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BRIEFING

Implementation of the Takeover Directive in France

Update

Summary

Following the publication of a draft bill to implement the Takeover Directive in France in October 2005, discussions within the French parliament led to some proposed amendments, which have just been approved by the lower chamber. This briefing looks at these changes.

An amended draft bill to implement the Takeover Directive in France has recently been approved by the lower chamber of the French parliament. The new proposal brings a number of changes to the draft bill that the French Senate approved at the end of October 2005. With the French parliament split on how to implement a number of key issues of the Takeover Directive, further parliamentary debates are likely before the text is finalised.

This briefing, which is an update to our November 2005 briefing that was prepared on the basis of the Senate proposal, summarises the key changes proposed by the lower chamber of the French parliament.

Reciprocity

The amended draft bill reverses the Senate's position on how reciprocity would work in the event of competing bids and concert parties. Under the new proposal, a target company will only be released from the prohibition on frustrating action if none of the bidders or concert parties are subject to similar restrictions (the Senate had proposed that the prohibition would cease if one bidder or concert party was not subject to the restrictions).

In addition, the Senate's proposal to allow reciprocity in respect of the provisions of article 11 of the Takeover Directive, which is applied on a voluntary basis, has been removed in the new proposal.

Although no other changes have been made to the reciprocity provisions, we understand that in its next review of the draft bill, the French Senate may reconsider the current broad approach taken to reciprocity in France. All the proposals for implementing the Takeover Directive in France have so far been drafted on the assumption that reciprocity should apply in all circumstances, regardless of the reason for the target being subject to the prohibition on taking frustrating action. The Senate may now be moving towards a more restrictive interpretation of the Takeover Directive, under which, for example, reciprocity would only be applied to target companies that apply the article 9 restrictions voluntarily. With article 9 being implemented on a mandatory basis in France, this would significantly limit the practical consequences of reciprocity.

Mandatory bids

Certain helpful changes have been made to the mandatory bid provisions. For example, under the new proposal, there is less uncertainty surrounding whether shares can be offered as consideration in a mandatory bid. In this respect, the current position whereby a share exchange offer satisfies the mandatory bid requirement should be maintained.

Squeeze-out offers

Another useful amendment to the squeeze-out procedures in the French takeover code has been proposed. The draft bill specifies that the 95 per cent threshold for launching a squeeze-out should be calculated on a fully diluted basis where the offer is made for equity-linked securities. This follows the problems highlighted in the existing regulations during AS Watson's squeeze-out of Marionnaud Parfumeries in 2005. Under the new proposal it is clear that a squeeze-out *may* be made for the shares and equity-linked securities of the target company.

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