



# **SEE Legal** The **Southeast Europe** Takeover Handbook 2017

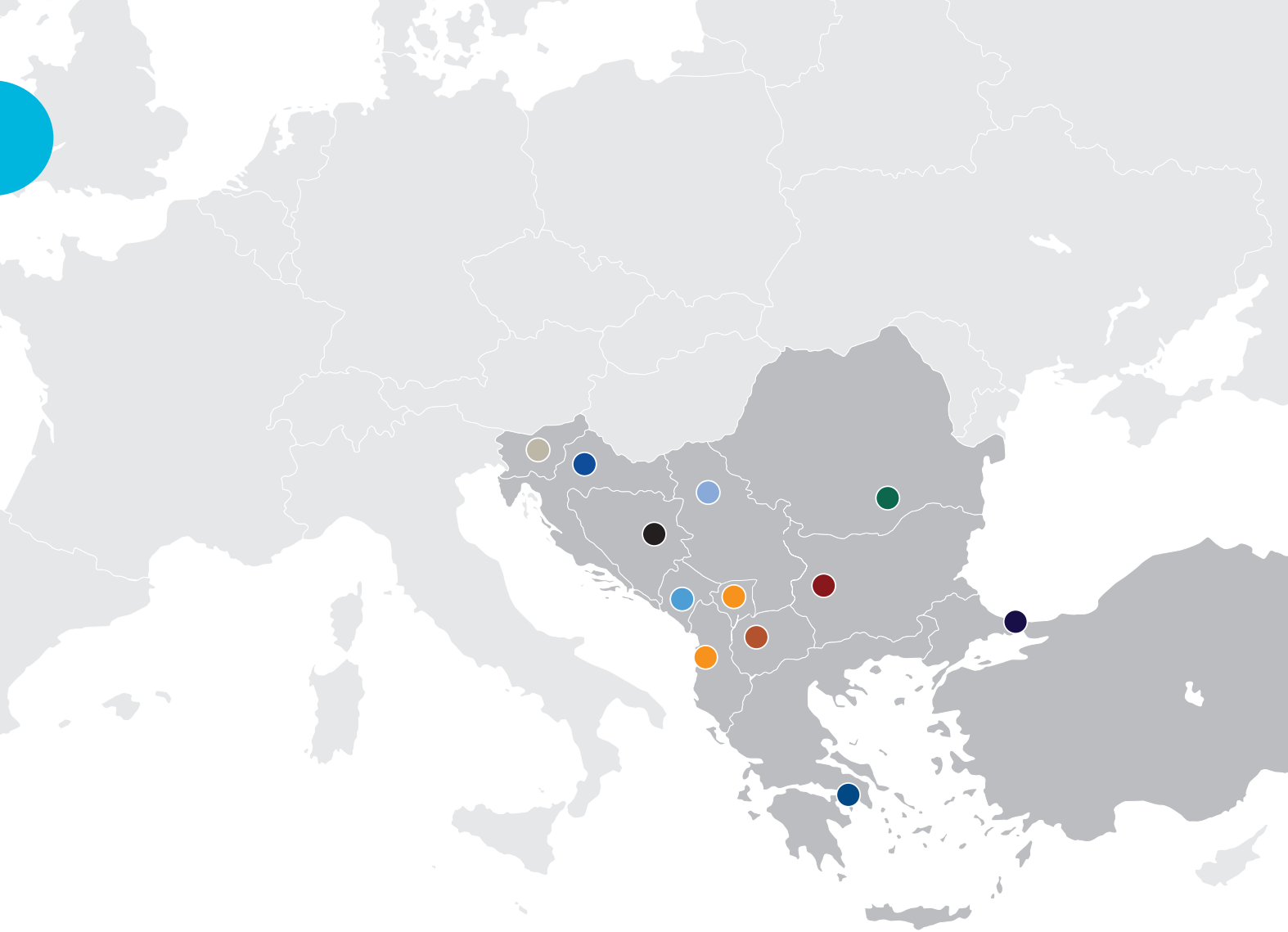






# CONTENTS

MEMBERS	4
.....	
PREFACE	6
.....	
ALBANIA	8
.....	
BOSNIA & HERZEGOVINA	10
.....	
BULGARIA	14
.....	
CROATIA	18
.....	
GREECE	22
.....	
MONTENEGRO	26
.....	
REPUBLIC OF MACEDONIA	30
.....	
ROMANIA	34
.....	
SERBIA	36
.....	
SLOVENIA	38
.....	
TURKEY	42
.....	
ABOUT SEE LEGAL	46
.....	
CONTACTS	48
.....	



“THE SOUTH EAST EUROPE LEGAL GROUP (SEE Legal) IS AN ORGANISATION OF TEN LEADING NATIONAL LAW FIRMS FROM 12 SOUTH EAST EUROPEAN COUNTRIES AND IS THE LARGEST PROVIDER OF LEGAL SERVICES THROUGH THE SEE REGION. OUR COMMITMENT REMAINS TO BE YOUR LEADING SOURCE FOR BUSINESS SUPPORT IN THE REGION.”

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# PREFACE

Dear Partners and Friends of SEE Legal,

South East Europe Legal Group ("SEE Legal"), a unique regional organisation of ten leading independent national law firms covering the twelve jurisdictions of South East Europe, is delighted to be publishing this South East Europe Takeover Handbook.

Established in 2003, SEE Legal employs more than 470 lawyers and has an impressive client base of multinational corporations, financial institutions and governmental bodies. Member firms of SEE Legal have advised on most of the landmark transactions in the region and have been continuously ranked as top tier law firms in the main reputable legal directories (Legal 500, Chambers & Partners, IFLR 1000, etc.) for the last ten years and more, and some even for two and a half decades.

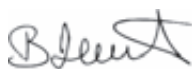
Our aim in preparing this Takeover Handbook was to provide to in-house counsels, professionals and legal practitioners a helpful tool in understanding the legal framework regulating the mandatory and voluntary takeover bid in the South East Europe.

The Takeover Handbook provides information which is a must in every M&A deal timeline e.g. triggers for the mandatory takeover bid, deadlines for announcing mandatory and voluntary takeover bids as well as their duration. The Guide further elaborates on more technical issues such as applicable methodologies for determination of per share value as this is often one of the key inputs required for financing of the transaction, especially in cases of cross border transactions when the mandatory takeover bid has to be announced in several jurisdictions. The Handbook also deals with other issues, such as squeeze-out process, claw back, role of SEC and many other relevant topics that have to be taken in consideration when the target or its subsidiary is a joint stock company.

Should you have any specific queries regarding takeover bid matters in South East Europe, we would be pleased to hear from you.

**Vladimir Dašić**

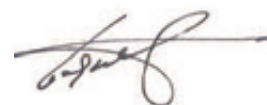
*Head of M&A Practice Group of SEE Legal*



Sincerely,

**Borislav Boyanov**

*Co-Chair of SEE Legal*



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## Disclaimer

*This publication is intended to provide a general guide to the takeover regulations in South East Europe. Each country section has been prepared by the relevant SEE Legal member firm covering the particular jurisdiction. This Handbook does not include a chapter for Kosovo due to the lack of legislation regulating the takeover process.*

*This publication is not meant to be a treatise on any particular country's legislation and is not exhaustive, but is meant to assist the reader in identifying the main principles governing the takeover process in the various jurisdictions of South East Europe and to provide helpful guidance. Legal advice should always be sought before taking any action based on the information provided herein. The information contained herein is based on the respective legislation as of 1 November 2016. No part of this Handbook may be reproduced in any form without our prior written consent.*

# ALBANIA

## 1. TAKEOVER BID

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Takeovers of publicly listed companies are regulated by the Law on Takeovers of Public Companies<sup>1</sup>, which applies to all publicly traded companies with a registered office in Albania and whose shares are listed on a regulated stock exchange market in Albania, or all foreign public companies that are listed on the stock exchange in Albania (the “Target”). It applies whenever the bidder acquires a controlling interest in a public company i.e. at least 30 per cent of the voting rights in the Target.

As there are no functional stock exchange markets in Albania, the enforcement of this law yet remains to be seen in the future.

### 1.1 Mandatory Takeover Bid

A Mandatory Takeover Bid (“MTO”) is triggered if a party (the “Bidder”) alone or in concert with others, has obtained control of more than 30 per cent of the voting shares of the Target. The Bidder can issue the mandatory bid within seven days from the day when the abovementioned control has been obtained.

#### *Exceptions to the MTO*

An MTO does not have to be launched in case:

- (a) there is another shareholder with an equal number of shares with voting rights in the Target;
- (b) more than 30 per cent of the shares are obtained through inheritance, donation or division of property;
- (c) the acquisition of shares is a result of the restructuring of the Target.

### 1.2 Voluntary Takeover Bid

Any person, either natural or legal can submit a Voluntary Takeover Bid (“VTO”) if they intend to acquire more than 30 per cent of the Target’s shares with voting rights. A Bidder may also submit a partial VTO in case it intends to acquire shares that together with the Bidders’ existing shareholding do not exceed the 30 per cent control threshold.

### 1.3 Conditional VTO

While an MTO has to be unconditional, a VTO may be conditioned with a minimum or maximum number of shares to be acquired. If such minimum or maximum is not acquired, the Bidder is allowed to revoke the VTO.

### 1.4 MTO/VTO Timeframe

An MTO/VTO must remain open for at least three and not more than 10 weeks after the offer document has been published plus an extension of eight days if the offer is amended eight days prior to its expiry date.

### 1.5 Purchase price in MTO/VTO

The price offered for the shares must not be lower than the highest value of either:

- (a) the fair price of the shares calculated using widely accepted evaluation methods; or
- (b) the average weighted market price of the shares during the previous three months; or
- (c) the higher price per share paid by the Bidder during the 12 months prior to the offer publication date.

The purchase price may be paid in cash, marketable shares with sufficient liquidity or a combination of both.

<sup>1</sup> Law No. 10236, dated 18.02.2010 on Takeovers of Public Companies.

## 1.6 Procedure

Publication of the MTO and VTO is subject to the prior approval of the Financial Supervisory Authority (the "FSA").

The intention of an MTO should be announced within seven days after the Bidder becomes aware or should have become aware of the triggering MTO event. The intent of the MTO/VTO is published on the internet website of the Bidder, the Albanian commercial registry, the relevant securities markets and with the official communication means of an organised stock market whilst application for approval of the MTO/VTO should be submitted to the FSA within 10 (calendar) days following the announcement. The Bidder should provide a detailed list of documents to the FSA, as specified in the law.

The FSA should respond within 10 days. An approval shall be deemed to be tacitly granted in case the FSA does not revert with a response within 10 days from the submission of the offer document.

Upon approval from the FSA, the Bidder submits the binding offer which should remain open for acceptance from three to 10 weeks from the date of the publication of the public offer.

The Bidder should announce the result of the bid immediately after the expiry of the bid period.

## 1.7 Obligation on top-up the price

If within a period of one year from the publication of the MTO/VTO, the Bidder or parties acting in concert, acquire voting shares of the Target at a price that is higher than the price from the MTO/VTO, the Bidder is obliged to pay the difference in price to the shareholders who accepted the MTO unless such acquisition has taken place as a result of:

- (a) a legal obligation of the Bidder to indemnify the shareholders;
- (b) a merger or division of the Target;
- (c) exercise of pre-emption rights in the event of increase of the capital of the Target.

## 2. SQUEEZE - OUT

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If a Bidder acquires shares in the Target representing at least 90 per cent of the capital and voting rights, it may within three months from the expiry of the offer approval term, request the remaining shareholders to sell their shares provided that such intent was foreseen in the offer document of the VTO. In the same scenario, the minority shareholders can request the Bidder to purchase their shares within three months from the expiry of the VTO/MTO. The payment form should be identical to the form of payment used by the Bidder for the acquisition of shares on the basis of the VTO/MTO. The value to be paid for the remaining shares must be the highest of the price provided in the VTO/MTO or the capital value of each share.



### 1. TAKEOVER BID

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Takeover of Joint Stock Companies Act of Federation of Bosnia and Herzegovina<sup>1</sup> ("FBH") sets forth the rules for acquisition of shares in joint stock companies listed at the Sarajevo Stock Exchange, or if they are not listed, are classified as open joint stock companies or closed joint stock companies that have at least 30 shareholders and the registered share capital of at least EUR 1 million (the "Target").

#### 1.1 Mandatory Takeover Bid

A Mandatory Takeover Bid ("MTO") is triggered if a party (the "Bidder"), alone or together with the parties acting in concert, acquires directly or indirectly shares in the Target, as a result of which the Bidder, alone or together with the parties acting in concert, holds more than 25 per cent of the voting shares in the Target. Additionally, after achieving the above threshold, the Bidder is obliged to publish an MTO if an increase in its voting rights by more than 10 per cent is acquired. However, an MTO obligation shall be also triggered if the Bidder acquires less than 10 per cent of voting rights if by such acquisition threshold of 75 per cent is achieved.

Therefore, even when the Target is not a direct target in a cross-border transaction (e.g. the direct target is a special purpose vehicle holding the shares in the Target or the parent company of the Target), an MTO is required if the conditions in the previous paragraph are fulfilled.

#### *Exceptions to the MTO*

An MTO does not have to be launched in the case of acquisition of the shares in:

- (a) a bankruptcy process;
- (b) a merger or restructuring process;
- (c) a privatisation process;
- (d) other cases stipulated by the Takeover of Joint Stock Companies Act of FBH.

#### 1.2 Voluntary Takeover Bid

The Bidder can also launch a voluntary takeover bid ("VTO"), which is conducted under the same conditions as the MTO.

#### 1.3 Conditional VTO

While an MTO has to be unconditional (save for the conditions that the Bidder will not acquire shares which are pledged), a VTO may be conditioned with a minimum number of shares to be acquired. If such minimum is not acquired, the Bidder is not obliged to purchase any of the shares deposited in response to the VTO.

#### 1.4 MTO/VTO Timeframe

A VTO/MTO lasts 28 days from the date of publication. In case of changes to the bid, the validity period may be extended for additional seven days, provided that the total validity period of the bid is no longer than 60 days from the date of initial publication.

In case of a competitive bid, the validity of all bids may be prolonged until the expiry of the bid last filed.

.....  
<sup>1</sup> Zakon o preuzimanju dioničkih društava, Official Gazette of Federation of Bosnia and Herzegovina, No. 77/15.

### 1.5 Purchase price in MTO/VTO

The offered price in the MTO/VTO cannot be lower than the price at which the offeror, and parties acting in concert, acquired shares in the period of one year prior to the obligation to publish the MTO (the "Acquisition Price"). If the average price of shares is higher than the Acquisition Price, the offeror is obliged to offer such higher price.

The Bidder has to deposit the total amount of the purchase price for acquisition of all remaining shares in the Target, or provide the bank guarantee in the same amount. The deposit evidence, or the bank guarantee, must be ensured prior to submission of the request for approval of the MTO/VTO.

### 1.6 Procedure

Publication of the MTO (and VTO) is subject to approval of the Securities Commission of FBH (the "SEC").

The intention of the MTO/VTO has to be publicly announced within one business day after the obligation to launch an MTO occurred, while application for approval of the MTO has to be submitted to the SEC within 30 (calendar) days following the day of acquisition triggering the MTO.

The SEC has 14 (calendar) days, upon submission of complete application, to approve the MTO/VTO. The MTO/VTO has to be publicly announced within seven (calendar) days upon obtaining the SEC approval.

Target's shareholders are accepting the MTO by depositing their shares to the special account opened in the Securities Registry of FBH (the "Registry") until the expiration of the MTO/VTO validity. Target's shareholders can also revoke their sale orders until the expiration of the MTO/VTO validity.

The deadline for payment of the shares is seven days from the expiration of MTO/VTO, or three days if the takeover is being conducted through the stock market.

The Bidder is obliged to publish the report on MTO/VTO on the next working day after the expiry date for payment of shares. The same report should be submitted to the SEC, Target, Sarajevo Stock Exchange and Registry. Publishing of the report is done in the same manner as publishing of the MTO/VTO.

### 1.7 Obligation on top-up the price

If within a period of one year from the closing date of the MTO/VTO, the Bidder or parties acting in concert, acquire voting shares of the Target at a price that is higher than the price from the MTO/VTO, the Bidder is obliged to pay the difference in price to the shareholders who accepted the MTO, within seven days from the date of this new acquisition.

## 2. SQUEEZE - OUT

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If the Bidder acquires 95 per cent or more shares in the MTO/VTO, it shall be entitled to conduct the squeeze-out process with the Registry, provided that the squeeze-out is completed three months following the expiry of the MTO/VTO deadline, and under the condition that the MTO/VTO contained a statement of the Bidder that it shall use this right.

### 1. TAKEOVER BID

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Takeover of Joint Stock Companies Act of Republika Srpska<sup>2</sup> ("RS") sets forth the rules for acquisition of shares in joint stock companies in RS which is established as, or issues shares by public auction in accordance with the laws applicable in RS, as well as joint stock companies which were established in the procedure of privatisation (the "Target").

#### 1.1 Mandatory Takeover Bid

A Mandatory Takeover Bid ("MTO") is triggered if a party (the "Bidder"), alone or together with the parties acting in concert, acquires directly or indirectly shares in the Target, as a result of which the Bidder, alone or together with the parties acting in concert, holds more than 30 per cent of the voting shares in the Target.

Therefore, even when the Target is not a direct target in a cross-border transaction (e.g. the direct target is a special purpose vehicle holding the shares in the Target or the parent company of the Target), an MTO is required if the conditions in the previous paragraph are fulfilled.

#### Exceptions to the MTO

An MTO does not have to be launched in the case of acquisition of the shares in:

- (a) a bankruptcy process;
- (b) a merger or restructuring process;
- (c) a privatisation process;
- (d) other cases stipulated by the Takeover of Joint Stock Companies Act of RS.

#### 1.2 Voluntary Takeover Bid

The Bidder can also launch a voluntary takeover bid ("VTO"), which is conducted under the same conditions as the MTO.

#### 1.3 Conditional VTO

While an MTO has to be unconditional (save for the conditions that the Bidder will not acquire shares which are pledged), a VTO may be conditioned with a minimum number of shares to be acquired. If such minimum is not acquired, the Bidder is not obliged to purchase any of the shares deposited in response to the VTO.

#### 1.4 MTO/VTO Timeframe

A VTO/MTO lasts 30 days from the date of publication. In case of changes to the bid, the validity period may be extended for additional 10 days, provided that the total validity period of the bid is no longer than 60 days from the date of initial publication.

In case of a competitive bid, the validity of all bids may be prolonged until the expiry of the bid last filed.

#### 1.5 Purchase price in MTO/VTO

The offered price in the MTO/VTO cannot be lower than the Acquisition Price. If the average price of shares is higher than the Acquisition Price, the offeror is obliged to offer such higher price.

The Bidder has to deposit the total amount of the purchase price for acquisition of all remaining shares in the Target, or provide the bank guarantee in the same amount. The deposit evidence, or the bank guarantee, must be ensured prior to submission of the request for approval of the MTO/VTO.

<sup>2</sup> Zakon o preuzimanju akcionarskih društava, Official Gazette of Republika Srpska, No. 65/08, 92/09 and 59/13.

## 1.6 Procedure

Publication of the MTO (and VTO) is subject to approval of the Securities Commission of RS (the "RS SEC").

The intention of the MTO/VTO has to be publicly announced immediately after the obligation to launch an MTO occurred, while application for approval of the MTO has to be submitted to the RS SEC within 30 (calendar) days following the day of acquisition triggering the MTO.

The RS SEC has 30 (calendar) days, upon submission of complete application, to approve the MTO/VTO. The MTO/VTO has to be publicly announced within seven (calendar) days upon obtaining the RS SEC approval.

Target's shareholders are accepting the MTO by depositing their shares to the special account opened in the Securities Registry of RS until the expiration of the MTO/VTO validity. Target's shareholders can also revoke their sale orders in the cases regulated by the law.

The deadline for payment of the shares is up to 10 days from the expiration of the MTO/VTO.

Within seven days after the expiry date for payment of shares, the Bidder is obliged to publish the report on MTO/VTO. The same report should be submitted to the RS SEC, Target, stock market and Securities Registry of RS. Publishing of the report is done in the same manner as publishing of the MTO/VTO.

## 1.7 Obligation on top-up the price

If within a period of one year from the closing date of the MTO/VTO, the Bidder or parties acting in concert, acquire voting shares of the Target at a price that is higher than the price from the MTO/VTO, the Bidder is obliged to pay the difference in price to the shareholders who accepted the MTO, within seven days from the date of this new acquisition.

## 2. SQUEEZE - OUT

During the shareholders meeting of the Target, upon proposal of the shareholder with more than 90 per cent of the capital, the shareholders may decide on the transfer of shares of the minority shareholders to the majority shareholder, with payment of adequate price, under the conditions provided by the Law on Companies of RS<sup>3</sup>.



<sup>3</sup> Zakon o privrednim društvima RS, Official Gazette of Republika Srpska, No. 127/08, 58/09, 100/11 and 67/13.

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# BULGARIA

## 1. TAKEOVER BID

The takeover bids are regulated by the Public Offering of Securities Act<sup>1</sup>. Their rules apply only to companies that are "public", i.e. have issued shares as a result of an IPO, have their shares registered for trade at a regulated market or have had more than 100 shareholders during the last two consecutive calendar years (the "Target").

The takeover bid rules are further detailed in the Ordinance No. 13 on the Takeover Bids for Purchase and Exchange of Shares<sup>2</sup> and in Ordinance No. 41 of 11.06.2008 on the requirements to the content of the public company's shares' price justification, including on the application of evaluation methods, in the case of merger, joint venture contracts and takeover bids<sup>3</sup>.

### 1.1 Mandatory Takeover Bid

A Mandatory Takeover Bid ("MTO") is triggered if a party (the "Bidder"), alone or together with related parties, acquires more than 1/3 of the voting shares in the Target, provided there is no other party, which alone or together with related parties holds more than 50 per cent of the Target's voting shares.

Identical obligations would arise if the thresholds of 50 per cent and 2/3 of the voting shares in the Target are exceeded.

Therefore, even when the Target is not a direct target in a domestic or cross-border transaction (e.g. the direct target is a special purpose vehicle holding the shares in the Target or the parent company of the Target), an MTO would have to be launched if the conditions listed above were met.

### Exceptions to the MTO

An MTO does not have to be launched:

- (a) in the case the threshold was reached or exceeded as a result of a voluntary takeover bid ("VTO");
- (b) in the case of privatisation transaction, unless the shares are privatised via the stock exchange or as a result of a tender offer ("TO");
- (c) in other cases stipulated by the Public Offering of Securities Act.

### 1.2 Voluntary Takeover Bid

If the Bidder owns 5 per cent of the votes in a Target and intends to acquire more than 1/3 of the votes, the Bidder can launch a VTO (the "5 per cent VTO").

A VTO could be also launched by a Bidder holding more than 90 per cent of the votes (the "90 per cent VTO"). Depending on the results of this VTO, the Bidder could then have the Target delisted.

In case the Bidder owns between 1/3 and 2/3 of the votes, then it may not acquire more than 3 per cent of the votes of the Target during a specific year, unless a VTO is launched (the "1/3 VTO").

### 1.3 Conditional VTO

While the MTO and VTO in general have to be unconditional, the 90 per cent VTO may be conditioned upon the number of shares tendered. The Bidder shall not be obliged to acquire the tendered shares unless their number is equal to or higher than the minimum announced in advance.

<sup>1</sup> Published in State Gazette No. 114 of 1999, as amended and supplemented.

<sup>2</sup> Published in State Gazette No. 4 of 2003, as amended and supplemented.

<sup>3</sup> Published in State Gazette No. 59 of 2008, as amended and supplemented.

Once the TO document is published it cannot be withdrawn, except in case of 5 per cent VTO or should the Bidder become unable to complete the TO due to reasons outside of its control.

#### 1.4 MTO/VTO Timeframe

A VTO/MTO could last from 28 up to 70 days from the date of the TO public announcement. The Bidder is entitled to extend the initially announced period within this timeframe.

In case a competitive TO is launched, the period of validity of the initial TO could be extended to match the period of validity of the competitive TO.

#### 1.5 Purchase price in MTO/VTO

The Bidder in an MTO may offer to the other shareholders either to purchase their shares in the Target or to exchange them for shares in the Bidder to be issued specifically for that purpose. Similar rules apply with respect to the 5 per cent VTO.

The 90 per cent VTO can provide for a cash consideration only.

The published TO document must contain a justification of the (i) proposed price, based on generally accepted valuation methods or (ii) proposed rate of exchange for shares in the Bidder. Different price justification and evaluation rules apply depending on whether the Target's shares are actively traded<sup>4</sup> or not.

The price under an MTO or the 90 per cent VTO may not be lower than the highest value between:

- (a) the fair price indicated in the justification as a result of the evaluation; or
- (b) the higher price between the average weighted market price of the shares during the last three months before the registration of the TO or before the date on which the obligation to launch the MTO should have been fulfilled; or

- (c) the higher price between the highest price per share paid by the Bidder or persons related thereto during the last six months prior to the TO registration or before the date on which the obligation to launch the MTO should have been fulfilled<sup>5</sup>.

The price of the 1/3 VTO and the 5 per cent VTO may not be lower than the average weighted market price of the shares during the last three preceding months or, where no such market price exists, the highest price per share paid by the Bidder or the persons related thereto during the six months preceding the TO. The Bidder may also propose a justification of the price based on generally accepted valuation methods.

Any TO providing for exchange of shares must mandatorily state an alternative option for purchase of the shares held by the shareholders to whom the TO is addressed.

#### 1.6 Procedure

The MTO/VTO is to be presented to the Financial Supervision Commission<sup>6</sup> (the "FSC") for approval. Simultaneously, the TO document is to be submitted to the management of the Target for consideration and issuing of an opinion, which is then presented to the FSC (if issued).

The TO can be published in case no temporary ban for publication is passed within 20 business days following the filing. The lack of reaction from the FSC is considered tacit approval and the TO can be published.

If a temporary ban is issued, the Bidder will have further 20 business days to remedy the defects and resubmit the corrected TO.

The FSC will have another 20 business days to reconsider the TO and if no permanent ban is issued, the Bidder may publish the TO in at least two national daily newspapers, together with the opinion of the Target's management.

<sup>4</sup> Actively traded are the shares in a company where the average daily volumes of trades are equal to or higher than 0.01 per cent of the total number of shares of the company during the preceding three months.

<sup>5</sup> In case the price of the shares cannot be determined in accordance with these rules, it shall be determined as the last issue value or the last price paid by the Bidder, whichever is higher.

<sup>6</sup> This Commission is in charge with the supervision over (i) the capital market and the companies operated therein (investment brokers, collective investment schemes, stock exchanges, etc.), (ii) the insurance market and insurance and re-insurance companies and (iii) the additional social security market (pension funds).

The said documents are also to be presented to the Target and the regulated market, at which the Target's shares are traded<sup>7</sup>, which are supposed to announce those on their websites.

Target's shareholders who want to accept the TO are supposed to deposit written acceptance notices with the investment broker running the process or with the Central Depository<sup>8</sup>, together with the depository receipts for their shares until the expiration of the TO validity term. Target's shareholders can revoke their acceptance freely until the expiration of the TO validity period, including any extension thereof.

Once the period of the TO expires, the deals with respect to the tendered shares are considered final. The payment of the price or the exchange of the shares are to be completed within seven business days following the expiry of the validity period of the TO. The transfer of the shares is effected by amending the records kept by the Central Depository.

Upon the settlement of the TO, the Bidder is obliged to publish forthwith a report on its results in two national daily newspapers and has to notify the FSC and the regulated market/s at which the shares are listed.

### 1.7 Obligation on top-up the price

The Bidder may increase the offered price freely during the validity period of the TO.

If prior to the expiry of the term of the TO the Bidder acquires directly or through related parties voting shares in the Target at a price higher than the one indicated in the TO document, the Bidder is obliged to increase the offered price in order to match the higher price.

In case of increase of the purchase price, irrespective of whether it is voluntary or mandatory, the acquisition of all tendered shares is to be completed at the increased price, including with respect to the ones tendered prior to the increase of the price.

## 2. SQUEEZE - OUT

If the Bidder acquires 95 per cent or more of the voting shares in an MTO/VTO, it shall be entitled to conduct the squeeze-out process, subject to FSC's approval. Although different rules may apply to the determination of the squeeze-out price, in general it cannot be lower than the price paid in the preceding TO procedure as a result of which the 95 per cent threshold was reached.

The squeeze-out procedure is to be launched within three months following the completion of the respective MTO or VTO.

The FSC is to approve the squeeze-out proposal within 14 days of its filing. Once the proposal is approved, the transfer of the shares and the payment of the price are to be completed in seven business days.

Within the indicated three-month period, each shareholder may ask the Bidder to acquire its shares at the terms offered in the preceding MTO/VTO even if no squeeze-out procedure is launched.

<sup>7</sup> Including the markets of all other EU member states at which the shares are listed (if any).

<sup>8</sup> A commercial company owned by the Ministry of Finance, banks and investment brokers, which is in charge with maintaining the records of all non-physical shares, including the ones of the public companies.

# DTB

DIVJAK TOPIC BAHTIJAREVIC Law Firm

HR



# CROATIA

## 1. TAKEOVER BID

Joint Stock Companies Takeover Act <sup>1</sup> (the “Act”) sets forth the rules for acquisition of shares in joint stock companies:

- (a) with registered seat in the Republic of Croatia whose shares are listed (i) on a regulated market<sup>2</sup> of the Zagreb Stock Exchange, or (ii) on a regulated market in any member state<sup>3</sup> but are not listed on a regulated market of the Zagreb Stock Exchange; and
- (b) with registered seat in another member state whose shares are listed on a regulated market in any member state (the “Target”).

### 1.1 Mandatory Takeover Bid

A Mandatory Takeover Bid (“MTO”) is triggered if a party (the “Bidder”), alone or together with the parties acting in concert, acquires directly or indirectly voting shares in the Target, as a result of which the Bidder, alone or together with the parties acting in concert, holds (together with the shares which the Bidder has already acquired) more than 25 per cent of the voting shares in the Target.

### Exceptions to the MTO

The Act provides for various exceptions to the MTO. For instance the MTO does not have to be launched in the case of acquisition of the shares:

- (a) in a bankruptcy/pre-bankruptcy process;
- (b) in a merger or restructuring process;
- (c) if upon acquisition of shares, the Target holds ratio equal to or lower than the voting shares the other shareholder of the Target holds;
- (d) in other cases stipulated by the Act.

### 1.2 Voluntary Takeover Bid

The Bidder can launch a voluntary takeover bid (“VTO”) which is subject to the requirements prescribed by the Act.

### 1.3 Conditional VTO

A VTO may be conditioned with a minimum number of shares to be acquired which cannot be lower than 25 per cent of voting shares. If such minimum is not reached, the Bidder shall not purchase any of the shares deposited in response to the VTO.

### 1.4 MTO/VTO Timeframe

The MTO lasts 28 days as of the day it was published. The deadline is extended in the event of publishing of an amendment to the MTO or a competing offer/bid.

<sup>1</sup> Zakon o preuzimanju dioničkih društava, Official Gazette of Republic of Croatia, No. 3173/2007, 795/2009, 2364/2012, 2015/2013, 2257/2013 and 3141/2013 implementing Directive 2004/25/EC.

<sup>2</sup> Regulated market means a multilateral system operated and/or managed by a market operator, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments – in the system and in accordance with its non-discretionary rules – in a way that results in a contract, in respect of the financial instruments admitted to trading under its rules and/or systems, and which is authorised and functions regularly and in accordance with the provisions of Title III of the Directive 2004/39/EC.

<sup>3</sup> Member state means the member states of the European Economic Area.

The publishing of an amendment to the MTO prolongs the deadline for additional seven days, while the publishing of a competing bid prolongs the deadline until the expiry of the competing bid. The total period of validity of the bid (and the competing bid) may not exceed 60 days as of the day the first bid was published.

### 1.5 Purchase price in MTO/VTO

The Bidder may offer cash or securities (listed on the same market as the shares subject of the MTO, unencumbered, and of the same class as the shares which are the subject of the MTO), or a combination thereof. If securities or a combination of securities and cash is offered in the MTO, the Bidder also has to offer a cash/monetary alternative.

Generally, in the event of an MTO the amount of the consideration may not be less than the higher of the following prices:

- (a) the price at which the Bidder (and parties acting in concert) has acquired the shares of the Target within one year preceding the date on which the Bidder became obliged to launch the MTO;
- (b) the average market price of the shares of the Target on the regulated market during the three months prior to the date preceding the date on which the Bidder became obliged to launch the MTO<sup>4</sup>.

The Bidder has to deposit with the Central Depository & Clearing Company Inc. (the **"Depository"**) the total amount of the purchase price for acquisition of all shares from the MTO, and/or to provide the bank guarantee to the Depository in the same amount. The confirmation of the Depository on the deposit of the purchase price or the bank guarantee has to be enclosed with other offer documents that are to be submitted to the Croatian Financial Services Supervisory Agency (the **"Agency"**).

If the price for shares is offered as securities or a combination of cash and securities, then the securities which are offered for the Target's shares have to be deposited on a special account at the Depository.

### 1.6 Procedure

The Bidder must notify the Agency of its obligation to launch the MTO and publish the notification without delay upon exceeding the threshold of 25 per cent of voting shares in the Target. Following the publication of the notification via regulated market operator, the Target is obliged to inform the representatives of the employees or the employees of the notification as well as inform the Agency of any procedures or negotiations with the Bidder or the lack thereof.

Publication<sup>5</sup> of the MTO is subject to approval of the Agency. The Bidder must submit a request for the approval of the publishing of the MTO, the MTO and the pertaining documentation to the Agency within 30 days as of the date on which the Bidder became obliged to launch the MTO.

The Agency will decide on the aforementioned request within 14 days as of the day a complete request for the approval of the MTO was received. The Agency verifies that all legal requirements have been met and that the offer documents are complete.

The Bidder is obliged to provide the MTO to the Target, regulated market operator (of the regulated market on which the shares of the Target are listed) and Depository without delay following the receipt of the Agency's resolution. The MTO must be launched within seven days as of the day the resolution of the Agency is received. The Management Board of the Target is obliged to publish an elaborated opinion on the MTO within 10 days of publishing of the MTO.

<sup>4</sup> There are various details prescribed by the Act about calculation of the average market price for shares on the regulated market.<sup>4</sup>

<sup>5</sup> Any publishing performed in accordance with the Act must be made via regulated market operator (of the regulated market on which the shares of the Target are listed) and in the Official Gazette of Republic of Croatia.

Prior to publishing the elaborated opinion, the Management Board is obliged to present it to the representatives of the employees or the employees of the Target.

The Target's shareholders will deposit their shares with the Depository for the purpose of accepting the MTO. The Target's shareholders can withdraw the shares from deposit within the validity period of the MTO which constitutes the withdrawal of the acceptance of the MTO.

The deadline for payment of the shares is 14 days from the expiration of the MTO's validity period. Settlement of the shares is done by the Depository.

Upon settlement of the MTO, the Bidder is obliged to publish the report on MTO within seven days as of the expiration of the payment deadline. The same report should be submitted to the Agency, regulated market operator (of the regulated market on which the shares of the Target are listed) and Target.

### 1.7 Obligation on top-up the price

If within a period of one year from the closing date of the MTO, the Bidder or parties acting in concert, acquire voting shares of the Target at a price that is higher than the price from the MTO, the Bidder is obliged to pay the difference in price to the shareholders who accepted the MTO, within seven days from the date of this new acquisition.

## 2 SQUEEZE - OUT

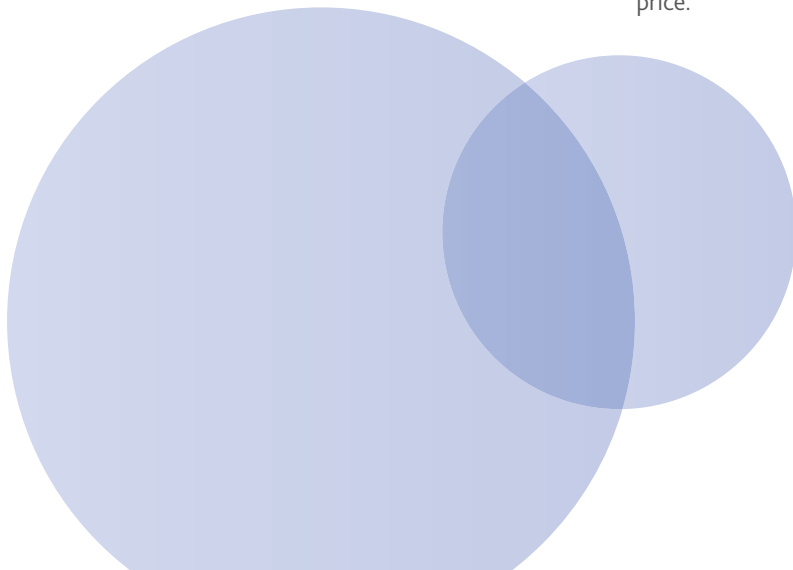
Following the MTO, if the Bidder acquires 95 per cent or more shares in the Target, it will be entitled to conduct the squeeze-out process before the Depository at the MTO price or, if the MTO price has been increased then at the increased price, provided that the squeeze-out is completed three months following the expiry of the MTO deadline.

The squeeze-out right is exercised by submitting a request to the Depository which must be published and notified to the minority shareholders, Agency, regulated market operator (of the regulated market on which the shares of the Target are listed) and Target without delay.

The Bidder has to deposit with the Depository the total amount of the purchase price for acquisition of all remaining shares from the minority shareholders or to provide a bank guarantee to the Depository in the same amount.

The Depository will notify the minority shareholders, Agency, regulated market operator (of the regulated market on which the shares of the Target are listed) and Target of the precise date of the transfer and publish the respective notification.

If the Bidder acquires 95 per cent or more shares in the Target, following the MTO, the minority shareholders are entitled to the sale of their voting shares in the Target to the Bidder, with the Bidder's obligation to purchase the shares at the MTO price or, if the MTO price has been increased then at the increased price.





KYRIAKIDES GEORGOPOULOS  
Law Firm



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# GREECE

## 1. TAKEOVER BID

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Greek law on takeover bids<sup>1</sup> sets forth the rules for the acquisition of shares in companies having their registered seat in Greece and whose shares are admitted to trading on a regulated market in Greece (the "Target").

### 1.1 Mandatory Takeover Bid

A Mandatory Takeover Bid ("MTO") is triggered in the following cases:

- (a) a person, alone or in concert with other parties acting on its behalf or in coordination with it (the "**Bidder**"), acquires directly or indirectly, shares in the Target, and because of that acquisition, the percentage of voting rights held by the Bidder, directly or indirectly, or in concert with other persons acting on its behalf or in coordination with it, exceeds 1/3 of the total number of the voting rights of the Target;
- (b) a person holding more than 1/3 of the aggregate voting rights of the Target without, however, exceeding 1/2 of the aggregate voting shares thereof, alone or in concert with other parties acting on its behalf or in coordination with it, acquires, directly or indirectly, within a period of six months, shares in the Target representing more than 3 per cent of the aggregate voting rights of the Target.

### *Exceptions to the MTO*

An MTO is not triggered in the following cases:

- (a) a third person holds more than 1/3 of the aggregate voting rights of the Target;
- (b) the Bidder being obliged to launch an MTO under 1.1(a) above, holds more than 1/3 of the aggregate voting rights of the Target, without, however, exceeding such threshold by more than 3 per cent, and undertakes in writing (i) to dispose within six months of the shares so that its percentage falls below the 1/3 threshold and (ii) not to exercise the voting rights attached to the shares exceeding such threshold until the shares are disposed of;
- (c) the acquisition of shares in the Target is a result of:
  - (i) a voluntary takeover bid ("**VTO**") effected in accordance with the current legal framework addressed to all the shareholders of the Target for the total of their shareholding provided that the consideration offered was fair and equitable<sup>2</sup>;
  - ii) the exercise of the Bidder's pre-emptive rights provided that the pre-emptive rights of the remaining shareholders have not been abolished. The same applies in case the shares have been acquired in exercise of the Bidder's right to subscribe for any remaining shares (not covered by the other shareholders during the share capital increase), provided that the Board of Directors of the Target (the "**Board**") allocates them proportionally, taking into consideration the respective rights of all the other existing shareholders;

<sup>1</sup> Law 3461/2006 implementing Directive 2004/25/EC.

<sup>2</sup> For the definition of "fair and equitable", please see Section 1.5.

- (iii) a merger between related companies;
- (iv) a privatisation of the Target; and
- (v) a restructuring of the Target;

(d) other cases provided by Greek law on takeover bids.

## 1.2 Voluntary Takeover Bid

Any person submitting a VTO for the acquisition of shares in the Target is obliged to acquire all the securities offered, unless it has defined the highest number of securities that it is committed to acquire.

## 1.3 Conditional VTO

The Bidder of the VTO may set a minimum number of shares that should be offered to it in order for the VTO to be valid.

## 1.4 MTO/VTO Timeframe

The acceptance period of a takeover bid commences from the date of publication of the relevant information circular and must be greater than four weeks and up to eight weeks from the date of such publication. The acceptance period may be extended by the Hellenic Capital Market Commission (the "HCMC") only once for a period of not more than two weeks.

## 1.5 Purchase price in MTO/VTO

The Bidder may offer cash or securities, listed or not, or a combination thereof.

In the case of an MTO, a cash alternative must be offered and the amount of the consideration may not be less than the higher of the following prices:

- (a) the average market price of the shares during the six months preceding the date on which the Bidder became obliged to launch the MTO;
- (b) the price that the Bidder or the persons acting in concert with it has/have paid to acquire shares in the Target during a period of 12 months preceding the date on which the Bidder became obliged to launch the MTO.

In case the consideration of an MTO or a VTO is offered in the form of listed securities, the price to be offered is considered as "fair and equitable" if the following values are taken into consideration for the shares of the Target and the listed shares offered:

- (a) for the value of the Target's shares: the higher of the following is taken into account:
  - (i) the 6-month average market price before the Bidder launches the takeover bid; and
  - (ii) the price paid by the offeror to acquire shares in the Target during a period of 12 months preceding the day on which the Bidder launches the takeover bid;
- (b) for the value of the listed shares offered: the 6-month average market price before the Bidder launches the takeover bid is taken into account.

## 1.6 Procedure

The Bidder informs the HCMC and the Board in writing of the takeover bid, immediately following the decision to launch a takeover bid and simultaneously files with the HCMC a draft of information circular (the "Information Circular").

Within the next business day following the notifications towards the HCMC and the Board, the Bidder announces publicly the takeover bid.

The Information Circular is approved by the HCMC, provided its contents comply with the law, within 10 business days following the submission to the HCMC of a complete draft by the Bidder.

The Bidder publishes the Information Circular within three business days from its approval by the HCMC and communicates a copy thereof to the Board simultaneously with its publication.

The acceptance of the offer is made in writing, by virtue of a statement submitted to credit or investment services institutions, duly authorized by the Bidder.

Alternatively, the acceptance may be effected by the Hellenic Exchange S.A. through a written declaration to the administrators of the Dematerialised Securities System.

The acceptance can be freely revoked in writing before the expiration of the acceptance period.

The results of the MTO/VTO are published by the Bidder within two days following the expiration of the acceptance period and announced to the representatives of the Target's employees.

The Bidder, who, following the submission of the takeover bid to all the holders of securities and for the total amount of their securities, owns securities representing at least 90 per cent of the voting rights of the Target, is bound for a period of three months from the publication of the results of the takeover bid to acquire through the stock exchange all the securities that may be offered to him in cash at a price equal to the consideration offered during the takeover bid.

### 1.7 Obligation on top-up the price

If, after the takeover bid has been made public and before the expiration of the acceptance period, the Bidder or any person acting on his behalf or in concert with him purchases voting shares of the Target at a price higher than the offer price of the VTO/MTO, then the Bidder is obliged to increase the offer price at a level equal to such higher price.

## 2. SQUEEZE - OUT

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The Bidder, who, following the submission of the takeover bid to all the holders of the Target's securities and for the total amount of their securities, owns securities representing at least 90 per cent of the aggregate voting rights of the Target, may require to be transferred all the remaining securities of the Target (squeeze-out). The consideration for the acquisition of the Target's securities must be in the same form and at least equal to the consideration offered during the takeover bid.

The squeeze-out right may be exercised within three months from the expiration of the takeover bid acceptance period, provided such intention of the Bidder was included in the Information Circular.

The squeeze-out right is exercised following the submission of a relevant request to the HCMC which is also communicated to the Target. The request must include the amount and form of the consideration. The request is published by the Bidder within the next business day.

Simultaneously with such request, the Bidder submits a certificate by a credit institution, registered in Greece or in another member state that the Bidder has the means to pay the consideration.

# BDK

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# MONTENEGRO

## 1. TAKEOVER BID

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Takeover of Joint Stock Companies Act<sup>1</sup> sets forth the rules for acquisition of shares in joint stock companies, conditions for takeover, and obligations of the participants in the takeover process.

### 1.1 Mandatory Takeover Bid

A Mandatory Takeover Bid ("MTO") is triggered if a party (the "Bidder"), alone or together with the parties acting in concert, acquires directly or indirectly shares in a joint stock company (the "Target"), as a result of which the Bidder, alone or together with the parties acting in concert, holds more than 30 per cent of the voting shares in the Target.

MTO is required if the conditions in the previous paragraph are fulfilled, even when the Target is not a direct target in a crossborder transaction (e.g. the direct target is a special purpose vehicle holding the shares in the Target or the parent company of the Target).

#### *Exceptions to the MTO*

An MTO does not have to be launched in the cases of acquisition of the shares:

- (a) in case of capital increase through public offering;
- (b) in a privatisation process;
- (c) during a restructuring procedure;
- (d) in bankruptcy or liquidation proceedings;
- (e) in other cases stipulated by the Takeover of Joint Stock Companies Act.

### 1.2 Voluntary Takeover Bid

If the Bidder owns less than 30 per cent of shares in the Target and intends to acquire additional shares, the Bidder can launch a voluntary takeover bid ("VTO"), in addition to the option to acquire additional Target's shares on the stock exchange.

### 1.3 Conditional VTO

While an MTO has to be unconditional, a VTO may be conditioned with a minimum number of shares to be acquired. If such minimum is not acquired, the Bidder is not allowed to purchase any of the shares deposited in response to the VTO.

### 1.4 MTO/VTO Timeframe

An MTO/VTO could last from 15 up to 60 days from the date of publication of the takeover prospectus in the daily newspaper. In case of bid improvement, the validity period may be extended for additional seven days.

In case of a competitive bid, the validity of all bids may be prolonged until the expiry of the bid last filed.

### 1.5 Purchase price in MTO/VTO

If the Target's shares are considered liquid, the price will be the higher of:

- (a) the weighted average price in the last six months prior to the date when the obligation to launch takeover bid was created;
- (b) the price at which the Bidder (and parties acting in concert) has obtained the shares within the last 12 months prior to the date when the obligation to launch the takeover bid was created, including the price paid for the acquisition of the shares which triggered the MTO;

<sup>1</sup> Zakon o preuzimanju akcionarskih društava, Official Gazette of Montenegro, No. 018/11 and 52/2016.

If the shares of the Target are not liquid, or not listed, then per share price must be higher than:

- (i) per share price determined under (b) above;
- (ii) shares book value according to the last annual financial statements of the Target;
- (iii) value of the voting shares estimated by an auditor appointed by Target from the list of the auditors adopted by the Security Exchange Commission (the "SEC").

## 1.6 Procedure

Publication of the MTO (and VTO) is subject to approval of the SEC.

The decision on the MTO has to be publicly announced within four business days from the acquisition of the shares which triggered the obligation to launch an MTO, while application for approval of the MTO/VTO has to be submitted to the SEC within eight (calendar) days following the day of announcement.

The SEC has 14 (calendar) days to approve the MTO/VTO. The SEC is not authorised to assess the justifiability and reasonableness of the MTO/VTO, but only that all legal requirements have been met and that offer documents are complete.

Target's shareholders are accepting the MTO/VTO by signing a written statement. The shareholders who accept the MTO/VTO deposit their shares to a special account opened in the CDA until the expiration of the MTO/VTO term. Target's shareholders can revoke their acceptance until the expiration of the MTO/VTO term.

Three days from the expiry of the MTO/VTO, the Bidder is obliged to deliver to the SEC a report on the results of the MTO/VTO containing among other documents, the price of the shares and the percentage of the shares the Bidder acquired. The SEC shall confirm in the decision that the MTO/VTO process is successfully finalised within eight days from the receipt of the Bidder's report. The deadline for payment of the shares is three working days from this SEC's decision.

Upon settlement of the tendered shares that is done by the CDA, the Bidder is obliged to publish the report on the MTO/VTO in at least two daily newspapers regularly distributed on the territory of Montenegro. The same report should be submitted to the SEC, CDA and the Target.

## 1.7 Obligation on top-up the price

Not applicable.

## 2. SQUEEZE - OUT

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### 2.1 Procedure

If the Bidder (and concert parties) has acquired 95 per cent of voting shares of the Target after the MTO/VTO, it shall be entitled to conduct the squeeze-out before the CDA with the same per share price as in the MTO/VTO or for the price the Bidder purchased the shares after the MTO/VTO, if it was higher than the price paid in the MTO/VTO, provided that the Bidder files a request to the CDA within three months following the expiry of MTO/VTO deadline. The Bidder is obliged to deposit with the CDA the total amount of the purchase price for acquisition of the remaining shares in the Target.

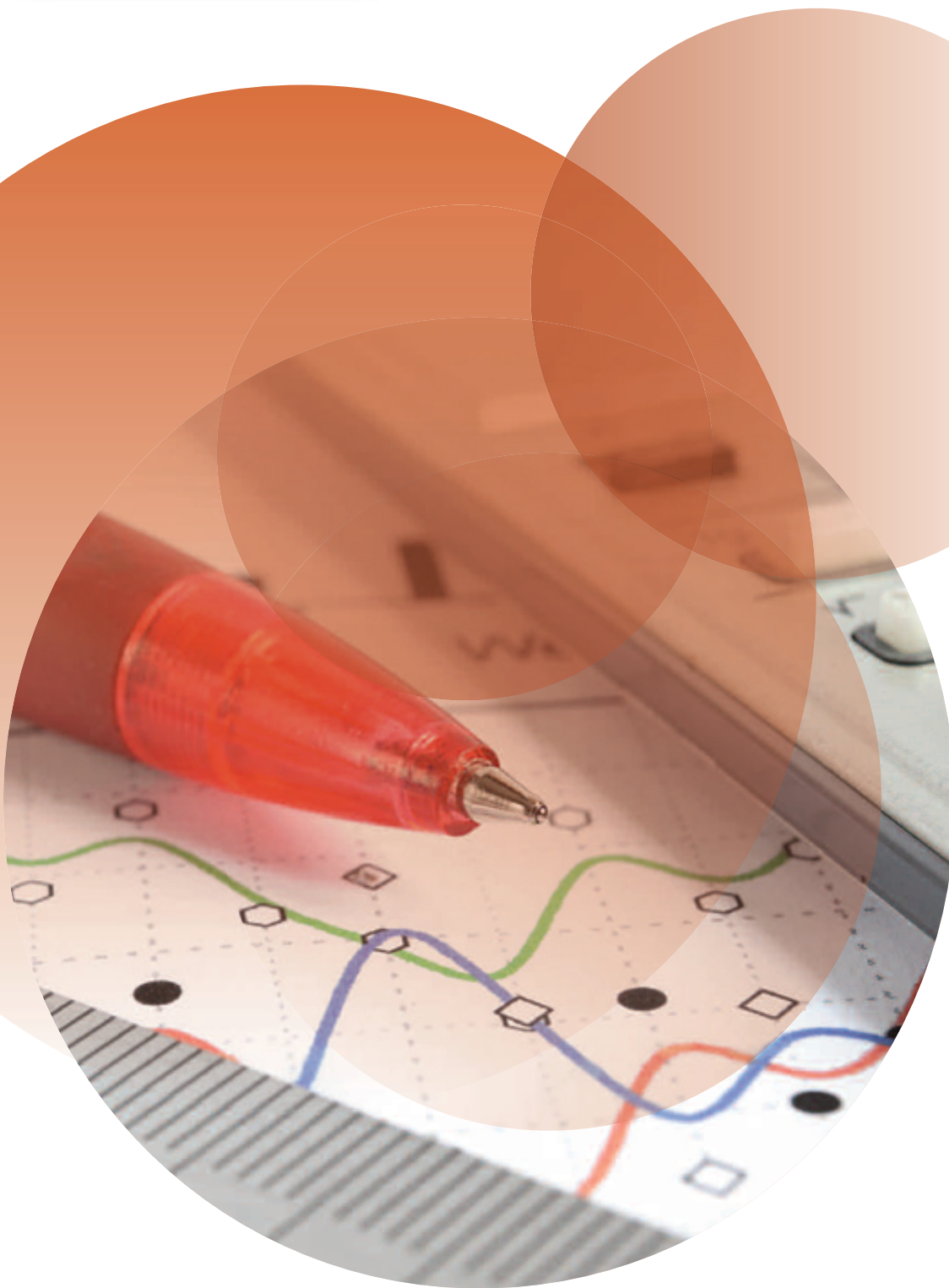
The Bidder is obliged to notify the shareholders of the Target on filing of the request for squeeze-out by publishing this information in at least two daily newspapers regularly distributed on the territory of Montenegro, on the date of filing a request to the CDA.

### 2.2 Sell-out

If the Bidder in an MTO/VTO acquires more than 75 per cent of voting shares, the shareholders of the remaining voting shares have the right, within 15 days from the date of publication of the results of the MTO/VTO, to offer the Bidder to acquire the remaining voting shares. The Bidder is obliged to buy the offered shares under the conditions of the MTO/VTO.

If the Bidder (and concert parties) has at least 95 per cent of voting shares of the Target after the MTO/VTO, the remaining shareholders are entitled to file a written request for sale of their shares to the Bidder, within three months following the expiry of the MTO/VTO. The Bidder is obliged to buy such shares at the MTO/VTO price or at the price the Bidder purchased the shares after the MTO/VTO if it was higher than the price paid in the MTO/VTO. In case the Bidder does not buy the remaining shares, the shareholders can file a lawsuit against the Bidder.





# REPUBLIC OF MACEDONIA

## 1. TAKEOVER BID

Takeover Law of Joint Stock Companies (the "Takeover Law")<sup>1</sup> sets forth the rules for acquisition of shares in joint stock companies listed on the Macedonian Stock Exchange (the "MSE"), as well as in the joint stock companies with reporting obligations<sup>2</sup> under the Securities Law<sup>3</sup> registered in the Registry for Reporting Companies maintained by the Security and Exchange Commission (the "SEC"), (the "Target"). The Takeover Law continues to apply to these joint stock companies, within a year as of the date when they are no longer listed on the MSE or registered as reporting companies at the SEC registry.

### 1.1 Mandatory Takeover Bid

A Mandatory Takeover Bid ("MTO") is triggered if a party (the "Bidder"), alone or together with the parties acting in concert, acquires more than 25 per cent of the voting shares in the Target, so called the control threshold.

If the Bidder, who conducted successful takeover offer, in a period of two years following the takeover bid, reaches the additional threshold for takeover by acquiring 5 per cent of the voting shares in the Target, it shall be required to make an MTO.

The obligation to make the MTO ceases when the Bidder with a successful takeover bid acquired at least 75 per cent of the voting shares issued by the Target.

#### Exceptions to the MTO

An MTO does not have to be launched in the case of acquisition of the shares:

- (a) as a result of substitution of shares of a legal entity that was dissolved due to the merger or division;
- (b) in a bankruptcy process where the Bidder has the capacity of a bankruptcy creditor;
- (c) in a procedure for change of the legal status of a company;
- (d) in a merger process<sup>4</sup>;
- (e) in other cases stipulated by the Takeover Law.

### 1.2 Voluntary Takeover Bid

If the Bidder, alone or together with the parties acting in concert, owns less than 25 per cent of the voting shares in the Target and intends to acquire additional voting shares i.e. to take over, the Bidder can launch a voluntary takeover bid ("VTO").

The Takeover Law does not differ between the MTO and VTO in terms of the procedure and requirements to carry out a takeover.

### 1.3 Conditional VTO

An MTO i.e. VTO may not contain other conditions than the ones related to the termination of the offer as per the Takeover Law, as well as related to the terms in which the takeover procedure is carried out. The Bidder may, however, set as a condition a minimum number of shares to be acquired. If such minimum is not acquired, the takeover bid is not successful and the Bidder is exposed to the legal consequences prohibiting the Bidder to make a new takeover bid or purchase shares in excess of the 25 per cent voting shares in the Target.

### 1.4 MTO/VTO Timeframe

A VTO/MTO could last from 28 up to 60 days from the date of publication in the Official Gazette of the Republic of Macedonia and in at least one daily newspaper which is issued on the entire

<sup>1</sup> Закон за преземање на акционерските друштва, Official Gazette of Republic of Macedonia, No. 69/2013, 188/2013, 166/2014, 154/2015 and 23/2016.

<sup>2</sup> The companies that have more than 50 shareholders and registered share capital of at least EUR 1 million or companies that have made a public bid, but are not listed on the MSE, are considered companies with special reporting obligations.

<sup>3</sup> Закон за хартии од вредност, Official Gazette of Republic of Macedonia, No. 95/2005, 25/2007, 7/2008, 57/2010, 135/2011, 13/2013, 188/2013, 43/2014, 15/2015, 154/2015, 192/2015 and 23/2016.

<sup>4</sup> Provided that only one of the companies participating in the merger process owns shares in the company for which the condition for giving an MTO has been fulfilled.

territory of the Republic of Macedonia. In case of bid changes, the validity period may be extended for additional seven days. If the success threshold for the takeover bid was fulfilled in the last 14 days of its validity, the validity period will be extended for additional 14 days. In both cases the total period of validity of the bid may not exceed 60 days.

In case of a competitive bid, the validity of all bids may be prolonged until the expiry of the bid last filed, but the total period of validity of all bids may not exceed 60 days.

### 1.5 Purchase price in MTO/VTO

The purchase price in an MTO/VTO:

- (a) cannot be lower than the highest price at which the Bidder (and concert parties) has/have obtained shares of the Target within the last 12 months prior to publication of the intention to takeover the Target;
- (b) If the price referred in point (a) is lower than the average price of the shares on the MSE in the last 12 months prior to publication of the intention to takeover the Target, the purchase price must be at least equal to the average price of the shares on the MSE.
- (c) If the shares that are subject of the takeover bid are not traded on the MSE in the last 12 months prior to the publication of the intention to takeover, the price should be at least equal to the value of the shares determined by an authorised appraiser.

The Bidder has to deposit in the Central Depository Registry (the "CDR") the total amount necessary for the payment of all the shares to which the bid refers to, or to provide the bank guarantee to the CDR in the same amount. The deposit evidence, or the bank guarantee, has to be enclosed with other offer documents that are to be submitted to the SEC.

### 1.6 Procedure

Publication of the takeover bid (both MTO and VTO) is subject to approval of the SEC.

The Bidder is obliged to notify the SEC, the management body of the Target, the MSE and the Commission for Protection of Competition for its intention to takeover the Target and to publish its intention in the Official Gazette of the Republic of Macedonia within one business day upon sending the notice.

Within three business days from the receipt of the Notice for takeover of the Target, the management body of the Target should notify the SEC for the existence/non-existence of agreement or negotiations with the Bidder.

No later than 30 days, but no less than 10 days upon the publication of the notification for the intention of takeover of the Target, the request for issuance of approval for the takeover bid and the document for making the bid i.e. the prospect are filed to the SEC.

The SEC has 10 business days from the day of receipt of the complete request, i.e. no later than 25 business days, if the bid is with shares for replacement, to approve the takeover bid.

The takeover bid is accepted by the owners of the shares issued by the Target with a written statement of acceptance of the takeover bid (acceptance statement). The acceptance statement is sent to the CDR, and the owners of the shares reserve the shares on a separate account at the CDR and cannot dispose with the same. At this moment the takeover bid is considered accepted.

The Bidder is obliged to deliver to the SEC, the Central Securities Depository (the "CSD") and the Commission for Protection of Competition a notification on the result from the takeover bid within three days as of the expiration of the deadline for acceptance of the bid. The SEC then adopts a resolution by which the success/non-success of the takeover bid is determined, and the same is delivered to the Bidder, the Target, CSD and the MSE. The Bidder is obliged to publish the resolution of SEC on the same manner the takeover bid was published.

If the takeover bid is successful, the CSD is obligated, within eight days from the receipt of the SEC's resolution, in the name and on behalf of the Bidder to fulfil the monetary obligation, i.e. the obligation to transfer the shares for replacement to the owners of shares<sup>5</sup>.

When the CSD on behalf of the Bidder fulfils the necessary obligations, it shall transfer the shares from the accounts of the acceptors of the bid, on the shares account of the Bidder.

### 1.7 Obligation on top-up the price

If within a period of one year from the expiry of the deadline for acceptance of the successful takeover bid, the Bidder or parties acting in concert, acquire voting shares of the Target at a price that -is higher than the price from the MTO/VTO, the Bidder is obliged to pay the difference in price to shareholders who accepted the bid, within eight days from the date of this new acquisition.

## 2. SQUEEZE - OUT

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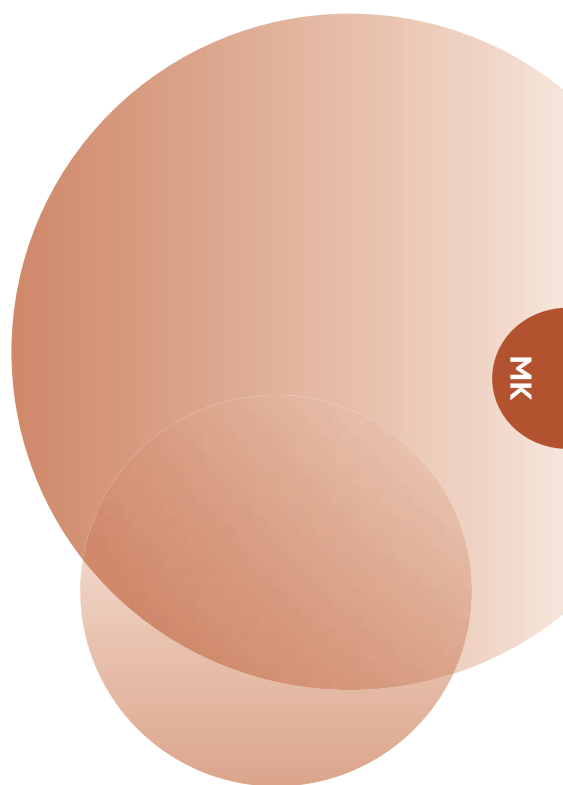
If the Bidder acquires 95 per cent or more shares in an MTO/VTO, it shall be entitled to conduct the squeeze-out process before the CDR with the same per share price as in the MTO/VTO, within three months following the publication of the decision for the successfulness of the takeover bid of the SEC in the Official Gazette of the Republic of Macedonia.

For this purpose the Bidder is obliged to file to the CSD a request for compulsory sale of the shares of the shareholders which did not accept the takeover bid, in which the conditions for sale of shares shall be stated and to perform payment of the monetary amount necessary for purchase of the shares on a separate account of the CSD. The CSD notifies all shareholders of the Target which did not accept the takeover bid for undertaking of the filed request for compulsory sale and calls to deliver data for the bank account to which the amount of the price of the sold shares shall be made.

The CSD is obliged within eight days from the receipt of the request for compulsory sale on behalf of the Bidder to fulfil the monetary obligation towards the owners of the shares (the shareholders of the Target who did not accept the bid whose shares are subject to the compulsory sale).

When the requirements are entirely fulfilled on behalf of the Bidder by the depositary, the CSD transfers the shares from the account of the shareholders to the account of the Bidder.

In accordance with the Takeover Law, the same threshold applies in case of a sell-out.



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<sup>5</sup> If the bid was with shares for replacement.



# ROMANIA

## 1. TAKEOVER BID

The takeover bid is regulated primarily by the Capital Markets Law<sup>1</sup> as well as by implementing norms issued by the Financial Surveillance Authority (*Autoritatea de Supraveghere Financiară* - the "FSA") and is applicable in relation to acquisitions of stakes in a company whose shares are admitted to trading on the regulated market (the "Target"). In Romania the main regulated market is the one operated by the Bucharest Stock Exchange. Essentially, the takeover can be voluntary or mandatory, as outlined below.

### 1.1 Mandatory Takeover Bid

A Mandatory Takeover Bid ("MTO") is triggered where a natural person or a legal entity (the "Bidder"), as a result of his acquisition in any way, directly or indirectly, on his own or in cooperation with other persons acting on his behalf or in concert with him, holds securities of a company and due to the said acquisition the percentage of voting rights which that person possesses, directly or indirectly, on his behalf or with any other person acting on his account or in concert with him, exceeds the threshold of one-third of the total voting rights of the company. In such a case the Bidder is obliged to launch a mandatory bid for the total securities of the company by paying an equitable and fair consideration.

The acquirer and the persons acting in concert must proceed with a mandatory tender offer addressed to the shareholders of the company and submit an offering document for approval to the FSA. The offering document must be accompanied, inter alia, by the proof of sufficiency of funds (i.e., either a guarantee representing at least 30 per cent of the total value of the offer or a bank letter of guarantee to cover the entire value of the offering).

### Exceptions to the MTO

An MTO does not have to be launched in the case of acquisition of the shares in:

- (a) the privatisation process;
- (b) certain intra-group acquisitions;
- (c) other cases stipulated by the Capital Markets Law.

### 1.2 Voluntary Takeover Bid

In the meaning of the Capital Markets Law, a voluntary takeover bid ("VTO") is launched when a person who does not have the obligation to launch a takeover bid intends to acquire over 33 per cent of the voting rights in a listed company. The VTO must be addressed to all shareholders of the issuer with the intention to acquire all their holdings.

### 1.3 Conditional VTO

The legislation does not regulate the possibility to launch conditional VTOs.

### 1.4 MTO/VTO Timeframe

The period for the carry out of the VTO can be of minimum 15 and maximum 50 business days.

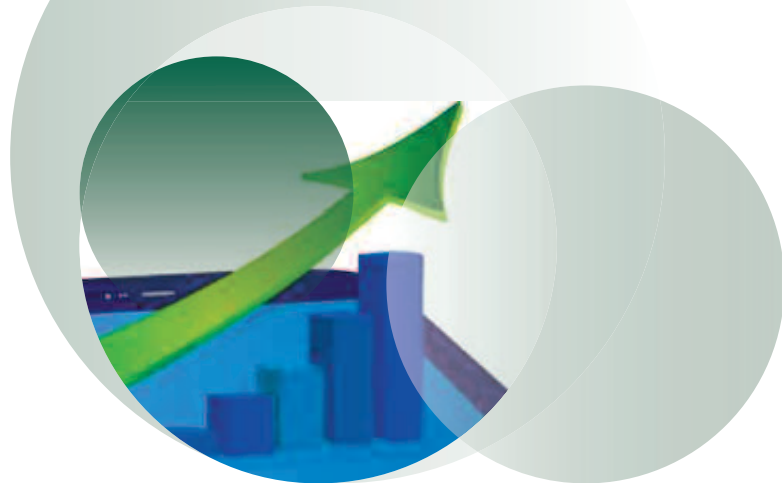
### 1.5 Purchase price in MTO/VTO

In case of an MTO, as a rule the price must be at least equal to the highest price paid by the acquirer or the persons acting in concert within 12 months prior to the MTO. If this price determination is not applicable or if the FSA determines that the respective acquisitions have affected the fair determination of the price, the price will be determined by an authorised valuator by taking into account the criteria set forth by the Capital Markets Law.

In case of a VTO, the price shall be at least equal to the highest price between:

- (a) the highest price paid by the offeror or the persons acting in concert with him during the period of 12 months prior to the date of submitting the public offer documents to the FSA;

<sup>1</sup> Law No. 297/2004 on capital markets, as amended and supplemented.



- (b) the average weighted price of trading, related to the last 12 months before the date of submitting the public offer documents to the FSA;
- (c) the price resulted from dividing the net asset value of the company to the number of shares issued, in accordance with the last financial statement.

Where none of the criteria mentioned above is applicable, the acquisition price shall be at least equal with the net asset per share according to the last financial statement of the issuer.

### 1.6 Procedure

The carry out of the MTO and VTO is subject to the prior approval of the offering document and announcement by the FSA.

The public purchase offer must be made through an intermediary authorised to provide financial investment services and activities.

The public offer carried out without the approval of the offering document or in breach of the conditions established through the approval decision of the FSA is deemed to be null as of right and trigger the sanctions provided by law. The Bidder has the obligation to repay to good-faith investors the payments and damages resulting from the null transactions concluded based on such offer.

The public takeover announcement may be published after the approval of the offering document by the FSA and must be published in line with the FSA norms. The takeover bid becomes mandatory as of the day when the takeover announcement is published.

As a rule, the FSA shall decide on the approval of the offer document within 10 working days from the registration of the request. The revocation of the approval decision of the FSA for the offering document during the period when the public offer is carried out shall annul the effects of the subscriptions made prior to the time of revocation. In case of a VTO, the board of directors of the company subject to takeover shall send to the FSA, the Bidder and the regulated market on which such securities shall be traded its position regarding the opportunity of the takeover, within five days after the receipt of the preliminary offer notice.

The board of directors may call the extraordinary general meeting to inform the shareholders of the position of the board of administration as regards such bid. If the request for the call is made by a significant shareholder, the call of the general meeting is mandatory, and the call shall be published within maximum five days as of the registration of the request.

From the receipt of the preliminary announcement and until the closing of the offer, the company's board of directors subject to takeover shall inform the FSA and the regulated market of all operations performed by the members of the board of directors and of the executive management regarding such securities.

### 1.7 Obligation on top-up the price

There is no top-up obligation after the closing date of the MTO/VTO. However, the Bidder or the persons acting in concert with the offeror may not launch another takeover bid for the same issuer one year from the closing of the previous takeover bid.

## 2. SQUEEZE - OUT

The squeeze-out right is applicable where the offeror, following the submission of the bid addressed to all the holders of securities of the listed company for the total of their holdings, either: (i) holds securities representing not less than 95 per cent of the total number of shares conferring voting rights and not less than 95 per cent of the voting rights which can be effectively exercised or (ii) has acquired in the bid, addressed to all the holders of securities, shares representing at least 90 per cent of the total number of shares of the share capital of the Target and at least 90 per cent of the total of voting rights targeted in the bid.

The squeeze-out right can be exercised within a three-month period from the closing of the bid (the possibility to exercise this right should be included in the offer document).

## SERBIA

## 1. TAKEOVER BID

Takeover of Joint Stock Companies Act<sup>1</sup> sets forth the rules for acquisition of shares in joint stock companies listed on the Belgrade Stock Exchange (the "BSE"), or if they are not listed, have more than 100 shareholders and the registered share capital of above EUR 3 million (the "Target").

## 1.1 Mandatory Takeover Bid

A Mandatory Takeover Bid ("MTO") is triggered if a party (the "Bidder"), alone or together with the parties acting in concert, acquires directly or indirectly shares in the Target, as a result of which the Bidder holds more than 25 per cent of the voting shares in the Target.

The Bidder is obliged to make a new MTO only after it acquires at least additional 10% of the voting shares of the Target or when, irrespective of the number of additionally acquired shares, further acquisition of shares results in the Bidder holding more than 75% of voting shares in the Target. If, however, under MTO the Bidder acquires more than 75% of voting shares in the Target, no MTO obligation exists in case of further acquisitions.

MTO is required if the conditions in the previous paragraph are fulfilled, even when the Target is not a direct target in a crossborder transaction (e.g. the direct target is a special purpose vehicle holding the shares in the Target or the parent company of the Target).

*Exceptions to the MTO*

An MTO does not have to be launched in the case of acquisition of the shares in:

- (a) a bankruptcy process;
- (b) a merger or restructuring process;
- (c) a privatisation process;
- (d) other cases stipulated by the Takeover of Joint Stock Companies Act.

## 1.2 Voluntary Takeover Bid

If the Bidder owns less than 25 per cent of shares in the Target and intends to acquire additional shares, the Bidder can launch a voluntary takeover bid ("VTO").

## 1.3 Conditional VTO

While an MTO has to be unconditional, a VTO may be conditioned with a minimum number of shares to be acquired. If such minimum is not acquired, the Bidder is not allowed to purchase any of the shares deposited in response to the VTO.

## 1.4 MTO/VTO Timeframe

A VTO/MTO could last from 21 up to 45 days from the date of its publication in the daily newspaper. In case of bid improvement, the validity period may be extended for additional seven days, provided that the total validity period of the bid is no longer than 60 days.

In case of a competitive bid, the validity of all bids may be prolonged until the expiry of the bid last filed, but the total period of validity of all bids may not exceed 70 days.

<sup>1</sup> Zakon o preuzimanju akcionarskih društava, Official Gazette of Republic of Serbia, No. 46/2006, 107/2009, 99/2011 and 108/2016.

### 1.5 Purchase price in MTO/VTO

If the Target's shares are considered liquid, the price will be the higher of:

- (a) the weighted average price in the last six months prior to the date when the obligation to launch takeover bid was created;
- (b) the price at which the Bidder (and parties acting in concert) has obtained the shares within the last 12 months prior to the date when the obligation to launch the takeover bid was created, including the price paid for the acquisition of the shares which triggered the MTO;

If the shares of the Target are not liquid, or not listed, then per share price must be higher than:

- (c) per share price determined under (b) above;
- (d) shares book value according to the last annual financial statements of the Target;
- (e) value of the voting shares estimated by an auditor appointed by Target from the list of the auditors adopted by the Security Exchange Commission (the "SEC").

The Bidder has to deposit in the Central Depository Registry (the "CDR") the total amount of the purchase price for acquisition of all remaining shares in the Target, or to provide the bank guarantee to the CDR in the same amount. The deposit evidence, or the bank guarantee, has to be enclosed with other offer documents that are to be submitted to the SEC.

### 1.6 Procedure

Publication of the MTO/VTO is subject to approval of the SEC.

The intention of the MTO has to be publicly announced within two business day after the obligation to launch an MTO occurred, while application for approval of the MTO has to be submitted to the SEC within 15 business days following the day of acquisition triggering the MTO.

The SEC has ten business days to approve the MTO/VTO. The SEC is not authorised to assess the justifiability and reasonableness of the MTO/VTO, but only that all legal requirements have been met and that offer documents are complete.

Target's shareholders are accepting the MTO/VTO by depositing their shares to the Bidder's account opened in the CDR until the expiration of the validity period. Target's shareholders can also revoke their sale orders until the expiration of the validity period.

The deadline for payment of the shares is three working days from the expiration of validity period and the settlement of the tendered shares is done by the CDR.

Upon settlement, the Bidder is obliged to publish the report on MTO/VTO in at least one daily newspaper regularly distributed on the territory of Serbia. The same report should be submitted to the SEC, BSE and Target.

### 1.7 Obligation on top-up the price

If within a period of one year from the closing date of the MTO/VTO, the Bidder or parties acting in concert, acquire voting shares of the Target at a price that is higher than the price from the MTO/VTO, the Bidder is obliged to pay the difference in price to the shareholders who accepted the MTO/VTO, within seven days from the date of this new acquisition.

## 2. SQUEEZE - OUT

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If the Bidder acquires 90 per cent or more shares in the MTO/VTO, it shall be entitled to conduct the squeeze-out process before the CDR with the same per share price as in the MTO/VTO, provided that the squeeze-out is completed three months following the expiry of the MTO/VTO deadline.

The squeeze-out process requires convocation of the shareholders assembly of the Target. The notice for the shareholders assembly has to be delivered to the shareholders at least 21 days prior the scheduled date. Resolution on squeeze-out requires simple majority of present votes. After the adoption of the resolution such resolution has to be registered in the Serbian Business Registers Agency. Within eight days after the registration of the resolution, such resolution, accompanied with other documents, has to be delivered to the CDR in order to perform the squeeze-out.



# ŠELIH & PARTNERJI



# SLOVENIA

## 1. TAKEOVER BID

The Takeovers Act<sup>1</sup> sets forth the rules for acquisition of voting rights in joint stock companies listed on any organised market including the Ljubljana Stock Exchange, or if the respective shares are not listed, in joint stock companies that have had more than 250 shareholders on the last day prior to the year relevant for the assessment of application of Takeovers Act and/or have more than EUR 4 million of the total capital as shown in their most recent publicly published annual reports (the "Target").

### 1.1 Mandatory Takeover Bid

A Mandatory Takeover Bid ("MTO") is triggered if a party (the "Bidder"), alone or together with the parties acting in concert, acquires directly or indirectly voting rights in the Target, as a result of which the Bidder, alone or together with the parties acting in concert, holds at least 1/3 of the voting rights in the Target. The Takeovers Act contains detailed rules on when a Bidder is considered to have voting rights even though the Bidder does not own shares in the Target, such as in case of options, indirect holdings, discretionary exercise of voting rights by a proxy, etc.

Therefore, even when the Target is not a direct target in a cross-border transaction (e.g., the direct target is a special purpose vehicle holding the shares in the Target or the parent company of the Target), an MTO is required if the conditions in the previous paragraph are fulfilled, except if it can be proven that the purpose of acquisition of majority shareholding in the direct target was not the acquisition of the Target.

### Exceptions to the MTO

An MTO does not have to be launched in the case of acquisition of the shares in the following cases:

- (a) merger or division, provided that the goal of such merger or division had not been the takeover of the Target;
- (b) transfer of securities to persons who had or are deemed to have acted in concert with the Bidder, or to companies affiliated with the Bidder;
- (c) following a decrease of share capital of the Target through withdrawal of shares, made pursuant a shareholders' assembly decision in the adoption of which the respective person did not participate;
- (d) when the share of voting rights of any other shareholder or shareholders who together constitute an affiliated group under the Companies Act<sup>2</sup> in the Target is higher than the share of the respective acquirer;
- (e) when the shares were acquired in a Target that is subject to insolvency proceedings by a person who has achieved the takeover threshold or the additional takeover threshold as creditor in the process of financial restructuring in compliance with the Insolvency Act<sup>3</sup>; and
- (f) in other cases stipulated by the Takeovers Act.

### 1.2 Voluntary Takeover Bid

If the Bidder owns less than 1/3 of voting rights in the Target or no voting rights in the Target and intends to acquire additional voting rights, the Bidder can launch a voluntary takeover bid ("VTO"), in addition to the option to acquire additional Target's shares on the organised market (up to the threshold for an MTO).

<sup>1</sup> *Zakon o prevzemih*, Official Gazette of Republic of Slovenia, No. 77/06, 67/07, 1/08, 68/08, 35/11, 105/11, 10/12, 38/12, 56/13, 63/13, 25/14 and 75/15.

<sup>2</sup> *Zakon o gospodarskih družbah*, Official Gazette of Republic of Slovenia, No. 65/09, 33/11, 91/11, 32/12, 57/12, 44/13, 82/13 and 55/15.

<sup>3</sup> *Zakon o finančnem poslovanju, postopkih zaradi insolventnosti in prisilnem prenehanju (ZFPPiP)*, Official Gazette of Republic of Slovenia, No. 126/07, 40/09, 59/09, 52/10, 106/10, 26/11, 47/11, 87/11, 23/12, 48/12, 47/13, 100/13, 10/15, 27/16, 31/16 and 38/16.

### 1.3 Conditional VTO and MTO

The VTO and MTO may not include conditions other than those expressly required or allowed by the Takeovers Act.

If a regulatory authorisation (e.g., approval of the Bank of Slovenia, the Securities Market Agency (the "ATVP") or similar) is required for the purchase of the Target's shares, both the MTO and VTO have to contain appropriate conditions in this respect. Merger clearances are generally not considered such regulatory authorisations which would need to be included.

Both the MTO and VTO may be conditional upon the minimum number of shares to be acquired by the Bidder (the "Takeover Threshold"). In an MTO, such condition is mandatory: the Takeover Threshold in case of an MTO should be set at no less than 50 per cent share of all voting shares of the Target plus one share, unless the Bidder has already achieved the 50 per cent threshold prior to the MTO. In view of the consequences applicable in case of an unsuccessful MTO (including the loss of voting rights), the structuring of the transaction in this respect has to be carefully considered in advance.

### 1.4 MTO/VTO Timeframe

An MTO/VTO could last from 28 up to 60 days from the publication. In case of bid improvement, lowering of the Takeover Threshold, achievement of the Takeover Threshold or a competitive bid, the validity period may be extended as foreseen in the Takeovers Act, however only provided that the total validity period of the bid is no longer than 60 days.

In case of a competitive bid, the validity of all bids may be prolonged until the expiry of the bid last filed, but the total period of validity of all bids may not exceed 60 days from the publication of the first bid.

### 1.5 Purchase price in MTO/VTO

The Bidder may generally offer a cash consideration or substitute securities or a combination of both, depending on the circumstances as foreseen in the Takeovers Act.

The takeover price has to be the same for all securities belonging to the same class or type and no less than the highest price paid for the same type of securities by the Bidder (or the parties acting in concert with the Bidder) in the period of 12 months prior to the announcement of the bid.

If the shares of the Target are not traded on any organised market, the adequacy of the purchase price has to be audited by one or more court-appointed auditors, and the audit report(s) disclosed in the takeover prospectus.

The Bidder has to deposit in the Central Securities Clearing Corporation (the "KDD") the total amount of the purchase price for acquisition of all remaining shares in the Target, or to provide a bank guarantee to the KDD in the same amount. Similar rules exist for cases where the purchase price is paid in substitute securities or a combination of cash and substitute securities. The respective KDD confirmation has to be enclosed with other offer documents that are to be submitted to the ATVP.

### 1.6 Procedure

Prior to publication of the MTO or VTO, the Bidder has to publish its takeover intention in a newspaper available throughout Slovenia, and communicate it to the Target as well as to certain regulators. In case of an MTO, the takeover intention has to be published at the latest within three business days following the acquisition of 1/3 of the voting rights in the Target.

Publication of the MTO (and VTO), as well as the related prospectus, is subject to approval of the ATVP. The ATVP generally has up to eight business days to approve the MTO (or VTO, respectively) and the related prospectus. In order to receive the approval, the Bidder has to evidence to the ATVP, among others, that it did, in order to pay the takeover price, not encumber or promise encumbrance over the Target's shares that are not yet owned by the Bidder, or over any other Target's assets.

The MTO or VTO has to be published after the expiry of at least 10, and not later than 30 days following the publication of the takeover intention. Publication has to be performed in a newspaper available throughout Slovenia, and at the same time the Takeovers Act requires circulation to the target, all Slovenian brokers and certain regulators.

The Target's management has to publish its opinion on the takeover bid and the reasons therefore within 10 days of the publication of the MTO/VTO, and involvement of employee representatives in preparation of such opinion is also ensured.

Target's shareholders are accepting the MTO/VTO by making a written statement of acceptance to the KDD member that manages their respective securities account. These KDD members then transfer the acceptance statements to the Bidder's KDD member. After the statements of acceptance are issued, the accepting shareholders can generally no longer dispose with their respective shares. After the MTO/VTO is declared to be successful, such shareholders receive the takeover price and their shares are transferred to the Bidder's securities account. This settlement is done automatically by the KDD, and happens within eight business days of receipt of the ATPV decision declaring successfulness of the MTO/VTO.

An exception applies in case a competitive bid has been made: in such a case, the accepting shareholders may decide to withdraw from their initial acceptance and to accept the competitive bid.

**1.7 Obligation on top-up the price**

If within a period of one year of the expiry of the time allowed for the acceptance of a successful bid, the Bidder or parties acting in concert with the Bidder, purchase securities of the Target at a price that is higher than the price from the MTO/VTO, the Bidder is obliged to pay, in cash, the difference in price to the shareholders who accepted the MTO/VTO, within eight days from the date of this new acquisition.

**2. SQUEEZE - OUT**

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If a shareholder holds 90 per cent or more shares in the Target (the "Major Shareholder"), it shall be entitled to conduct the squeeze-out process, whereby it has to pay an equitable price per share to all minority shareholders. In such a situation, all minority shareholders also have the right to request the Major Shareholder to buy them out at an equitable price. Equitable price has to be audited and is subject to judicial review upon request of any minority shareholder.

If the squeeze-out process is carried out within three months following announcement of success of an MTO during which the Major Shareholder exceeded the 90 per cent shareholding, the Major Shareholder is entitled to perform a squeeze-out at the takeover price instead of the equitable price. If the Major Shareholder exceeded the 90 per cent shareholding during a VTO, one additional condition needs to be fulfilled in order for such Major Shareholder to be able to pay during the squeeze-out process the takeover price instead of the equitable price: such VTO must have been accepted by at least 90 per cent of addressees.

Any squeeze-out process requires convocation of the shareholders' assembly of the Target, which has to pass a resolution on squeeze-out. Minority shareholders are entitled to review annual reports, Major Shareholder's report and other documents during the period from convocation of such shareholders' assembly until the date when it is actually held.



# KOLCUOĞLU DEMİRKAN KOÇAKLI

HUKUK BÜROSU • ATTORNEYS AT LAW



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# TURKEY

## 1. TAKEOVER BID

The Capital Markets Law<sup>1</sup> and the Communiqué on Tender Offers<sup>2</sup> (the “Communiqué”) issued by the Capital Markets Board (the “CMB”) govern the principles applicable to takeover bids in public companies.

### 1.1 Mandatory Takeover Bid

A Mandatory Takeover Bid (“MTO”) is triggered if a person (the “Bidder”) acquires (whether directly or indirectly, single-handedly or together with other persons acting in concert) the management control of a public company (the “Target”). In such case, the Bidder must launch an MTO to the other shareholders of the Target to purchase their shares.

Under the Communiqué, the acquisition of the management control is defined as the acquisition of (i) more than 50 per cent of the Target’s voting rights or (ii) privileged shares entitling the holder of shares to appoint or to nominate the majority of the board of directors’ members. In addition, even if there is no change in the company’s shareholding structure, agreements executed between shareholders, granting to those shareholders management control, may also trigger the obligation to launch an MTO.

#### Exceptions to the MTO

The Bidder is not obligated to launch an MTO if:

- (a) the management control is acquired as a result of a voluntary takeover bid (“VTO”) to purchase all shares of the Target;
- (b) the management control is acquired as a result of the execution of a written agreement without any share purchases, and such agreement is approved by the general assembly of shareholders and the dissenting shareholders are provided with an exit right;

- (c) the voting percentage of a shareholder having the management control decreases below 50 per cent of the total voting rights and such shareholder re-acquires more than 50 per cent of the total voting rights before the management control changes hands;
- (d) the voting rights granting the management control are transferred to another group entity; and
- (e) the purchaser acquires joint control over the Target as a result of the partial purchase of the shares granting the management control, provided that such shares do not represent more than 50 per cent of the total voting rights.

In addition, the CMB may grant exemption to the Bidder if:

- (i) the shares or voting rights are acquired to strengthen the financial position of a company suffering financial difficulties;
- (ii) the Bidder sells out or undertakes to sell out the shares that trigger the MTO obligation provided that such shares are not used in the general assembly meeting or the board structure is not changed;
- (iii) change in the parent company’s management control does not aim to acquire the management control of the public company (subsidiary);
- (iv) the shares are owned by the state in a public company subject to privatisation and are sold; or
- (v) management control of the company changes due to a merger provided that the dissenting shareholders’ shares are repurchased before the merger, in accordance with the terms and conditions set out in the offering circular (izahname), which is prepared for the public offering.

If any of the foregoing occurs, the Bidder must submit an application to the CMB within six days after the MTO obligation arises to request exemption.

<sup>1</sup> 6362 sayılı Sermaye Piyasası Kanunu, published in the Official Gazette of Republic of Turkey No. 28513 on 30 December 2012.

<sup>2</sup> Pay Alım Teklifi Tebliği (II-26.1), published in the Official Gazette of Republic of Turkey No. 28891 on 23 January 2014.

## 1.2 Voluntary Takeover Bid

A VTO can be launched for the acquisition of all or part of a public company's shares. However, if a partial VTO results in the granting of the management control in the Target, then an MTO requirement arises for the remaining shares of the Target. On the other hand, if management control is acquired following a VTO made for all shares in the public company, the launch of an MTO is not required.

A third party can launch a competing offer within the offer period and the shareholders that have accepted the original VTO can refrain from selling their shares to the original bidder to the extent that (i) they accepted the original VTO before the announcement of the competing offer and (ii) the share transfer has not been completed.

## 1.3 Conditional VTO and MTO

The Communiqué states that the MTO must be unconditional, but it is silent whether the VTO may be subject to certain conditions.

## 1.4 MTO/VTO Timeframe

Upon the acquisition of the management control, the Bidder must submit an application to the CMB within six business days, and the MTO must be kicked-off within two months from the acquisition date of the management control. Upon the CMB's approval, the offer period for the MTO or VTO starts in six days and lasts for minimum 10 and maximum 20 days.

## 1.5 Purchase price in MTO/VTO

The Communiqué sets forth detailed provisions on the calculation of the MTO price. The offer price cannot be lower than the highest price paid by the Bidder for the same class of shares within the six-month period before the date on which the MTO requirement is triggered, including the price paid for the share acquisitions triggering the MTO requirement. Price adjustments, additional payment options and similar price-structuring mechanisms are also taken into account in calculations of the tender price, if any. If the MTO price cannot be calculated by the foregoing method, the CMB may require the Bidder to provide an independent valuation report to this effect.

The Communiqué also provides detailed guidelines for price calculation in case of an indirect change in the Target's management control and the presence of different share classes representing the Target's share capital.

If, after the announcement of the price and before completion of the offer period, the Bidder (or persons acting in concert with it) purchases the shares at above the offer price, the offer price must be re-determined. This must not be less than the highest price paid by the Bidder for the newly acquired shares.

The Communiqué does not set out a benchmark for the VTO price. The Bidder can increase the price any time before completion of the offer period. If the VTO price is increased, the offer period must be extended for another two weeks. If some shareholders have sold their shares to the Bidder before the price increase, the difference must be paid to such shareholders within two business days of completion of the offer period.

The Bidder must pay the purchase price in full and in cash, which must be denominated in Turkish Lira. However, if the selling shareholder consents in writing, the Bidder can also make the payment with publicly-traded securities.

## 1.6 Procedure

Launching an MTO or VTO is subject to CMB's approval. The Bidder must prepare the information form and documents set out in the Communiqué and submit an application to the CMB to launch the bid. The CMB may require the Bidder to provide security with respect to the payment of the offer price.

The information form prepared by the Bidder must be published in the Public Disclosure Platform and on the website of the Target within three days of the CMB's approval. In the VTO process, the board of directors of the Target must prepare a report setting out its opinion on the VTO, which must be disclosed to the public together with the total fund amount and the relevant resources.

The shareholders accepting the offer must deliver their shares to an intermediary institution of the Bidder and the share transfer is performed through such intermediary institution. The offer price must be paid on the next business day of the sale date.

If the Bidder fails to comply with the MTO rules, the CMB may impose an administrative fine corresponding to the total value of shares that are subject to the MTO. In addition, the Bidder cannot use its voting rights at the general assembly of shareholders' meeting unless it duly completes the MTO process.

### 1.7 Obligation on top-up the price

If the Bidder acquires additional voting rights of the Target at a price that is higher than the price of the MTO/VTO, the MTO/VTO process must continue with the re-adjusted price. In addition, the Bidder is obligated to pay the difference to those shareholders who accepted the MTO/VTO, within two days as of the end of the offer period. If the Bidder fails to comply with this obligation and such breach comes out within one year after the end of the offer period, the Bidder must launch a new bid and pay the difference to the shareholders who had sold their shares together with the interest accrued.

## 2. SQUEEZE - OUT

The Communiqué on Squeeze-Out and Sell-Out Rights<sup>3</sup> regulates the principles applicable to the squeeze-out. If the total voting percentage of a shareholder or a group of shareholders acting in concert reaches or exceeds 98 per cent in a public company, the controlling shareholder can exercise its squeeze-out right and force the minority shareholders to exit the company. The controlling shareholder may have reached such percentage through different methods such as MTO, VTO, mergers or capital increases.

Once the controlling shareholder's total voting percentage reaches or exceeds 98 per cent of the total voting rights, the minority shareholders have the right to exercise a sell-out right and exit the company within three months of the controlling shareholder's disclosure of reaching the squeeze-out threshold.

Even if the controlling shareholder's voting rights fall below 98 per cent within such three-month period, the minority shareholders' sell-out rights remain effective until the end of this period. After the three-month period, the minority shareholders' sell-out right terminates and the controlling shareholder can exercise its squeeze-out right.

<sup>3</sup> Ortaklıktan Çıkarma Ve Satma Hakları Tebliği (II-27.2), published in the Official Gazette of Republic of Turkey No. 29173 on 12 November 2014.

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