree**
(Royal Decree 1066/2007, approved on July 27th, in force since August 13th, 2007)

3

2. Scope of application of the Spanish regulation on takeover bids

Spanish regulation on takeover bids (equitable price) applies to:

- **Companies listed in Spanish stock markets.**
- **Companies listed in Spanish stock markets and other EU country market but first listing in Spain.**
- **Companies listed in Spain and other EU country (registered office in another third country) that choose Spanish regulation**

- **Location of the registered office is not relevant for this purposes.**

4

3. Price requirements depending on the type of takeover bid

1. Mandatory takeover bid – Equitable price (Minimum bid price)
2. Voluntary takeover bid – Not needed equitable price (not minimum bid price)
3. De-listed takeover bid – Minimum bid price \implies highest price between equitable price and a valuation report (DCF, company multiples, comparable transaction).

✓ Before trasposition EU directive:

NOT MINIMUM BID PRICE.

Exception: **de-listed takeover bids** \implies higher than the value calculated by an independent expert valuation report.

5

3. Price requirements depending on the type of takeover bid

MANDATORY TAKEOVER BID

- ✓ Whosoever acquires control of a listed company must launch a takeover bid for all the securities of that company, addressed to all the holders thereof, for an equitable price.

¿What does “acquires control” mean?

- It attains 30% or more of voting rights; or
- The offeree attains less than 30%, but has nominated more than half of the board members within 24 months following the date of the acquisition.

- ✓ CNMV may grant dispensation from the obligation of takeover bid if other shareholder holds an equal or higher percentage of voting rights
- ✓ Calculation of voting rights: offeree, companies that belong to the same group, persons acting in concert with the offeree.
- ✓ Deadline to submit the authorisation request: 1 month. No conditions permitted.

3. Price requirements depending on the type of takeover bid

- Indirect or consequential attainment of control

- ✓ When control is attained by:
 - A merger or an acquisition of control over a non listed company that controls a listed company.
 - Share capital reduction
 - Exchange, subscription or conversion
 - Variation in the company's treasury stock
 - Contract or commitment to underwrite an issue or a public offering

takeover bid for an equitable price within 3 months (except dispensation)
or
reduce voting rights under 30% and political rights are not exercised

3. Price requirements depending on the type of takeover bid

Equitable price

- Highest price paid within 12 months preceding the announcement o
- Value calculated by a Board of Directors valuation report
- ✓ Special rules
 - ✓ Exercise a call option = Strike + premium
 - ✓ Exercise a put option = Strike - premium
 - ✓ Other derivatives = Highest strike + Premiums
 - ✓ Exchange or conversion – Weighted average of market prices of securities offered on the purchase date
 - ✓ Considerations in addition to the price and deferred payments must be added to the transaction price.
- ✓ Takeover bid filed after the term, interests accrued on the equitable price - legal interest rate

3. Price requirements depending on the type of takeover bid

- ✓ Adjustments in equitable price
- ↪ CNMV may authorise or require adjustments in the following events:
 - ✓ Dividend payments (before announcement or during acceptance period)
 - ✓ Reasonable signs of manipulation of market price
 - ✓ Price of transaction lower than the purchase day's range of trading prices
 - ↪ Equitable price no less than the lower limit of that range
 - ✓ Acquisition of a non relevant number of shares.
 - ✓ Offeree company in proven financial difficulties.
- ✓ CNMV may request to the offeror a report on the valuation methods used to determine equitable price

9

3. Price requirements depending on the type of takeover bid

- ✓ Equitable price, if no purchases:
 - ↪ **Offeror's Board of Directors valuation report**
 - DCF
 - Company multiples
 - Comparable transactions
 - 6 months weighted average market price (prior to announcement)
 - Preceding year takeover bids prices
 - Others (net asset value, liquidity value)

10

3. Price requirements depending on the type of takeover bid

VOLUNTARY TAKEOVER BIDS

- ✓ Price: not needed equitable price (not minimum bid price)
- ✓ Deadline: 1 month from the announcement
- ✓ Possibility to set up conditions:
 - Approval of modifications to the articles of the offeror company.
 - Acceptance by a specific number of shares Prorating rules
 - Approval of the bid by the general meeting of the offeror.
 - Authorisation of the competition authorities or others.
- ✓ If a voluntary takeover bid becomes compulsory, compulsory takeover requirements and provisions must be complied
- ✓ If control is attained – offeror must launch a mandatory takeover unless: acceptance over 50% or the voluntary takeover price was equitable.

11

3. Price requirements depending on the type of takeover bid

DE-LISTING TAKEOVER BIDS

- ✓ Launched by the de-listed company or by a third party, if approval by the general meeting.
- ✓ Payment in cash.
- ✓ Price: highest between equitable price and the value using the following methods:
 - DCF
 - Company multiples
 - Comparable transactions
 - 6 months weighted average market price
 - Preceding year takeover bids prices
 - Others (Net asset value, Liquidity value)

12

4. Consideration offered

- ✓ Cash, exchange of securities or a mix of both.
- ✓ It must be offered, as an alternative, a cash consideration if:
 - Offeror has bought an stake of over 5% within the preceding 12 months.
 - Mandatory takeover bids
 - The securities exchanged are not listed in an EU country
 - Offeror general meeting does not approve the issue of the securities to exchange.
- ✓ In exchange takeover bids: offeror must disclose the equivalent cash price, applying to the exchange formula the average weighed trading price during the quarter preceding the announcement.

13

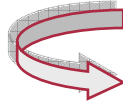
5. Determining squeeze out and sell out prices

- ✓ Squeeze out price must be the consideration offered under the takeover bid.
 - ➡ All expenses deriving from the sale must be borne by the offeror
- ✓ Sell out price must be the consideration offered under the takeover bid
 - ➡ All expenses deriving from the sale must be borne by the shareholders
- ✓ The consideration offered may be: cash, exchange or a mix of both.
 - ➡ The same offerer under the takeover bid
- ✓ Squeeze out and sell out prices may be adjusted if the offeree company pays a dividend, split its shares, etc.

14

6. CNMV supervision of the bid price

1. Detail of the offeree purchases within 12 months preceding
 - Analysis number of shares and prices paid.
 - Acquisitions by the offeree, board members, companies belonging to the same group and companies or person acting in concert
 - The offeror assures no additional purchases \Rightarrow Penalty
 - Check that prices paid are in daily ranges of market prices.
2. Ownership certificate (offeror and persons acting in concert)
3. The offeror may buy shares of the offeree in the acceptance period



Disclose to the market the purchases: No. of shares, price
 Elevate takeover price (if purchases at a higher price)
 Removing of conditions
 If exchange takeover or a mix \Rightarrow cash as an alternative
 Acceptance period may be extended

15

7. Practical cases

- ✓ Price adjustments as a consequence of dividend payments before the announcement of the takeover bid
- ✓ Price adjustments as a consequence of dividend payments during the acceptance period
- ✓ Acquisition of a non relevant number of shares
- ✓ Acquisition of a non relevant number of shares within an strategy of purchase of a significant stake of the company
- ✓ Purchase by an offeror board member
- ✓ Equitable price in consequential attainment of control takeover bids
- ✓ Considerations in addition to the price added to the transaction price and extension to all shareholders

16