FRESHFIELDS BRUCKHAUS DERINGER

Public takeovers in France

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This booklet is a guide to the regulations governing public takeovers in France. It forms part of a series covering countries where Freshfields Bruckhaus Deringer has an established M&A practice. The series is aimed at those with an interest in acquiring or advising on the acquisition of a public company in different European jurisdictions. The information and opinions contained in this document are not intended to be a comprehensive study, nor to provide legal advice, and should not be treated as a substitute for specific advice concerning individual situations. This document speaks as of its date and does not reflect any changes in law or practice after that date.

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Introduction

How common are recommended or hostile takeovers of listed companies in France?

Recommended and hostile takeovers have been used to take control of listed companies in France for more than 30 years and the regulatory framework that has evolved alongside this practice is among the oldest in Europe. All forms of public offers (hostile, recommended and mandatory) have become increasingly common in recent years, with on average approximately 90 takeover offers being made each year.

Implementation of the Takeover Directive

France implemented the Takeover Directive (the Directive) following a law passed at the end of March 2006 and consequential changes made to the *Règlement général* (General Regulation) of the *Autorité des marchés financiers* (AMF) in September 2006. Although previous French takeover laws and regulations were broadly compliant with the main provisions of the Directive, France used its implementation of the Directive as an opportunity to introduce additional changes to its regulations, which are described in this document.

Are public takeovers regulated?

Public takeovers in France are regulated by a single market authority, the AMF.

The AMF has issued and enforces the General Regulation, which contains both the rules on the conduct of takeovers and associated disclosure obligations.

A takeover is subject to the General Regulation if the target is a company whose registered office is located in France and whose securities are admitted to trading on a French regulated market.

The AMF will also be the competent authority relating to an offer for a target company that is not listed in the country of its registered office:

- whose registered office is located in a European Union/European Economic Area (EU/EEA) member state (other than France) and whose first place of listing in the EU/EEA was France; or
- whose registered office is located in an EU/EEA member state (other than France) and whose securities were simultaneously admitted to trading on several regulated markets (including the French regulated market), provided the target company chose the AMF as the competent authority.

In these cases, the AMF will apply the provisions of French law and of its General Regulation. By way of exception, the conditions under which the board of the target company may take frustrating action, the rules relating to mandatory offers and the circumstances under which the target company

may be subject to a squeeze-out procedure, remain governed by the laws of the member state in which it has its registered office.

The AMF *may* be the competent authority relating to an offer for a target company whose registered office is not located in an EU/EEA member state but whose securities are admitted to trading on the French regulated market but not on its domestic market.

Where the AMF is not the competent authority relating to a given offer, but the offer is open for acceptances in France, then:

- if the offer document has been approved by the competent authority of an EU/EEA member state, the principle of mutual recognition will apply and no further documentation or information will need to be provided. However, a French translation of the offer document will have to be sent to the AMF and published in France;
- if the offer document has been approved by the competent authority of a non-EU/EEA member state, the AMF should generally not require the publication of a full offer document. In this case, the AMF will typically require the bidder and the target company to publish a press release setting out the main terms of the offer and, at the AMF's request, information relating to the formalities for shareholders to accept the offer as well as the tax treatment of the consideration offered to the shareholders.

Certain fundamental principles apply to public takeovers in France: equality of treatment of shareholders, transparency and integrity of the market, fairness in transactions and free competition between bidders. Most of the underlying regulations are based on these principles.

The General Regulation distinguishes between 'normal' public offers and 'simplified' public offers. The purpose of a normal public offer is to take control of a target company, whereas the simplified procedure is used to acquire or increase an interest in a company without seeking to acquire control (for example, where a bidder already has a controlling interest in the target). A number of rules, including the offer timetable and settlement mechanics, differ depending on whether the normal or simplified offer procedure is followed. For example, a simplified offer may be made through market purchases, while a normal offer is centralised by Euronext Paris, allowing shareholders to withdraw their acceptances at any time up to the closing date of the acceptance period.

Is litigation a feature of takeovers?

Decisions of the AMF on public takeovers can be challenged before the Paris court of appeal (Cour d'appel). Although litigation is a common feature of hostile takeovers in France, the Paris court of appeal has rarely obliged a bidder to revise the terms of its offer. Decisions of the AMF can be challenged within 10 days of their publication in the *Bulletin des annonces légales obligatoires* and the AMF can decide to suspend or extend the offer

timetable while judicial proceedings are pending. Alternatively, the AMF may decide to reopen the offer following the court's decision.

Minority shareholders of listed companies are able to create special groups (*associations*) to defend their interests. These groups are entitled to participate in shareholder meetings, put questions to the directors and commence litigation relating to a takeover offer. In recent years, the number of these shareholder groups has risen, resulting in an increase in litigation.

Antitrust and regulated industries

The French domestic merger control regime is enforced by the French finance ministry (the Ministry) through the Direction Générale de la Concurrence, de la Consommation et de la Répression des Fraudes (DGCCRF) and by the Conseil de la Concurrence (the competition council).

Under the French domestic regime, a notification to the Ministry is mandatory when the following merger control thresholds are met.

- The worldwide turnover of all of the undertakings involved is greater than €150m.
- The turnover achieved by at least two of the undertakings in France is greater than €50m.
- The transaction does not have a Community dimension.

The notification may be made at any time after the parties have entered into a form of 'gentlemen's agreement' or signed a letter of intent regarding the acquisition of a controlling interest or announced a public takeover. If the parties to a transaction that meets the thresholds fail to notify it to the Ministry, they may be fined 5 per cent of their pre-tax turnover in France for the last financial year.

What are the waiting periods and does implementation of the takeover have to be suspended?

The Ministry may investigate a concentration in two phases.

- Phase I: the Ministry has five weeks to review the transaction. This period may be extended by an additional period of three weeks if the notifying parties propose undertakings more than two weeks after the transaction was notified. After a Phase I review, the Ministry may approve the transaction (with or without undertakings) or express reservations about it. In the latter case, the Ministry will refer the case to the competition council for a Phase II review.
- Phase II: the competition council has three months to carry out an in-depth examination of the proposed transaction and report to the Ministry. The report is not binding on the Ministry, which has a further four weeks to approve, veto or modify the transaction. The total time period for the Ministry to reach a decision in the event of a Phase II review is therefore approximately five months.

In principle, a transaction cannot be completed until it has been approved by the Ministry. However, a bidder is allowed to proceed with a public takeover offer before obtaining the Ministry's approval, provided it does not exercise the voting rights attached to the shares acquired pending clearance. Page 20 summarises the position on using antitrust conditions on bids for French targets.

Are any industry sectors protected from takeovers?
The prior authorisation of the French government is required for investments in a limited number of 'strategic' sectors, depending on the nationality of the investor (EU/EEA or non-EU/EEA) and the type of investment (acquisition of control or a strategic stake).

Although the strategic sectors are primarily focused on national security and defence-related matters, the list is broad and includes activities such as gambling and certain IT systems. In addition, following changes introduced in January 2006, the Ministry now has the power to negotiate undertakings (for example, to dispose of certain business units to a French company or maintain productions in France) prior to approving a transaction.

Investments in the French financial services industry are subject to specific regulation. For example, any proposed takeover of a French bank has to be notified to the governor of the Banque de France at least eight business days before it is filed with the AMF or announced. In addition, French banking board (Comité des établissements de crédit et des entreprises d'investissements) approval must be obtained before the opening of the acceptance period of an offer to acquire a French bank, broker or any other financial institution. The French banking board is entitled to delay its decision until antitrust approval has been obtained from the Ministry or the European Commission (the Commission).

Similarly, the acquisition of an interest in a French insurance company is also subject to the approval of the French insurance board (*Autorité de Contrôle des Assurances et des Mutuelles*).

Other regulated sectors in France include the press, broadcasting and the mining industries.

Barriers to acquiring control

Are shares in public companies freely transferable?

Shares in a French listed company may be held in registered or bearer form and, as a general rule, are freely transferable. Both bearer and registered shares are represented by book entries rather than share certificates. Shares are transferred by entries in the company's share register (registered shares) or the shareholder's account with his or her financial intermediary (bearer shares). In principle, in addition to share disclosure obligations (see page 15), a company may include a specific provision in its by-laws enabling it to identify its bearer shareholders from time to time.

Except for certain regulated areas determined by law, provisions restricting the free transfer of shares are prohibited for listed companies. However, shareholders are free to grant each other pre-emption rights and generally restrict the free transfer of their shares. Such agreements are very common in French listed companies.

If an agreement contains 'preferential' terms for the sale or acquisition of shares (such as pre-emption rights or put and call options), and relates to at least 0.5 per cent of the share capital or the voting rights of a listed company, it must be disclosed to the company and the AMF within five trading days of it being entered into. The AMF publishes the principal terms of such agreements. Failure to disclose an agreement will result in its terms being ineffective if an offer is launched for the company to which it relates.

Are there any company law provisions or common provisions in constitutional documents that make takeovers difficult?

A number of provisions under French law make a company less vulnerable to a hostile takeover.

The most effective defence is for a company to be incorporated in the form of a *société en commandite par actions* (SCA). An SCA is a form of limited partnership, with limited partners who hold transferable shares as in a 'normal' *société anonyme* (SA) and general partners whose shares are not transferable and who benefit from veto rights on significant corporate decisions (including the appointment or removal of directors and amendments to the by-laws). In practice, a takeover of an SCA gives the bidder virtually no management control of the target.

Other defence mechanisms include provisions limiting the number of voting rights that may be exercised by a single shareholder. However, if a bidder holds more than two thirds of the target company's share capital or voting rights following a takeover offer, any such limits are suspended at the first shareholders' meeting of the target company following the takeover offer.

By-laws of certain French listed companies provide for double voting rights for shares registered in the name of the same shareholder for a certain period of time (usually two years). On the transfer of such shares the double

voting rights cease, meaning that a successful bidder will acquire shares with simple voting rights, while the relative weight of shareholders not having tendered their shares to the offer will increase.

Once an offer is filed with the AMF, special rules apply to restrict the management's ability to implement defensive measures (see page 26).

At what level of shareholding can a bidder replace the board of directors or supervisory board of a target company and control shareholder resolutions?

A French SA may have either a single board of directors (*conseil d'administration*) or a two-tier structure consisting of a management board (*directoire*) and supervisory board (*conseil de surveillance*). In both structures, directors may be removed by a resolution of the company's shareholders in a general meeting. In addition, members of a management board may also be removed by the supervisory board if this is provided for in the by-laws.

Members of the supervisory board may be dismissed 'without just cause', notice or the payment of damages (except if the dismissal is deemed abusive or vexatious). Dismissal of members of the management board is possible 'with just cause', otherwise the dismissal may give rise to damages.

In principle, meetings of a company's shareholders are convened by the board of directors. However, if, following a takeover offer, the bidder holds more than 50 per cent of the share capital or voting rights of the target, it may also convene a shareholder meeting.

A shareholder resolution to remove the directors of a company requires a simple majority vote. Resolutions to amend the company's by-laws, including matters relating to the issue of equity securities, require a two-thirds majority.

Can public companies in France make themselves bid-proof?

Management's ability to take defensive measures during an offer period is limited. No decisions may be taken contrary to the interests of the company or the principle of equal treatment of, and information to, the shareholders of the companies concerned. In addition, the terms of any agreement that could affect the outcome of the offer must be disclosed to the AMF and made public.

Unless reciprocity applies (see below), management is further prohibited from taking any frustrating action during an offer period without specific shareholder approval during the offer period. In addition, authorisations granted by shareholders to directors to take frustrating action (such as the issue of shareholder warrants) and decisions taken by the board of directors that may frustrate the offer and that have not been fully implemented (such as authorisations to issue new shares given to the board of directors by the shareholders' meeting before the filing of the offer), are suspended during the offer period unless specifically renewed during such period.

Reciprocity is the principle according to which the board of directors of a target company is released from the restrictions from taking frustrating action described above in the event that the target company is the subject of a hostile bid from a company that is itself not subject to the same or equivalent restrictions. Where reciprocity applies, the target board may take any frustrating action that has been approved as such by a general meeting of its shareholders in the previous 18 months.

The AMF will require appropriate disclosure of frustrating action to be made to the market. Experience will show whether, where specific shareholder approval has been obtained during the offer period, the AMF could ultimately block the proposed action or request an injunction from the president of the high court of Paris (*Tribunal de grande instance de Paris*) on the grounds that the proposed action was contrary to the basic principles of French takeover regulations (see page 2).

The target company may buy-back its share capital during a takeover if the offer is in cash and if the shareholder resolution authorising the buy-back programme expressly allows this. If the share buy-back amounts to frustrating action, it needs either to have been expressly authorised or confirmed by shareholders in general meeting.

Access to information

What information will be publicly available on the target?
Listed companies in France have to file certain information with the companies and commercial register, including constitutional documents, minutes of shareholders' meetings, names of directors, annual accounts and management reports. This information is freely available to the shareholders.

In addition, listed companies must publish certain information as part of their listing and ongoing disclosure obligations.

- Prospectuses or registration documents prepared regarding securities offerings.
- Quarterly and half-yearly financial statements.
- Information on arrangements that are likely to affect the outcome of a takeover offer in their annual management report. This information includes material contracts with change of control provisions and golden parachute provisions in director and employee employment arrangements.
- Ongoing information relating to any event or material development in their business that is likely to affect their share price, for example, major litigation, disposals or acquisitions.

Finally, the AMF publishes certain information about listed companies, such as summaries of shareholders' agreements and shareholding disclosure notices.

How can the bidder get information about target shareholders?
Share registers held by the company, or its financial intermediary, are not available for inspection by shareholders or third parties. In addition, a company's share register only contains details of the holders of its registered, and not bearer, shares.

However, shareholders are under an obligation to notify the company and the AMF each time they, or any of their concert parties, cross certain thresholds (5 per cent, 10 per cent, 15 per cent, 20 per cent, 25 per cent, one-third, 50 per cent, two-thirds, 90 per cent and 95 per cent of the share capital or the voting rights of the company). This information is published by the AMF (see page 15).

Can the bidder rely on the target's accounts?
Financial information published by a company is either certified, in the case of annual accounts, or reviewed by its statutory auditors, in the case of interim financial information. Although directors are liable to criminal sanctions if they publish misleading accounts, French law and practice has not yet evolved to the point where it is generally accepted that directors or auditors are at risk of civil liability to the bidder in such a case.

Preliminary issues

Negotiation

Is a bidder required to negotiate before announcing an offer and, if so, who with?

There is no legal requirement for a bidder to negotiate or even approach the target before announcing an offer. In practice, the bidder will often make preliminary contact on an informal basis with the AMF and any other authorities whose approval will be necessary for the launch of the offer (see page 4).

Will a merger agreement be used?

The bidder, target and any principal shareholders of the target may enter into an agreement governing the conduct of the bid.

Can the bidder expect contractual representations or warranties?

A bidder might seek warranties from a controlling or dominant shareholder in the context of a friendly takeover. However, warranties cannot be included in the terms of the general offer to shareholders.

What liabilities can arise for misstatements or omissions during negotiations?

Despite the absence of contractual representations and warranties, the directors, financial advisers and other professional advisers of the target involved in pre-bid negotiations could be held liable for any misleading statements. However, there are no precedents of litigation having been successfully brought by a bidder on these grounds.

Is there a requirement to negotiate in good faith?

As a matter of principle, under French law parties are required to negotiate in good faith but are free to terminate negotiations at any time. Depending on the circumstances (for example, where the terms of the deal had been essentially agreed or discussions had been ongoing for a long period of time), a party may be liable to damages to the other parties if it 'recklessly' pulls out of negotiations. The exact scope of the obligation to negotiate in good faith is unclear and whether, and at what point in time, a party is entitled to terminate discussions without having to justify its decision is essentially a matter of fact. The examples of case law on the subject do not relate to negotiations preceding a public takeover.

Therefore, in practice, the parties will often enter into a non-binding letter of intent, or memorandum of understanding, making clear that they are each entitled to walk away without incurring any liability to the other.

Confidentiality

Will the bidder be expected to sign a confidentiality agreement?

On a recommended bid, a confidentiality agreement between the bidder and the target is fairly common. This will cover the fact that a transaction is being discussed, as well as the confidentiality of the information provided.

Will the bidder be expected to agree to a 'standstill' restricting the acquisition of shares or making a hostile bid?
Agreements restricting the bidder's ability to acquire shares or make a hostile bid are becoming more common in France.

Due diligence

What is the usual level of due diligence?
An offer may not be made conditional on the absence of adverse events affecting the target during the offer (see page 20). This makes pre-bid due diligence all the more important.

In practice, due diligence prior to the launch of a recommended bid is very limited and tends to focus on high level financial and business issues. Of course, on a hostile transaction, due diligence will be limited to a review of publicly available information.

Although French takeover regulations do not impose any specific restrictions on the level of due diligence that may be carried out, the AMF has issued guidelines on the conduct of pre-bid due diligence that, along with other rules, in particular relating to insider dealing, are likely to limit the scope of the bidder's due diligence.

Will the receipt of any information affect the bidder's ability to make a bid?
French rules on insider dealing, which are subject to criminal and regulatory sanctions, prevent a bidder in possession of price-sensitive information relating to a company from buying shares in that company.

This restriction falls away as soon as the information becomes public. Therefore, a bidder who receives price-sensitive information on the target that cannot subsequently be disclosed in the offer document or elsewhere (for example for reasons of confidentiality) would be in breach of the insider dealing rules if it were to acquire target shares prior to or through the offer.

It is generally considered that the bidder's knowledge of its own intention to make an offer should not be inside information preventing the bidder from launching an offer, although this may affect the bidder's ability to acquire a stake in the target prior to launch.

Is there an obligation to publish details of any information exchanged between the bidder and the target?
Details of specific information exchanged between the bidder and target do not need to be disclosed to the market. However, the AMF considers that the market should be informed of the existence of a data room. In addition, target shareholders must be treated equally and are entitled to sufficient information to allow them to make an informed assessment of the bid.

Will the information have to be disclosed to a rival bidder?
There is currently no specific obligation for a target to give the same level of information to all bidders. However, the AMF takes the view that the

general principle of fairness of competition between bidders would oblige the target to give the same access to information to all bidders.

Deal protection

What can the bidder do to deter other bidders from coming in?

Under the General Regulation and the general law on directors' duties, it is difficult for a target to agree to deal protection measures during pre-offer negotiations (see page 26).

The simplest and most common way to gain protection from competitors is to control as many shares in the target as possible before the offer is announced. This can be achieved through outright purchases of target shares or by persuading shareholders to undertake to accept the offer when it is made.

There is some uncertainty under French law as to whether the use of an irrevocable undertaking to tender shares to an offer is compatible with the principle of fairness of competition between bidders. However, it is generally accepted that an irrevocable undertaking will be held to be valid if it does not prevent another bidder from making a competing offer. This can be achieved by restricting the number of shares covered by the undertaking, or providing that it will automatically lapse on a competing offer being made. In any event, the main terms of such agreements must be disclosed in the offer document.

Exclusivity arrangements, under which target directors agree not to commence discussions with third parties, can bind a company or a major shareholder provided they have a limited duration.

Can the target agree to pay a break fee?

As a matter of practice in France, target companies have tended not to agree to pay break fees for a number of reasons, in particular the compatibility with the requirement to act in the best interests of the company. A reciprocal break fee arrangement was first used in France in 1999 and again on the merger between Vivendi, Seagram and Canal Plus. To date, no court has considered their validity.

Rights of employees

Do target employees or their representatives have to be consulted before the offer is announced?

Under French law, the target company's works council (*comité d'entreprise*) or group works council (*comité de groupe*) must be consulted on any proposed takeover offer. The bidder must send a copy of the offer document to the target company's works council within three days of publication. In the absence of a works council or group works' council, direct contact must be made with the target group's employees.

The obligation to convene a meeting of the relevant works council falls primarily on the management of the target company and arises on the day of the filing of the offer document with the AMF. At this meeting, the works council may decide to convene a further meeting with the bidder and will

give its opinion on the nature (hostile or recommended) of the offer. If the bidder fails to attend a meeting organised by the works council, the voting rights attached to the target shares it owns or acquires are suspended until it does so. If a merger agreement is entered into in connection with the bid, there is an argument that the works council must also be consulted before the target company signs the agreement.

If the opinion of the target company's works council differs from that of the target company's board of directors, it must be included in the target company's offer document.

Consistent with the requirements of the Directive, the bidder's works council must also be consulted on any proposed takeover following filing with the AMF.

What rights do employees have to challenge an offer at any stage?
Provided the relevant consultation procedure is complied with, the employees of the target have no right to challenge the offer, even if the works council disapproves of it.

Does a bidder have to say anything about the future of target employees?
A bidder has to give details in its offer document of its intentions regarding the continuation of the target's business and the employment policy that it intends to pursue during the 12 months following the offer. It also has to indicate any likely changes to the size and structure of the target's workforce during the same period.

Approaches to target shareholders

Are there any restrictions on the bidder approaching target company shareholders?
There are no specific restrictions on a bidder contacting shareholders with a view to seeking irrevocable undertakings in connection with the offer although the number of shareholders contacted is generally limited and in practice a number of shareholders may not be known to the bidder (see page 9). It is a criminal offence to send a company's register of shareholders to a third party.

Announcement obligations

How long can the bidder keep its interest confidential?

A bidder may choose not to disclose its interest in acquiring the target for as long as it can maintain confidentiality. There is no specific restriction on a bidder announcing a simple intention to make an offer in general terms provided that the announcement does not amount to market manipulation.

The AMF may require a person who it reasonably believes to be preparing a takeover offer to make its intentions known to the AMF, which will then disclose the information.

If the person states its intention to launch a takeover offer, the AMF will fix a date by which the terms of the offer must be made public, or the offer formally launched. If the person states that it does not intend to launch an offer or fails to comply with the AMF's requirements to disclose the terms of the offer, the potential bidder will be precluded from launching an offer for the same target or from placing itself in a mandatory offer situation (see page 32) during a period of six months from such date unless important changes occur in the situation or shareholding of the relevant parties, including the potential bidder.

The requirement for the potential bidder to announce its intention is triggered by the existence of market rumours, specifically where accompanied by significant movements in the price or trading volumes of the target company's securities as monitored by the AMF. The AMF will also have to identify the potential bidder and have reasonable grounds to believe that it is preparing a bid. The General Regulation specifies situations that could indicate that the potential bidder is preparing a bid, including discussions between the parties and the appointment of advisers. However, in practice both of these events are likely to occur early in the pre-bid process when the possible bidder may not have any clear intention to announce.

Does a target have to make an announcement if it receives a bid approach?

The target company will not be required to make an announcement if it receives a bid approach. The AMF may however require the target company to make an announcement if the bid is solicited and there are significant movements in the price or trading volumes of its securities. The terms of the announcement may be discussed confidentially with the AMF.

Share dealings

Are there any insider dealing or other restrictions on share dealings either before the offer is announced or during the offer?
Before the announcement by the AMF of the filing of the offer, or the disclosure by the bidder of its intention to launch a bid upon request by the AMF, there are no particular restrictions on the bidder's ability to buy and sell target shares. However, insider dealing rules (see page 11), share disclosure obligations and the rules on mandatory bids may restrict the bidder's ability to make market purchases. In addition, from the announcement by the AMF of the filing of the offer (which marks the commencement of the offer period) until the closing date of the offer acceptance period, dealings in target shares may only take place on the regulated market on which they are listed. The voting rights attached to any shares acquired in breach of this rule are suspended for two years.

If the offer is in cash and not subject to any conditions, the bidder and persons acting in concert with it may buy target shares in the market during the offer period. However, specific rules govern the price at which market purchases may be made (see page 20).

If all or part of the consideration consists of securities, or the offer is subject to conditions, the bidder, the target company and their respective concert parties are prohibited from trading in target shares during the offer period. The same persons are prohibited from trading in the securities offered as consideration from the commencement of the offer period until the closing date of the acceptance period.

Between the closing date of the acceptance period and the publication of the results of the offer, the bidder and any person acting in concert with it may not sell any target shares.

These restrictions also apply to market dealings by the bidder's and target's respective financial advisers. However, financial advisers are permitted to continue certain existing trading activities in the normal course of business provided they put in place a system of Chinese walls.

What disclosure obligations apply to share dealings?
Certain disclosure obligations are triggered under French law by the following thresholds being reached, upwards or downwards, whether during an offer period or otherwise: 5 per cent, 10 per cent, 15 per cent, 20 per cent, 25 per cent, one-third, 50 per cent, two-thirds, 90 per cent and 95 per cent. Shares held by any shareholder or third parties on its behalf or by entities it controls and other parties acting in concert with it and shares it is able to acquire at its own discretion are taken into account for calculating the thresholds. The thresholds apply to the number of shares or voting rights of a listed public company with its registered office in France.

The relevant shareholders must notify the AMF and the target within five trading days of the relevant threshold being reached. The information is then made public by the AMF.

In addition to these statutory thresholds, the by-laws of the target may provide for additional disclosure obligations upon thresholds from 0.5 per cent being reached. These are made to the target company but not made public.

If a shareholder fails to comply with the disclosure obligations, all shares held in excess of the relevant threshold lose their voting rights for a period of two years from the date on which the notification is finally made. In addition, a French commercial court may grant an order suspending the voting rights of all of the shareholder's shares in the company upon application from the target company. The shareholder may also be liable to a fine.

Finally, additional disclosure obligations apply during an offer period.

First, any dealings (in shares in the target company and, in the case of an exchange offer, the bidder) by the bidder, target, or any of their respective directors, concert parties, financial advisers or investors holding 5 per cent or more of the share capital or voting rights of the target (or of the bidder), or any investor having acquired more than 0.5 per cent since the start of the offer period, must be notified to the AMF at the end of each trading day. This information is published on a daily basis.

Second, any person who increases the number of shares or voting rights it holds in the target during an offer period by at least 2 per cent of the total number of shares or voting rights or who acquires a number of shares representing more than 5 per cent, 10 per cent, 15 per cent, 20 per cent, 25 per cent or 30 per cent of the share capital or voting rights of the target is required to immediately disclose its intentions with respect to the offer.

If the bidder buys shares, does it have to state its intentions regarding the target?

In addition to the obligations described above, a person who at any time acquires (directly, indirectly or as part of a concert party) shares representing more than 10 or 20 per cent of the share capital or voting rights of a French listed company must declare his or her intentions with regard to such interest for the next 12 months. This declaration of intention must include a statement of whether the investor's intention is to continue to acquire shares, acquire the control of the company, or request appointments to the board and whether the shareholder is acting in concert. It must be notified to the target company and the AMF within 10 trading days of the relevant threshold being reached. The information is then published by the AMF. The intentions may only be changed in the event of a 'significant change to the environment, situation or shareholding of the persons concerned'.

Will share dealings affect the terms of the bid?
If a bidder has acquired more than 5 per cent of the capital of the target company's shares in cash during the 12 months prior to the launch of the offer, the terms of its offer must include a full cash alternative.

During an offer where the bidder is entitled to make market purchases of target shares, if it (or any persons acting in concert with it) or one of its financial advisers acquires any shares at a higher price than the offer price, the offer price is automatically increased to the higher of the price actually paid for the shares and 102 per cent of the offer price.

Are there any rules preventing market manipulation?
France has implemented the Market Abuse Directive. Accordingly, market manipulation is a criminal offence and subject to regulatory sanctions by the AMF. These sanctions are identical to those relating to insider dealing and may be applied together by the AMF. The AMF has published certain accepted market practices that do not constitute market manipulation (buy-back of shares and liquidity agreements). However, these are unlikely to be directly relevant for a bidder in the context of a takeover offer.

Offer structure

What is the usual form of a takeover offer?

Generally, a bidder must offer to acquire 100 per cent of the outstanding share capital of the target. The offer must also be made for any equity-linked securities issued by the target, such as convertible bonds.

A description of the proposed offer and a draft offer document must be filed with the AMF for review by one or more presenting banks acting on behalf of the bidder.

The scope of the AMF's review includes the terms of the takeover offer, the nature, characteristics and market for any securities offered as consideration, the conditions regarding the minimum level of acceptance, and the level and accuracy of the information provided in the offer document. Once satisfied with the terms of such offer and the level and accuracy of the information provided in the offer document, the AMF formally approves the offer terms and offer document by granting a *déclaration de conformité* (in principle within 10 trading days of the offer being filed or five trading days following the filing of the target company's response document where a joint offer document is not prepared – see page 27).

Is the offer made by the bidder or its financial adviser?

The offer document is signed by the bidder, but filed with the AMF by one or more 'presenting banks' acting on its behalf. The presenting bank's primary obligation is to guarantee the bidder's irrevocable undertaking to acquire all of the target shares tendered to the offer, and in particular to pay the offer consideration if the bidder fails to do so. If there is more than one presenting bank, at least one of them is required to provide this offer guarantee.

Accordingly, the presenting banks will take a keen interest in the bidder's financial position and will want to be assured that the necessary funds are available. They are likely to insist on the bidder providing them with security for the purposes of the offer, which may include putting cash equivalent to the maximum offer consideration on deposit with the presenting bank.

Does France have a statutory merger alternative?

French law provides statutory mechanisms by which control of a listed company can be acquired other than through share purchases or a takeover offer. These include a statutory merger of two existing companies (*fusion*) or a contribution scheme of either all of the assets and liabilities relating to a branch (*apport partiel d'actifs*) or the shares of another company (*apport en nature*), in exchange for the issue of shares.

In the case of a statutory merger between two independent companies incorporated in France, a two-thirds majority vote is required at a meeting of the shareholders of both companies. If this is obtained, the merger may

be achieved without any takeover offer being made by either company for the other, although in this case, a public document setting out the terms of the merger would have to be approved by the AMF.

What experience do French companies have of dual-headed structures?
Prior to the implementation of the European Company Statute (ECS) in France, it was impossible to carry out cross-border statutory mergers. As a result, there have been some attempts to create dual-headed structures in France. The purpose of a dual-headed structure is to create a single shareholder electorate from the two merging partners while allowing both partners to preserve their individual and national identities.

Alternatively, dividend access schemes may enable certain foreign shareholders to receive all or part of the dividend income directly from a subsidiary incorporated in their own jurisdiction in a tax efficient manner.

Since final implementation in France during the course of 2006, the French market has shown limited interest in the opportunities offered by the ECS, Scor being the only large-scale company to have adopted the statute in the summer 2006. It remains to be seen whether the upcoming implementation of the Cross-Border Merger Directive will allow for more cross-border mergers involving French entities.

Terms of the offer

What controls do the authorities have over the price and other terms?
The terms of an offer are subject to review and approval by the AMF on the basis of the criteria set out in its General Regulation. Review of the offer terms includes the characteristics of the securities offered as consideration in the case of a share exchange offer and any minimum acceptance level or offer conditions to which the offer is subject

The AMF General Regulation brings about the merger of the AMF's review of the offer document and review of the offer terms. Both reviews are now conducted during a 10-day trading period and give rise to a declaration of conformity (*déclaration de conformité*) by the AMF (see page 18).

The AMF's review of the offer price is conducted through its control of the level of disclosure in the offer document rather than a stand-alone analysis of the offer price *per se*, and the bidder is required to include a multi-criteria analysis of the offer price in its offer document.

The AMF's declaration of conformity (or refusal) may be challenged in the French courts.

The bidder is free to determine the offer price. However, in the case of a simplified offer launched by a bidder that holds a majority of the target company's capital and voting rights, the price stipulated by the bidder cannot be lower than the target's weighted average share price over the 60 trading days preceding publication of the filing of the offer without the AMF's approval.

French takeover regulations have also recently been amended to require mandatory offers to be launched at a price at least equivalent to the highest price paid by the bidder, and its concert parties, during the 12 months prior to the launch of an offer. The AMF has the discretion to require or authorise a mandatory bid to be launched at a different price where justified by an obvious manifest change to the characteristics of the target company or the market for its securities. Although not specified in the General Regulation, it is thought that any such change would have to be outside the ordinary course of business and could not, for example, be simply a significant decrease in the target company's share price over the relevant period (in the absence of any specific external event). It is also not clear how the minimum price requirement would apply to a mandatory offer made by way of a share exchange offer.

The AMF sets the offer timetable and has the power to extend it, for example to ensure that any competing offers close on the same date.

What conditions are permitted or required?
Historically, French takeover rules have required an offer to be irrevocable and unconditional. However, this principle has evolved in recent years and an offer may now be conditional upon:

- bidder shareholder approval (if required);
- the outcome of any related offers made by the bidder;
- a certain level of acceptances (see below); and
- antitrust clearance (see page 4).

Furthermore, the AMF must have received the approval of any administrative or regulatory authorities (such as the French banking or insurance board) prior to the opening of the acceptance period.

The acceptance condition is often set at 50.01 per cent or two-thirds, being the majority required to approve a resolution amending a company's by-laws. A 95 per cent acceptance threshold (being the level at which French tax integration can be achieved and the minimum shareholding required for a squeeze-out to be effected) is generally thought to be unacceptable to the AMF in the absence of specific circumstances justifying such a condition (for example, extreme financial difficulties of the target). An acceptance condition can be waived by the bidder at the latest five trading days before the end of the offer period.

An offer may be made subject to an antitrust approval condition. Although in practice the opening of certain offers for acceptances continues to be suspended until antitrust clearances have been obtained, since the end of 2002 an offer may open for acceptances while antitrust approvals are still pending. The offer will subsequently lapse if the relevant approvals are not obtained. Under the French regime:

- the inclusion of an antitrust condition is optional for the bidder;
- only antitrust approval by the Commission and/or the relevant authorities in the US and member states of the EU is accepted as a condition; and
- the offer will automatically lapse in each case if a Phase II investigation (or equivalent) is launched by the relevant authorities.

Conditions that allow the bidder to walk away from the offer if there is a material adverse change to the target's business are prohibited. Likewise, the offer cannot be conditional on financing.

How easy is it for a bidder to walk away?

Other than the conditions listed above, the bidder can only walk away from its offer if:

- a competing offer is made;
- a competing offer is improved; or
- during the offer period, the target company takes specific actions that 'alter its substance', or if 'the offer no longer has an object'. This was the case in the pacman offer by Elf Aquitaine for TotalFina, which was held to be 'without object' following the subsequent recommendation by Elf

Aquitaine of TotalFina's offer for it. However, in this case, AMF approval is required for the bidder to walk away.

Is there a requirement to treat all shareholders equally?

The equal treatment of all target shareholders has always been one of the prominent general principles guiding the decisions of the French stock market authorities. A bidder cannot pay one shareholder in cash and everyone else in shares, or encourage certain (but not all) shareholders to accept the offer by giving them monetary or other incentives. However, stakeholders in different situations (for example, shareholders and bondholders) may be treated differently.

Share consideration

How usual is it to offer new shares or securities as consideration for an offer?
Offers of new shares or securities of the bidder are common and present tax rollover advantages for target shareholders. A part cash and part share (or other securities) offer is also possible. The bidder will however be required to include a cash option where the shares offered are not listed on an EU or EEA regulated market, or, if listed, they are illiquid, or where the bidder, alone or in concert, has acquired more than 5 per cent of the target company's share capital or voting rights in cash over the 12 month period preceding the filing of the offer.

If shares are issued, are a prospectus or listing particulars required?
The AMF's normal rules relating to the listing of shares on the Paris stock exchange will apply to the listing of shares in connection with a takeover offer in France. These generally require a prospectus or equivalent information document to be prepared by the bidder.

Are there any valuation requirements?
The offer price is subject to review by the AMF (see page 20). Details of the valuation, including the criteria used, must be included in the offer document.

Changes to the French takeover regulations in 2006 introduced a requirement for the target company to publish a fairness opinion, prepared by an independent expert, in certain situations. These include where the offer is likely to give rise to conflicts of interest among the target board or to threaten the equality of treatment of shareholders, or in the event of a compulsory acquisition procedure (*retrait obligatoire*) (see page 32). The General Regulation includes a non-exhaustive list of situations that the AMF views as constituting a conflict of interest and accordingly where a fairness opinion is required. These include where the target company is already controlled by the bidder and where there are a number of ancillary transactions related to the main bid that are likely to have a significant impact on the offer price.

The appointment of the independent expert is not subject to the prior approval of the AMF. However, the expert is required to confirm in its formal valuation report that it does not have any prior, current or known future relationship with the parties concerned by the offer (including their advisers). The expert's independence is further protected by the rules on fees, which must be fixed, not dependent on the outcome of the offer and only paid by the target company.

A minimum period of 15 trading days is required between the appointment of the independent expert and the finalisation of its report. A practice note published by the AMF sets out the content requirements for the independent expert's fairness opinion report.

Timing

Is there a prescribed timetable once a bid has been announced?

The announcement by the AMF of the principal terms of an offer filed with it marks the beginning of the offer period, which continues until the results of the offer are announced, usually about two weeks after the closing date of the acceptance period (see below). Upon the filing of an offer, the AMF may suspend trading in the target's shares and any other shares affected by the offer. Trading in such shares resumes on the date specified by the AMF before the offer opens for acceptances.

The acceptance period starts the day following the latter of the publication of the bidder's offer document and the obtaining of any regulatory approvals (see pages 3 and 4).

The offer timetable is fixed by reference to the date on which the target publishes its response document to the bidder's offer document. The period between this date and the closing date of the acceptance period is 25 trading days. However, the duration of the offer acceptance period (the period from the publication of the bidder's offer document until the end of the offer acceptance period) may not exceed 35 trading days. The offer timetable and acceptance period are likely to be extended in the event of a competing offer being filed or litigation arising in connection with the offer.

In addition, if the AMF finds omissions or material errors in the 'additional information' document (see page 26), the acceptance period may be extended for an additional five trading days from the date on which the revised document is published. The AMF may also extend the offer timetable at any time during the acceptance period for any other reason (for example, to allow the offer to be open for acceptances for at least 20 US business days, if it is also being made in the US).

Finally, if the bidder's minimum acceptance threshold is reached (or if there is no such threshold, the bidder acquires at least 50 per cent of the target's shares during its offer), the AMF will automatically re-open the offer for a further period of no fewer than 10 trading days to allow additional acceptances.

Can a bidder revise its offer?

A bidder may increase its offer price or waive any minimum acceptance condition no later than five trading days prior to the closing date of the acceptance period. It may also waive a related offer condition at any time prior to the closing date of the offer acceptance period. It may not otherwise revise its offer. When a bidder revises its offer, it must publish a supplemental offer document.

Do target shareholders have withdrawal rights?

On a 'normal' offer, target shareholders wishing to accept the offer give instructions to this effect to their financial intermediary during the acceptance period. At the end of the offer acceptance period, each financial

intermediary forwards its clients' instructions to Euronext Paris, which centralises the instructions. Target shareholders may withdraw their instructions at any time until such date.

Shares tendered to a 'simplified offer' are, generally, acquired in the market in the same way as normal trades are carried out on the market rather than being centralised by Euronext Paris. In this case, target shareholders do not have withdrawal rights.

Can a bidder make another bid if the first one fails?

There are no particular restrictions on a bidder making a further bid if the first one fails, although it would have to justify to the AMF why the subsequent offer was appropriate.

Information for target shareholders

What information is the bidder required to provide?

The bidder will have to prepare an offer document setting out the terms of the offer as well as a separate additional information document containing factual information on the bidder's legal, financial and accounting situation. The additional information document is filed and published separately from the offer document, no later than the day before the day on which the offer opens for acceptances. Where new shares are offered as consideration for the offer, the additional information document must include information on the bidder to Prospectus Directive disclosure standards. If the bidder is already listed in France, it may incorporate by reference its annual registration document for these purposes.

The General Regulation provides for the level of information to be included in the bidder's offer document as follows.

- The identity of the bidder.
- Details of the terms of the offer, including:
  - (i) the offer price or exchange ratio and valuation criteria;
  - (ii) the number of shares subject to the offer;
  - (iii) any minimum acceptance level condition;
  - (iv) the number of shares already held by the bidder and the number of shares that it may acquire at its discretion – the bidder must also indicate the dates and terms on which share purchases were carried out over the preceding 12 month period and may be carried out in the future;
  - (v) the method of financing the offer and its impact on the assets, business and results of the companies concerned;
  - (vi) a preliminary offer timetable; and
  - (vii) the number and nature of securities offered as consideration (if applicable).
- The bidder's intentions for the following 12 months relating to the target's business and financial strategy and the continued listing of the target's shares.
- The bidder's intentions regarding employment – this section of the offer document must include details of likely changes to the size and structure of the target's workforce during this period.
- The national law that will govern contracts entered into between the bidder and the holders of the target company's securities as a result of the offer and courts having jurisdiction relating to such contracts.

- Details of any agreements relating to the offer to which the bidder is a party, or of which it is aware, together with the identity and details of persons acting in concert with the bidder.
- Where applicable (see page 32), a description of the undertaking to file an irrevocable and fair offer for the shares and equity-linked securities of any company of which more than one third of the share capital or voting rights is held by the target company and which represents an essential asset of the target company.
- The opinion of the bidder's board of directors (or supervisory board) on the consequences of the offer for the company, its shareholders and employees – the details of the meeting of the board of directors at which this opinion was given, such as the number of votes cast in favour of the resolution and the identity and opinion of any dissenting board members, are also required to be included in the offer document.
- A responsibility statement from the bidder and the bidder's presenting bank (see below).

What information is the target required to provide?
Like the bidder, the target is required to publish a document in response to the offer as well as a separate additional information document with factual information to Prospectus Directive disclosure standards. The target will generally incorporate by reference its annual registration document for these purposes. Unless a fairness opinion is required, the bidder's offer document and the target's response document may be included in one joint document.

The target's response document is required to include:

- the number of treasury shares held by the target as well as the number of shares that it may acquire at its discretion – the target must also indicate the dates and terms on which the shares were purchased over the preceding 12 month period;
- details of any agreements or other arrangements that could affect the outcome of the offer;
- any independent expert's fairness opinion – the target company may omit sections of the fairness opinion where necessary to protect its legitimate interests, provided such omission is not likely to mislead the market;
- the opinion of the target company's board of directors (or supervisory board) on the consequences of the offer for the company, its shareholders and employees, including similar details of the meeting at which the opinion was given as those required to be included in the bidder's offer document;

- the opinion of the target company's works council on the offer, if different from that of the target company's board of directors (or supervisory board); and
- the intentions of the board members to tender their shares to the offer.

Who has to take responsibility for published information?
The directors of the bidder take responsibility for the accuracy of the information contained in the bidder's offer document and as indicated above, the offer document includes a responsibility statement to this effect. The offer document is also required to include a statement from the presenting bank certifying that the information contained in the offer document relating to the offer price (and related valuation section) is accurate. The directors of the target take responsibility for the information contained in the response document or those sections of a joint document relating to the target company.

A separate responsibility statement is required from the bidder and presenting bank in respect of the bidder's additional information document (the presenting bank's responsibility statement is filed with the AMF but not made public) and from the target regarding the target's additional information document.

A responsibility statement from the bidder's and target's statutory auditors no longer needs to be included in the relevant offer documents. Instead, the statutory auditors are required to provide the bidder and target respectively with a summary of their report on the accounts (*lettre de fin de travaux*), which is then filed with the AMF, but not made public.

Are there any special requirements for profit forecasts, asset valuations or statements about merger benefits?
The bidder is required to include in the offer document a merger benefits statement and any recent asset valuations used in determining the offer price or the exchange ratio.

Financing

Can a bid be conditional on financing?
The presenting bank guarantees the bidder's obligations under the offer, which are primarily to pay the offer price. If the bidder were to fail to do so, the presenting bank would be required to step in and pay on its behalf. This acts as a strong incentive on the presenting bank to verify the bidder's ability to finance the offer before filing the offer with the AMF.

Can the target's cash or assets be used to refinance borrowings incurred to finance the bid?
French law on financial assistance (which carries criminal sanctions) prevents a target from financing the acquisition of its shares by the bidder or pledging its assets as security for loans granted to the bidder for that purpose.

However, the bidder may offer security over target shares to its lenders.

Role of target board

What are the duties of the target board?
The board must consider the merits of the offer and provide shareholders with its opinion of the consequences of the offer for the company, its shareholders and its employees. In order to assist it in discharging this obligation, the target board will generally (but is not obliged to) seek financial advice, extracts of which may be repeated in the target's response document. In addition, the practice has developed for target directors to include a recommendation to target shareholders to accept or reject the offer.

Recent changes to the French takeover regulations have introduced a requirement for the target company to request a formal fairness opinion from an independent expert in certain situations (see page 23).

What scope do the target company directors have to frustrate a bid?
Target directors must ensure that during the offer period, any action taken or decisions and statements made are not contrary to the interests of the company or the principle of equal treatment of, and information to, the shareholders.

The obligation to act in the 'company's interest' is usually seen as prohibiting the directors from taking action that favours one bidder over another (such as undertakings to sell certain core assets on preferential terms or to withdraw from certain competitive markets).

Unless reciprocity applies (see page 9), management is further prohibited from taking any frustrating action during an offer period without specific shareholder approval during the offer period. In addition, authorisations granted by shareholders to directors to take frustrating action (such as the issue of shareholder warrants) and decisions taken by the board of directors that may frustrate the offer and that have not been fully implemented (such as authorisations to issue new shares given to the board of directors by the shareholders' meeting before the filing of the offer) are suspended during the offer period.

Role of financial adviser

Does the bidder have to have a financial adviser? If so, what is its role?
A bidder must have at least one financial adviser to act as the presenting bank and file the offer with the AMF.

Does the target have to have a financial adviser?
The target does not have to appoint a financial adviser, but in practice will almost always do so.

Is it usual to sign up an engagement or mandate letter?
The terms of the presenting bank's engagement with the bidder are normally set out in an engagement letter. This will generally include various provisions relating to the conduct of the offer and the extent of the presenting bank's obligations to the bidder in its capacity as financial adviser and will allocate ultimate risk of liability for inaccurate information in the offer document.

Will the financial adviser have to give a public opinion on the offer?
Apart from confirming that the information contained in the offer document relating to the offer price is accurate, the presenting bank does not have to give a public opinion on the offer. Any fairness opinion that is required to be produced in connection with the offer must be prepared by an independent financial expert, which would prevent the presenting bank from giving such an opinion.

Mandatory offers

Are there any rules requiring a bid to be made if a certain level of shareholding is reached?

The filing of a takeover offer in France is mandatory where a person, acting alone or in concert, acquires more than one-third of the share capital or the voting rights of a company. The same obligation is triggered by a person who already holds between one-third and 50 per cent of the company's share capital or voting rights increasing its shareholding by more than 2 per cent within a rolling 12 month period. A mandatory offer cannot be subject to any minimum level of acceptance condition.

The mandatory offer regime also applies to a situation where control is acquired of a company that in turn holds more than one-third of the shares in a listed company if this shareholding represents a substantial part of its assets. In 2005, the legislator introduced a further requirement for bidders to undertake to launch an irrevocable and fair offer for the shares and equity-related securities of any listed company (ie any French or foreign company whose shares are admitted to trading on an EEA regulated market or an equivalent foreign market) of which more than one third of the share capital or voting rights is held by the target company and which represents an essential asset of the target company.

For parties to be found to be acting in concert, there must be an actual agreement between them (formal or informal) with a view to acquiring or selling equity securities or exercising voting rights, in each case in order to implement a joint strategy relating to the relevant company.

A concert party is deemed to exist in certain situations, including between a company and the companies it controls and companies controlled by the same entity. Liability between concert parties (for example, the obligation to launch a mandatory bid) is joint and several.

In certain circumstances, the AMF may grant relief from the requirement to make a mandatory offer for a limited period of six months if a shareholder exceeds the relevant thresholds by no more than 3 per cent. In this case, the shareholder must undertake not to exercise the corresponding voting rights.

There are a limited number of exceptions to the obligation to make a mandatory offer. However, for these exceptions to apply, they must be requested by the acquiring shareholder and are then considered by the AMF on a case-by-case basis. Essentially, the AMF checks whether or not an actual change in the control of the target company has taken place.

The AMF may rule that a shareholder reaching the relevant threshold is exempt from filing a mandatory offer:

- if the shareholder already held (alone or in concert) the majority of the target company's voting rights before the triggering event; or

- if the thresholds were only crossed by a shareholder as a result of acting in concert with one or more shareholders who previously held more than 50 per cent of the share capital or voting rights and who continue to hold more shares or voting rights than that shareholder; or
- if the thresholds were crossed by a shareholder as a result of acting in concert with one or more shareholders that already held, alone or in concert, between one-third and one-half of a company's share capital or voting rights provided that such shareholders maintain a larger holding and that, upon the formation of this concert party, they do not exceed one of the thresholds requiring a mandatory bid (see page 32).

The AMF may also grant an exemption from the mandatory bid obligation in certain additional cases. These include:

- certain situations that have been approved by both companies' shareholders in a general meeting (such as mergers and contributions in kind);
- situations where the existing shareholder base is not changed (for example a reduction in the total number of shares or voting rights or transfer of shares between group companies); or
- subscribing for new shares in a company with major financial difficulties, if this has been approved by the target company's shareholders.

Failure to comply with the obligation to make a mandatory offer results in the voting rights attached to the shares exceeding the relevant threshold being suspended. In addition, the shareholder may be fined by the AMF or ordered by the court (upon application by the AMF or any other interested party) to file a takeover offer.

Special mandatory offer rules apply where a shareholder acquires a block of shares in cash, which, together with its existing holding, gives it more than 50 per cent of the share capital or voting rights of a listed company. The new majority shareholder is required to file a standing market offer (*garantie de cours*) for the remaining shares in the target.

The main difference between this type of offer and a standard mandatory bid is that the *garantie de cours* generally has to be made at the price at which the block of shares was acquired. The bidder will only be allowed to file a *garantie de cours* at a lower price if the acquisition of the block of shares included specific warranties or a deferred consideration element that would justify a different price being paid for the remaining shares.

A *garantie de cours* is carried out according to the rules applicable to the procedures for simplified public offers.

Minority squeeze-out

Do French companies have a procedure for requiring minority shareholders to accept a bid?

A shareholder holding at least 95 per cent of the capital and voting rights of a listed company may initiate a compulsory acquisition, or 'squeeze-out', procedure in order to acquire the shares of the remaining minority shareholders. The 95 per cent threshold is calculated on a fully diluted basis and the squeeze-out procedure may be made for equity-linked securities.

Until changes to the takeover regulations in 2006, a squeeze-out procedure (*retrait obligatoire*) had to be preceded by a buyout offer (*offre publique de retrait*). This involved two separate stages.

- A public buyout offer effected by the bidder making purchases in the market for at least 10 trading days at the offer price.
- Immediately following the end of the buyout offer, the automatic transfer of all outstanding shares to the bidder as part of the squeeze-out procedure, provided that the bidder held 95 per cent of the share capital (and voting rights) of the company following the buyout offer.

A bidder may now also launch a follow-on squeeze-out procedure within three months of the end of a takeover offer if the minority shareholders do not hold more than 5 per cent of the share capital or voting rights (calculated on a fully diluted basis) of the target company at the end of the offer. In this case, the squeeze-out does not have to be preceded by a buyout offer.

As a general rule, the implementation of a follow-on squeeze-out procedure requires the publication of a specific offer document containing a valuation of the target's securities by the bidder using objective valuation methods and a fairness opinion. The follow-on squeeze-out is subject to review by the AMF giving rise to a *déclaration de conformité*, based on the specific valuation and the fairness opinion. The AMF appears to accept that these conditions be satisfied at the time of the principal offer.

These conditions do not apply where the follow-on squeeze-out is implemented following a 'normal' public offer (see page 2) after which the bidder holds at least 95 per cent of the share capital and voting rights of the target. In this situation, the follow-on squeeze-out can be launched without any further formalities.

The consideration paid to the minority shareholders in a squeeze-out must generally be in cash. However, in the context of a follow-on squeeze-out, if the initial offer included a share element, the bidder may offer securities in the squeeze-out as well, provided that a cash consideration is offered as an alternative.

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