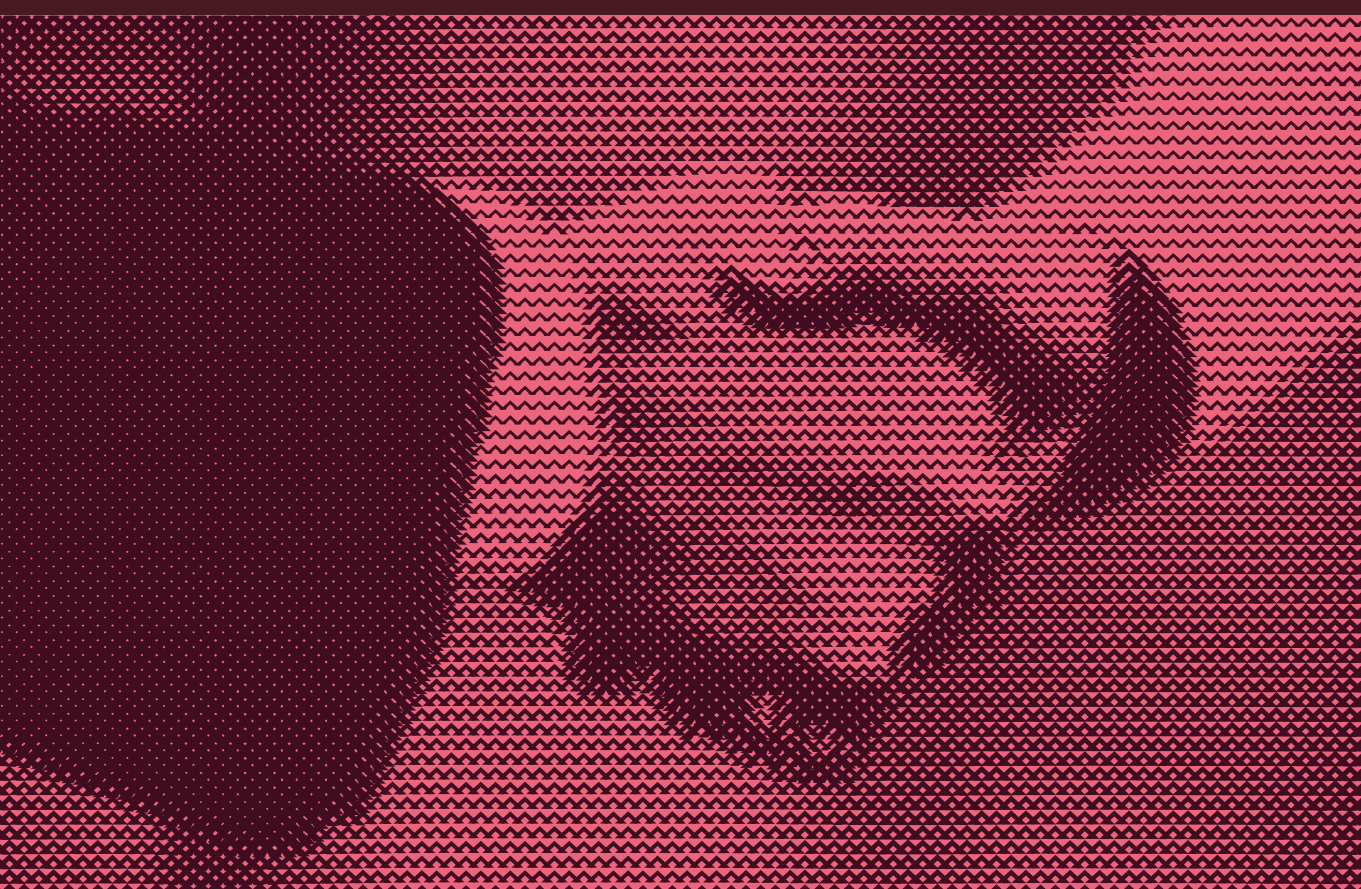




CUATRECASAS

Ten years of the Takeover Bid Regime in Spain

A practical guide





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A practical guide

ACI > Knowledge & Innovation Group

February 28, 2017

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INTRODUCTION

This guide analyzes the practical implementation of the Spanish takeover bid regulation over the last decade. We do not intend to carry out a systematic study, but rather to offer our clients an overview of the current regulations and main issues they should assess when deciding on their takeover bid strategy.

In August 2007, there was a profound reform of the takeover bid regulation, which aimed, on the one hand, to incorporate Directive 2004/25/EC¹ into Spanish law and, on the other hand, to adapt the regulation to the changes that had taken place in our market. In the years before the reform, the battles for the control of large companies and, singularly, that triggered by Endesa's initial bid and successive competing offers allowed the legislator to reflect on certain aspects of our regulations that could be improved. Perhaps for this reason, the current regulation incorporates, together with the provisions derived from the EU regime, some solutions given for the problems arising in that and other transactions.

Due to the reduction in the number of takeover bids caused by the financial crisis (which, among other effects, delayed the review of EU regulations, initially foreseen for 2012), we cannot assess how successful some of these new measures are, particularly in the area of competing bids. However, the case study conducted in this guide and experience gained in recent years allow us to analyze the practical application of such relevant matters as the choice of the type of bid in view of the circumstances of the target company and the characteristics of the offeror, the conditionality of the bids, the exercise of the squeeze-out right, and the exceptions and waivers from the obligation to launch a takeover bid.

Finally, to provide a more complete overview of the Spanish takeover bid regime, this guide has been expanded to include:

- a brief description of the takeover bid procedure, including, as attachments, two standard timetables, one for conditional voluntary takeover bids (Attachment I) and one for mandatory takeover bids (Attachment II); and
- a compilation of legislation relevant for takeover bids, included in Attachment III.

¹ Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids.

TABLE OF CONTENTS

OVERVIEW OF THE TAKEOVER BID REGIME IN SPAIN	13
1. Regulation	13
1.1. Basic regulation	13
1.2. Other relevant regulations	13
2. Scope of application	14
3. Bid types and cases in recent years	15
3.1. Mandatory vs voluntary bids	15
3.2. Two more types of bids: delisting bids and capital reduction	17
4. Mandatory takeover bids	22
4.1. Features of mandatory takeover bids	22
4.2. Waiver from the CNMV and exceptions to mandatory takeover bids	24
5. Voluntary takeover bids	28
5.1. Features of voluntary takeover bids	28
5.2. Voluntary takeover bids launched in “extraordinary circumstances”	32
6. Constraints on the offeror’s action	33
6.1. Prohibitions	33
6.2. Effects of acquiring target securities outside the scope of the takeover bid	33
7. Frustrating actions: duty of passivity of the target’s directors and executives	34
8. Competing bids	34
8.1. Time requirement	35
8.2. Target requirement	35
8.3. The right to act in concert	35
8.4. Break-up fee	35
8.5. Option to accept more than one bid	36
8.6. Sealed-bid auctions and the initial offeror’s right to improve the bid	36
9. Squeeze-outs / Sell-outs	36
10. Delisting bids	40
10.1. Features of delisting bids	40
10.2. Exceptions to delisting bids	41
11. Takeover bids in antitrust, corporate governance, transparency, and market abuse legislation	42
11.1. Antitrust law	42
11.2. Corporate governance	43
11.3. Transparency	44
11.4. Market abuse	44



BRIEF DESCRIPTION OF THE TAKEOVER BID PROCEDURE 45

1.	Design of the takeover bid strategy	45
2.	Announcing the takeover bid	46
2.1.	Mandatory takeover bids	46
2.2.	Voluntary takeover bids	46
3.	Submitting the takeover bid	46
3.1.	Mandatory takeover bids	46
3.2.	Voluntary takeover bids	46
4.	Documents related to a takeover bid	46
5.	Consideration	47
6.	Guarantees	47
6.1.	Cash offers	47
6.2.	Exchange or mixed offers	47
7.	Authorization of the takeover bid	48
8.	Bid acceptance period	49
9.	Report by the target company's governing body	50
10.	Amending the takeover bid	50
11.	Withdrawal and termination of the effects of the takeover bid	50
Attachment I. Standard timetable for a conditional voluntary takeover bid		54
Attachment II. Standard timetable for a mandatory takeover bid		56
Attachment III. Legislation and regulations dealing with takeover bids		58
Basic Regulation		59
Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids		59
Royal Legislative Decree 4/2015, of October 23, approving the consolidated text of the Securities Market Act		79
Royal Decree 1066/2007, of July 27, on the regime for takeover bids for securities		98
CNMV Circular 8/2008, of December 10, approving the formats to which takeover bid notices and applications must conform		151
Other relevant Regulation		157
Market abuse: Articles 9 (4) and 11(2) of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014		157
Acquisition of "key assets": Article 160 (f) of Royal Decree-Law 1/2010, of July 2, 2010, approving the consolidated text of the Spanish Companies Act		159
Anti-takeover defenses: Royal Decree-Law 1/2010, of April 16, 2010, and Code of Good Governance for Listed Companies, of February 18, 2015		160

Collection of fees in the exercise of squeeze-out: CNMV notice of June 18, 2008, on the collection of fees associated with squeeze-out transactions	161
Antitrust: Article 7 of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings and article 9 of Act 15/2007, of July 3, 2007, on the protection of competition	162
Disclosure of major holdings: Article 30(6) of Royal Decree 1362/2007, of October 19, 2007	164
Shareholders cooperation: ESMA Public Statement (ESMA/2014/677) on shareholder cooperation and acting in concert under Directive 2004/25/EC	165
Exceptions to the obligation to launch a takeover bid during bank restructuring: Royal Decree-Law 2/2011 and Royal Decree-Law 24/2012	171

TABLES AND CHARTS

Tables

Table 1. Mandatory takeover bids triggered by the “special regime”	16
Table 2. Cases subject to a mandatory takeover bid in which a controlling interest was relinquished	16
Table 3. Takeover bids launched since August 2007	17
Table 4. Breakdown of takeover bids by type	21
Table 5. Cases where the CNMV altered the equitable price in accordance with article 9(4) of Royal Decree 1066/2007	23
Table 6. Cases where the waiver under article 4(2) of Royal Decree 1066/2007 (“shareholder acting as counterweight”) was applied for	25
Table 7. Exceptions to mandatory takeover bids under article 8(d) of Royal Decree 1066/2007 (“rescue operations”)	25
Table 8. Breakdown of voluntary takeover bids aimed at qualifying for the exception under article 8(f) of Royal Decree 1066/2007	27
Table 9. Exceptions to mandatory takeover bids on taking control by merger (article 8(g) of Royal Decree 1066/2007)	28
Table 10. Partial voluntary takeover bids	29
Table 11. Conditions placed on voluntary takeover bids	29
Table 12. Prior agreements with the target’s shareholders in voluntary takeover bids	31
Table 13. Exercise of squeeze-out rights	39
Table 15. Delisting bids	40
Table 15. Instances of delisting using the intermediate procedure (article 11(d) of Royal Decree 1066/2007)	41
Table 16. Instances of delisting using an equivalent procedure (article 11(e) of Royal Decree 1066/2007)	42
Table 17. Anti-takeover defenses	43
Table 18. Aspects to keep in mind when designing a takeover bid strategy	45
Table 19. Amendments to takeover bids	50

Charts

Chart 1. Trends in takeover bids by year	21
Chart 2. Types of bids approved since August 2007	22
Chart 3. Outcome of exercising the right of squeeze-out	38
Chart 4. Authorization periods for mandatory takeover bids	48
Chart 5. Authorization periods for voluntary takeover bids	48
Chart 6. Authorization periods for delisting bids	49
Chart 7. Authorization periods for bids for capital reduction	49

OVERVIEW OF THE TAKEOVER BID REGIME IN SPAIN

1. Regulation

1.1. Basic regulation

- [Directive 2004/25/EC](#) of the European Parliament and of the Council of 21 April 2004 on takeover bids.
- [Royal Legislative Decree 4/2015](#) of October 23, approving the consolidated text of the Securities Market Act (articles 81-82, 128-137, 280, 293, 301-304, 306-308, additional provision 6, and transitional provision 1).
- [Royal Decree 1066/2007](#) of July 27, on the regime for takeover bids for securities.
- Spanish Securities and Exchange Commission [Circular 8/2008](#), of December 10, approving the formats to which takeover bid notices and application must conform.

1.2. Other relevant regulations

Market abuse

- Articles 9.4 and 11.2 of [Regulation \(EU\) No 596/2014](#) of 16 April 2014 on market abuse.

Acquisition of key assets

- Article 160(f) of [Royal Decree-Law 1/2010](#) of July 2, 2010, approving the consolidated text of the Spanish Companies Act.

Anti-takeover defenses

- Article 527 of [Royal Decree-Law 1/2010](#) of July 2, 2010, approving the consolidated text of the Spanish Companies Act.
- [Code of Good Governance for Listed Companies](#) of February 18, 2015 (Principle 1 and Recommendation 1).

Collection of fees in the exercise of squeeze-out

- [Notice by the Spanish Securities and Exchange Commission of June 18, 2008](#), on the collection of fees associated with squeeze-out transactions.

Antitrust

- Article 7 of [Council Regulation \(EC\) No 139/2004](#) of 20 January 2004 on the control of concentrations between undertakings.
- Article 9 of [Act 15/2007](#) of July 3, 2007, on the protection of competition.

Disclosure of major holdings in takeover bids

- Article 30(6) of [Royal Decree 1362/2007](#) of October 19, 2007.



Shareholders cooperation

- ESMA Public Statement ([ESMA/2014/677](#)) on shareholder cooperation and acting in concert under Directive 2004/25/EC. Date: June 20, 2014

Exceptions to the obligation to launch a takeover bid during bank restructuring

- [Royal Decree-Law 2/2011](#) of February 18, 2011 (Additional Provision One).
- [Royal Decree-Law 24/2012](#) of August 31, 2012 (articles 33(1)(d) and 36(4)(c)).

2. Scope of application

Spanish takeover bid regulations apply to bids made or that should be made for the shares of a listed company or for other securities that confer the right to acquire or subscribe those shares. A “listed company” is a public limited company domiciled in Spain, whose shares are traded, in whole or in part, on the Spanish Stock Exchanges.

Companies listed on a multilateral trading facility (e.g., the Spanish Alternative Equity Market - MAB) are not subject to the regime described in this guide, without prejudice to the rules each market may establish on the acquisition of controlling shares in the companies negotiating in it.

A special regime exists for companies domiciled outside Spain, whose shares are traded on a Spanish Official Secondary Market.

- In the case of companies domiciled in the EU, whose securities are not listed on the regulated market of the Member State where they are domiciled, a principle of shared jurisdiction applies. Provided certain conditions are met, aspects of company law will be subject to the law of the Member State where the company is domiciled, and matters referring to the bid will be subject to Spanish law, e.g., the authorization of the takeover bid, the matters referring to the consideration, the content of the prospectus and the competing offers.

For example, the takeover bid for shares in JAZZTEL PLC (May 26, 2015), a company incorporated under the laws of England and Wales but traded solely on the Spanish Stock Exchanges, was subject to joint supervision by the Spanish Securities and Exchange Commission (“CNMV”) and the UK Takeover Panel. The former dealt with aspects concerning the procedure and the consideration offered, while the latter dealt with aspects concerning corporate issues and information for employees. Corporate issues concerned such relevant aspects as establishing the percentage of votes conferring control, exceptions to the mandatory bid, and conditions under which the target company is entitled to frustrating actions. A squeeze-out was carried out under procedures laid down in the UK Companies Act 2006.

- In the case of companies domiciled in a third country whose securities are listed on the Spanish Stock Exchanges, matters concerning the bid, as mentioned above, will be subject to Spanish law.

3. Bid types and cases in recent years

3.1. Mandatory vs voluntary bids

There are two types of takeover bids in Spain:

- i. **Mandatory takeover bids**, as a procedure triggered by the acquisition of a controlling interest in a listed company, to ensure equal treatment of all shareholders by offering all of them the option of benefitting from any potential control premium.
- ii. **Voluntary takeover bids**, as a means to acquire shares in a listed company through public offerings.

Control of a listed company is considered attained and, therefore, the obligation to launch a mandatory takeover bid arises in the following cases:

- Direct, indirect, or consequential acquisition of shares or other securities that carry 30% of the voting rights (takeover bid by acquisition).
- The majority of the members of the governing body are appointed within 24 months following acquisition of less than 30% of the voting rights (takeover bid by appointment).
- Verbal or written agreements with other holders of securities entailing acquisition of 30% of the voting rights by acting in concert (takeover bid by concert). For these purposes, concert exists when there is an arrangement that regulates the exercise of voting rights in the general meeting, board of directors or executive board, or that conditions or restricts free transfer of shares with the aim of setting up a common policy concerning or significantly influencing management of the company.
- There is also a special regime to avoid positions from being taken in the market to benefit from the major changes introduced by the 2007 reform that, among others, put an end to partial mandatory takeover bids and lowered the threshold for total mandatory takeover bids from 50% to 30%. Those who, on August 13, 2007, controlled between 30% and 50% of voting rights have to launch a mandatory takeover bid in the following cases:
 - Their shareholding increases by at least 5% within 12 months.
 - They attain a percentage of voting rights equal to or greater than 50% of votes.
 - They obtain an additional stake and, in the 24 months following the acquisition, appoint a number of directors that, in addition to any directors previously appointed by them, represents over half the members of the governing body.

The following table identifies the cases where a mandatory takeover bid was launched as a result of this special regime.



Table 1. Mandatory takeover bids triggered by the “special regime”

Date	Target company	Offeror(s)
2007/12/27	Agbar	Criteria, Suez, and others
2008/03/12	Metrovacesa	Undertake Options
2008/03/26	Sogecable	Prisa

The mandatory bid due to acquisition may be caused by taking **direct, indirect or consequential control** of the listed company. The acquisition of indirect or consequential control may result from:

- the taking of control or merger with a company that has direct or indirect control of the listed company;
- a capital reduction in the listed company that does not proportionally affect all its shareholders;
- the exchange, subscription, conversion or acquisition of the listed company's shares deriving from the acquisition of securities or financial instruments that give right to the conversion, subscription or exchange of shares that entail voting rights;
- variations in the listed company's treasury stock; or
- compliance with an underwriting commitment within an issue or a public offering of securities of a listed company.

In these cases, no bid will have to be made when, within three months, a sufficient number securities is sold to bring the holding to below the 30% threshold and, in the meantime, no voting rights exceeding that threshold are exercised.

The table below sets out the cases in which the shareholder subject to a mandatory takeover bid for indirect or consequential acquisition of controlling interest chose to relinquish its controlling position.

Table 2. Cases subject to a mandatory takeover bid in which a controlling interest was relinquished

Company	Offeror	Reason for indirect or consequential acquisition of controlling interest
Vértice 360 (2012/06/01)	Ezentis	Changes to shareholder make-up following exit by a shareholder
Abertis (2012/04/26)	La Caixa (as controlling shareholder in Criteria)	Increase in treasury stock

Moreover, as regards CAMPOFRÍO, SHUANGHUI initially informed the market that its intention was to relinquish its indirect controlling position, which it had acquired after the merger with the last controlling shareholder of CAMPOFRÍO, and to not launch the takeover bid. However, some months later, it abandoned its intention and associated with SIGMA to make a mandatory takeover bid with regard to CAMPOFRÍO (May 21, 2014).

The existence of two types of bids (mandatory vs voluntary bids) allow different strategies to be followed for taking control of a listed company. One or other bid will be preferred based on the circumstances of the target company and on the nature of the offeror. [Section 1 in “Brief description of the takeover bid procedure”](#) discusses preliminary issues the offeror should take into account when developing its takeover bid strategy.

3.2. Two more types of bids: delisting bids and capital reduction

There are two other cases in which a listed company needs to make a bid:

- i. Where the target company decides to remove its shares from trading, unless certain exceptions provided for in article 11 of Royal Decree 1066/2007 apply (**delisting bids**) ([see section 10.2](#)).
- ii. Where the target company reduces its share capital by acquiring treasury stock, to comply with the principle of equal treatment for all shareholders (**capital reduction offer**).

The table below lists all the takeover bids launched in Spain since entry into force of Royal Decree 1066/2007 (August 13, 2007) until February 28, 2017:

Table 3. Takeover bids launched since August 2007

Target company	Offeror(s)	Type of offer	Date registered	Percentage share of votes held by offeror before the bid	Percentage of shares at which the bid was directed	Consideration	Conditional	Resulting % equity	Squeeze-out
Metrovacesa	Metrovacesa	R	2007/09/19	0.01	50.5	Swap		41.2	
Altadis	Imperial Tobacco	V	2007/11/07	0	100	Cash (NE)	√	95.81	√
Uralita	Nefinsa	V	2007/11/07	43.37	56.41	Cash (E)		35.70	
Tubos Reunidos	Tubos Reunidos	R	2007/12/05	0	14.76	Cash		14.76 (Pro rata)	
Agbar	Criteria, Suez, and others	M	2007/12/27	56.46	43.54	Cash		33.55	
CELO	Gepro XXI	M	2008/01/30	92.05	8	Cash		6.5	
Metrovacesa	Undertake Options	M	2008/03/12	70.51	13.4	Cash		10.1	
Sogecable	Prisa	M	2008/03/26	50.07	49.6	Cash		47.6	√
Logista	Altadis	M (indirect control)	2008/04/16	59.62	40.4	Cash		37.3	√
Estabanell y Pahisa	Estabanell y Pahisa	D	2008/04/30	0	20.9	Cash		17.2	
Plarrega Invest 2000	Vancouver Gestión	V	2008/06/30	0	100	Cash (E)		100	
Unión Fenosa	Gas Natural	M	2009/03/18	50.02	50	Cash		34.8	



Target company	Offeror(s)	Type of offer	Date registered	Percentage share of votes held by offeror before the bid	Percentage of shares at which the bid was directed	Consideration	Conditional	Resulting % equity	Squeeze-out
Aguas de Valencia	Aguas de Valencia	D	2009/04/22	0	39.3	Cash		4	
Itinere	Pear Acquisition	V	2009/06/03	0	51.7	Cash (E)	√	47	(1)
Corporación Dermoeestética	Corporación Dermoeestética	R	2009/07/15	0	47.4	Cash		53 (Pro rata)	
Federico Paternina	Inversora Mer	D	2009/12/09	91.06	9	Cash		7.6	φ
Agbar	Agbar	D	2010/05/06	0	10	Cash		9.1	
Mecalux	Mecalux	D	2010/06/14	0.24	7.4	Cash		7	
Banco Guipuzcoano	Banco Sabadell	V	2010/10/14	0	100	Swap (E)	√	97	√
CASSA	Agbar	V	2010/10/14	11.40	89	Cash (E)	√ (with-drawn)	2.1	
CEPSA	IPIC	V	2011/07/06	47.06	52.9	Cash (E)		51.5	√
Befesa	Proyectos de Inversiones Medioambientales	D	2011/07/06	97.38	2.6	Cash		2.5	√
Rústicas	Inversiones Mobiliarias de Desarrollo	D	2011/12/18	8.78	1.4	Cash		0.8	
Banco Pastor	Banco Popular	V	2012/01/18	0	100	Swap (E)	√	96.4	√
Funespaña	Mapfre	M	2012/03/27	45.12	33.8	Cash		9.6	
Fersa	Greentech	V	2012/07/10	0	100	Cash (NE)	√	Nil	
Vueling	Veloz Holdco	V	2013/02/27	45.90	54.15	Cash (E) (2)	√	44.66	φ
Metrovacesa	BBVA, Santander, Popular, and Sabadell	D	2013/04/18	76.56	4.41	Cash		4.29	
Corporación Dermoeestética	Pabellón Paladio	D	2013/05/09	59.09	40.91	Cash		32.66	φ
CASSA	Agbar	V	2013/06/12	13.62	86.38	Cash (E)	√	64.09	φ
Vueling	Veloz Holdco	D	2013/07/16	90.51	9.49	Cash		7.01	φ
Duro Felguera	Duro Felguera	V (partial)	2013/07/24	0.41	9.59	Cash (NE)		34.62 (pro rata)	
Inmolevante	Inmolevante	D	2014/04/10	2.92	5.44	Cash		3.72	
Campofrío	Sigma	M	2014/05/21	86.25	16.25	Cash	√	13.15	φ(3)
CASSA	CASSA	D	2014/06/23	0.03	2.26	Cash		0.46	
Ahorro Familiar	Lindisfarme	D	2014/07/23	94.46	29.274 (4)	Cash		28.45	φ

Target company	Offeror(s)	Type of offer	Date registered	Percentage share of votes held by offeror before the bid	Percentage of shares at which the bid was directed	Consideration	Conditional	Resulting % equity	Squeeze-out
Dogi	Businessgate	M	2014/07/23	75.01	17.6	Cash		0.14	
Deoleo	Ole Investments	V	2014/11/25	29.99	70.01	Cash (E) (5)		18.10	φ
Tavex	AYUSPE	D	2014/12/16	50	49.518	Cash		46.18	√
Realia	Hispania	V	2015/03/11	0	100 (6)	Cash (NE)	√	[Withdrawn]	
Damm	Damm	D	2015/03/11	0	32.88	Cash		13.05	
Sotogrande	Sotogrande Luxco	M	2015/04/29	96.99	3	Cash		1.88	
Jazztel	Orange	V	2015/05/26	0	100	Cash (7)	√	94.75	√
Realia	Inmobiliaria Carso	V (competing)	2015/06/23	24.95	75.05 (6)	Cash (NE)		0.15	φ
Abertis	Abertis	V (partial)	2015/09/30	1.75	6.50	Cash (NE)		8.10 (pro rata)	φ
Testa	Merlin	M	2015/10/28	77.01	0.38	Cash		0.31	φ
CVNE	CVNE	D	2015/10/28	0	17.18	Cash		8.60	
CLH	CLH	D	2015/11/12	0	0.85	Cash		0.61	
Realia	Inversora Carso	M	2016/05/04	30.49	69.69%	Cash		0.04	
FCC	CEC	M	2016/06/29	55.51	44.502 (8)	Cash	√	25.66	
Inverfiatc	Fiatc	D	2016/07/15	82.50	18.13	Cash		17.19	√
Fersa	Audax	V	2016/07/15	0	100	Cash (E)	√	70.86	
Cementos Portland	FCC	D (9)	2016/12/22	79.19	20.58	Cash		18.07	φ
Tecnocom	Indra	V	Pending (10)	0	100	Mixed (E) (11)	√	N/A	Pending



KEY

- R Capital reduction bid
- V Voluntary takeover bid
- M Mandatory takeover bid
- D Delisting bid
- √ Squeeze-out
- ϕ Offeror stated that it intended a squeeze-out but failed to reach the required thresholds
- E Voluntary takeover bid launched for an amount the offeror assumed would fulfill the requirements for the CNMV to consider it equitable
- NE Voluntary takeover bid not offering an equitable price

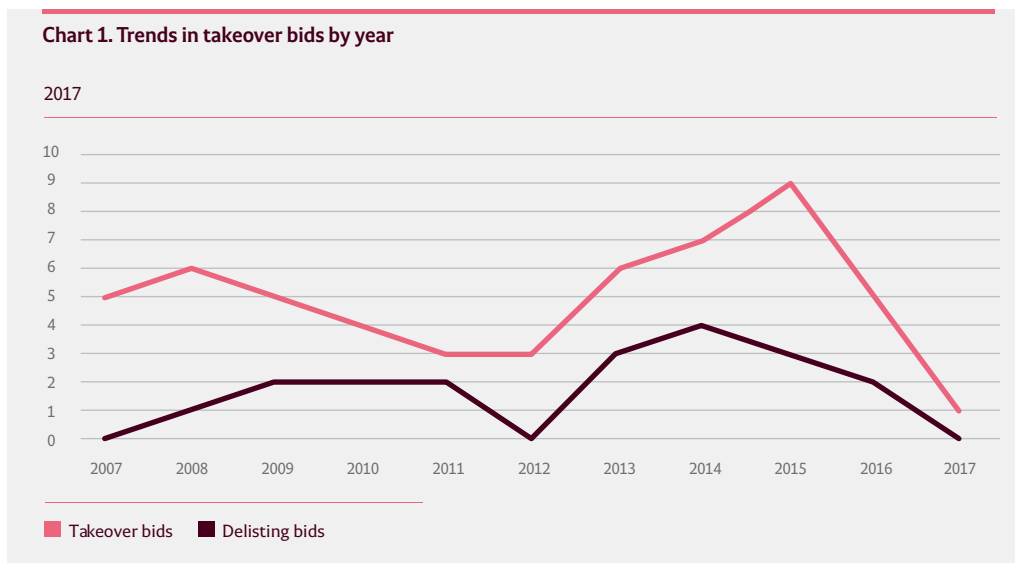
NOTES

1. After the takeover bid, delisting took place by means of the intermediate procedure established in article 11(d) of Royal Decree 1066/2007.
2. The bid was amended, among others, to improve the consideration, which was not initially equitable under article 9 of Royal Decree 1066/2007.
3. After the takeover bid, delisting took place by means of the intermediate procedure established in article 11(d) of Royal Decree 1066/2007.
4. This stake includes the shares owned by AXA Assurance IARD Mutuelle (23.327%) and the treasury stock (1.156%).

5. The offeror amended the bid to raise the price so that it would be considered equitable according to the CNMV's criteria, and to remove the at least 50% acceptances condition.
6. The bid was directed at the maximum theoretical share capital, namely all shares issued on the date of the prospectus and all those that might be issued before the deadline for accepting the bid through possible capitalization of a participating loan.
7. Since the exception provided for under article 8(f) of Royal Decree 1066/2007 did not apply, the price was not evaluated. As Jazztel is an English public limited company (plc), exceptions relating to mandatory takeover bids under Rule 9.1 of the UK Takeover Code applied, and there is no exception for cases in which control has been acquired through a voluntary takeover bid for all shares at an equitable price.
8. The bid was directed at 47.035% of the share capital and shares that might be issued during the acceptance period through conversion of outstanding convertible bonds.
9. The delisting bid was made as an alternative to a mandatory takeover bid as a result of taking indirect control of Cementos Portland through acquisition of a controlling interest in FCC.
10. On the date this guide was drafted, the CNMV had still not authorized this takeover bid, which was admitted for processing on December 29, 2016.
11. The consideration offered is €4.25/share: €2.55 in cash and 0.1727 of shares in Indra per share in TecnoCom.

Up until February 28, 2017, 54 offers had been made since the current takeover bid regime took effect. During the years of the crisis, there was an increase in delisting bids as a cost-saving measure.

The following chart shows both the trend in the number of bids authorized in recent years, and separately, the delisting bids.



The 54 offers are broken down below according to type.

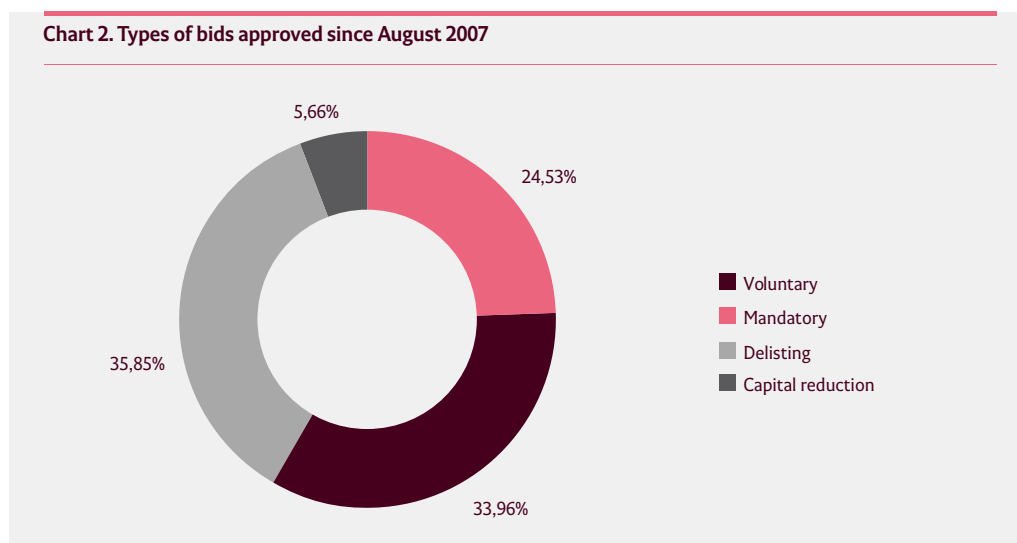
Table 4. Breakdown of takeover bids by type

Mandatory (13)	Voluntary (19)	Delisting (19)	Capital reduction (3)
Agbar 2007/12/27	Altadis 2007/11/07	Estabanell 2008/04/30	Metrovacesa 2007/09/19
CELO 2008/01/30	Uralita 2007/11/07	Aguas de Valencia 2009/04/22	Tubos Reunidos 2007/12/05
Metrovacesa 2008/03/12	Plarrega 2008/06/30	Paternina 2009/12/09	Corporación Dermoestética 2009/07/15
Sogecable 2008/03/26	Itinere 2009/06/03	Agbar 2010/05/06	
Logista 2008/04/16	CASSA 2010/10/14	Mecalux 2010/06/14	
Unión Fenosa 2009/03/18	Banco Guipuzcoano 2010/10/14	Befesa 2011/07/06	
Funespaña 2012/03/27	CEPSA 2011/07/06	Rústicas 2028/12/11	
Campofrío 2014/05/21	Banco Pastor 2012/01/18	Metrovacesa 2013/04/18	
Dogi 2014/07/23	Fersa 2012/07/10	Corporación Dermoestética 2013/05/09	
Sotogrande 2015/04/29	Vueling 2013/02/27	Vueling 2013/07/16	
Testa 2015/10/28	CASSA 2013/06/12	Inmolevante 2014/04/10	
Realia 2016/05/04	Duro Felguera 2013/07/24	CASSA 2014/06/23	
FCC 2016/06/29	Deoleo 2014/11/25	Ahorro Familiar 2014/07/23	
	Realia 2015/03/11	Tavex 2014/12/16	
	Jazztel 2015/05/26	Damm 2015/03/11	



Mandatory (13)	Voluntary (19)	Delisting (19)	Capital reduction (3)
	Realia 2015/06/23	CVNE 2015/10/28	
	Abertis 2015/09/30	CLH 2015/11/12	
	Fersa 2016/07/15	Inverfiatc 2016/07/15	
	Tecnocom [pending]	Cementos Portland 2016/12/22	

Chart 2. Types of bids approved since August 2007



4. Mandatory takeover bids

4.1. Features of mandatory takeover bids

- Total bids.** A mandatory takeover bid serves as an exit mechanism for shareholders after the change of control of a listed company. Therefore, the bid must be directed at all shareholders, share subscription right holders, and convertible or exchangeable bond holders. It may also be directed at the holders of warrants and other securities and financial instruments that confer the right to acquire or subscribe shares besides those referred to above.
- The offeror is not free to choose the bid price but must offer an equitable price.** The price of the bid is supervised to ensure that all shareholders are afforded the option of benefitting from any potential control premium paid by the offeror on acquiring a controlling interest. As a general rule, the price should be at least equal to the highest price that the offeror or the parties acting in concert with it have paid or agreed to pay for the same securities during the 12 months preceding the announcement of the bid.

If no shares in the target company were acquired during the 12-month period, the equitable price is calculated using the valuation methods specified in article 10 of Royal Decree 1066/2007 for delisting bids. Valuation methods include (i) the theoretical book value and liquidation value of the company or, where appropriate, the consolidated group; (ii) the weighted average price per share for the immediately preceding six-month period; (iii) the discounted cash flow; (iv) the multiples approach; and (v) comparable transactions.

In exceptional cases, the CNMV may alter the price calculated according to these rules, for instance, where the price is affected by special events or where it has been manipulated. The table below sets out cases where the CNMV altered the equitable price calculated in accordance with article 9(1) to article 9(3) of Royal Decree 1066/2007.

Table 5. Cases where the CNMV altered the equitable price in accordance with article 9(4) of Royal Decree 1066/2007

Cases in accordance with article 9(4)(d) of Royal Decree 1066/2007: transactions for an insignificant volume carried out at stock market price in the given period were not taken into account

Company	Type of takeover bid	Case
Sogecable (2008/03/26)	Mandatory	Director operation
Funespaña (2012/03/27)	Mandatory	Purchase of shares for appointment of a director by co-option
Campofrío (2014/05/21)	Mandatory	Treasury stock purchase operation
Sotogrande (2015/04/29)	Mandatory	Operation by a director of a related company
CVNE (2015/10/28)	Delisting	Purchase of shares for appointment of a director by co-option
Cementos Portland (2016/12/22)	Delisting	Director operation

Assumptions under article 9(4)(a) of Royal Decree 1066/2007: deduction of the amount of the dividend paid

Company	Type of takeover bid	Case
Agbar (2007/12/27)	Mandatory	Deduction of the gross amount of the dividends paid
Unión Fenosa (2009/03/18)	Mandatory	Deduction of the gross amount of the dividends paid



Agbar (2010/10/14)	Voluntary	Deduction of the gross amount of the dividends paid
Befesa (2011/07/06)	Mandatory	Deduction of the gross amount of an interim dividend paid

Other exceptional circumstances provided under article 9(4) of Royal Decree 1066/2007

Company	Type of takeover bid	Case
Dogi (2014/07/23)	Mandatory	Article 9(4)(f). The company was “demonstrably in serious financial distress” and the consideration had to be calculated using the valuation methods set out in article 10. (*)
Deoleo (2014/11/25)	Voluntary	Article 9(4)(c). The highest price paid in the reference period was lower than the price range of the securities on the date of the purchase that determined the price.

(*) The price of the bid was finally higher and was the same as the subscription value for the capital increase in which the offeror had acquired shares carrying 75% of the voting rights. Previously, an expert had concluded that, based on the valuation methods from article 10 of Royal Decree 1066/2007, it did not yield a positive financial value of DOGI’s shareholders’ equity.

- **Mandatory takeover bids can only be conditional on obtaining authorization from the antitrust authorities and other supervisory bodies.** As a general rule, since the purpose of a mandatory bid is to allow shareholders to exit when the exercise of control of a listed company changes hands, the bid cannot be conditional. The exception is a mandatory takeover bid made conditional on obtaining the requisite authorizations from the antitrust authorities and other supervisory bodies.

4.2. Waiver from the CNMV and exceptions to mandatory takeover bids

- **Waiver from the CNMV of the requirement to make a bid.** The CNMV will waive the requirement to make a takeover bid where, on reaching the control threshold, there is another shareholder holding a stake that is the same size or greater (article 4(2) of Royal Decree 1066/2007). In this case, although the threshold of 30% of the voting rights has been reached, it is considered that, in practice, effective control is not achieved because another individual or shareholder group has a stake that is the same size or larger (“counterweight shareholder”).

To be able to apply for this waiver, there has to be a counterweight shareholder at the time the threshold triggering a mandatory takeover bid is reached. In the CAMPOFRÍO takeover bid (May 21, 2014) this condition was not fulfilled, because when WH GROUP acquired (indirectly) 39.99% of the voting rights in CAMPOFRÍO in September 2013, there was no counterweight shareholder. That shareholder first emerged later, in November, when SIGMA acquired a 45.83% stake.

The CNMV will make such a waiver conditional on the ongoing existence of the circumstances on which it was based, i.e., on the counterweight shareholder not decreasing its stake to lower than that of the beneficiary of the waiver. Moreover, this waiver will also be conditional on the beneficiary not being subject to a takeover bid by appointment, i.e., that it does not appoint

more than half the members of the board of directors of the target company.

The table below shows the cases in which intention to seek this waiver was announced.

Table 6. Cases where the waiver under article 4(2) of Royal Decree 1066/2007 (“shareholder acting as counterweight”) was applied for

Date	Company	Beneficiary	Shareholder acting as counterweight
2007/11/07	Aguas de Valencia	Suez Environment (33.02%)	Partners of Inversiones Financieras Agval (60.68%)
2009/09/15	CEPSA	IPIC (47.06%)	Odival (48.83%)
2016/01/08 (*)	Realia	Inversora Carso (30.31%)	FCC (36.91%)

(*) On this date, Inversora Carso announced its intention to request a waiver. However, it ultimately decided to launch a mandatory takeover bid, announcing it to the marketplace on January 27, 2016.

Several cases are excluded from the requirement to launch a takeover bid on attaining a controlling interest in a listed company. The most notable are the exceptions for taking control by (i) “rescue operations,” (ii) launching a voluntary takeover bid for all shares, and (iii) concluding an industrial merger.

- **Rescue operations.** The CNMV may waive the requirement to launch a mandatory takeover bid to whoever, by converting or capitalizing loans into shares, acquires a controlling interest in a listed company, the financial viability of which is under grave and imminent threat (even if the company is not insolvent). The operation must aim at ensuring the company’s long-term financial recovery.

On January 22, 2014, the CNMV issued a reminder that this exception was not automatic for target companies in financial distress, but rather an express decision by the CNMV was required after it had verified that the operation aimed at ensuring the company’s long-term financial viability.

In contrast, where a controlling stake in a listed company is acquired by loan conversion or capitalization as a direct consequence of a court-approved refinancing agreement and a favorable opinion is issued by an independent expert, the “rescue operation” exception will be automatic without requiring a decision by the CNMV.

The following table lists previous exceptions to mandatory takeover bids in cases of “rescue operations.”

Table 7. Exceptions to mandatory takeover bids under article 8(d) of Royal Decree 1066/2007 (“rescue operations”)

Date	Company	Beneficiary(ies)	CNMV authorization	Court approval
2011/07/06	Metrovacesa	Banco Santander	√	
2015/07/27	GAM	Financial institutions		√
2015/12/15	Natra (*)	Creditor financial institutions		√
2016/02/08	Service Point	Paragon	√	

(*) Unlike the other cases, in NATRA an exception was sought preventively because the acquisition of 30% of the voting rights could arise in the future through conversion of some convertible bonds into shares.



- **Acquisition of control through a voluntary takeover bid.** No bid needs to be made when a controlling interest in a listed company is acquired by means of a voluntary takeover bid addressed to all of the securities of the target company and one of the following two conditions is met:
 - i. The voluntary takeover bid was made at an equitable price (see the concept of equitable price in section 4.1.).
 - ii. The bid was accepted by 50% of the voting rights to which it was directed. Voting rights already held by the offeror and parties acting in concert under a prior agreement with the offeror for the approval of the bid are not counted when calculating these voting rights.

The tables below break down the cases of voluntary takeover bids according to how the bid was designed to avert the risk of subsequently having to launch a mandatory bid, i.e., where the offeror decided to (a) launch its bid at a price it considered fulfilled the requirements for the CNMV to consider it equitable, or (b) make the bid conditional on a minimum number of acceptances.

When the offeror launched its bid at a price it considered equitable, the table indicates whether it provided a report or a fairness opinion to try to prove this circumstance to the CNMV. In any event, the CNMV's formal assessment of the sufficiency of consideration for it to be considered an equitable price, for the purposes of the exemption from a mandatory bid, will only take place with the authorization of the voluntary bid. Therefore, any assessment report or fairness opinion that the offeror provides is considered merely circumstantial.

The offeror in the takeover bid for DEOLEO (November 25, 2014) initially regarded the price it had set as equitable because it was the highest price paid to other shareholders in the 12 months preceding the bid. However, when it submitted the bid to the CNMV for authorization and until it obtained CNMV's approval for the price to be considered equitable, the offeror made the bid conditional on a minimum level of acceptance of more than 50% of the addressees to be able to qualify for the mandatory bid exception. The CNMV held the price not to be equitable because it was below the price range for the securities on the date of the acquisition it used to establish the price (article 9(4)(c) of Royal Decree 1066/2007). Finally, the offeror chose to change its bid by raising the price to an amount the CNMV considered equitable and by removing the minimum number of acceptances condition.

The takeover bids for DURO FELGUERA (July 24, 2013), ABERTIS (September 30, 2015), and JAZZTEL (May 26, 2015) have not been included in this analysis, the first two because they were partial offers and, therefore, not eligible for the exception, and the last because the target company was an English company and, therefore, the exceptions to mandatory takeover bids under Rule 9.1 of the UK Takeover Code were applied.

In one case, Inmobiliaria Carso's takeover bid for REALIA (June 23, 2015), the bid was not designed to benefit from the exception, i.e., it was not made at an equitable price or conditional on a minimum number of acceptances. This is because there was no risk of a mandatory takeover bid on account of the special circumstances of the transaction.

Table 8. Breakdown of voluntary takeover bids aimed at qualifying for the exception under article 8(f) of Royal Decree 1066/2007**Voluntary takeover bids launched at the offeror considered equitable price**

Target company	Offeror	Date registered	Report/ fairness opinion	Resulting % equity
Uralita (1)	Nefinsa	2007/11/07	√	35.70
Plarrega	Vancouver Gestión	2008/06/30	x	100
Itinere	Pear Acquisition	2009/06/03	√	47
Banco Guipuzcoano	Banco Sabadell	2010/10/14	√	97
CASSA	Agbar	2010/10/14	x	2.1
CEPSA	IPIC	2011/07/06	√	51.5
Banco Pastor	Banco Popular	2012/01/18	√	96.4
CASSA	Agbar	2013/06/12	x	60.64
Deoleo (2)	Ole Investments	2014/11/25	√	18.10
Fersa	Audax	2016/07/15	x	70.86

- (1) On September 11, 2007, the bid was launched at €7/share and was made conditional on a level of acceptance that would qualify for the exception under article 8(f) of Royal Decree 1066/2007. On October 23, 2007, the offeror notified its decision to remove that condition and raise the price to €7.06/share, which it assumed would fulfill the criteria for the CNMV to regard it as equitable.
- (2) The offeror raised the price so that the CNMV would regard it as equitable.

Voluntary takeover bids not offering an equitable price to an amount the CNMV considered equitable.

Target company	Offeror	Date registered	Minimum no. of acceptances	Resulting % equity
Altadis	Imperial Tobacco	2007/11/07	80%	95.81
Fersa (*)	Greentech	2012/07/10	>50%	41.81
Vueling	Veloz Holdco	2013/02/27	4.16%	44.66
Realia	Hispania	2015/03/11	52.525% of the maximum theoretical share capital	[Withdrawn]

- (*) The bid was unsuccessful. The minimum percentage of acceptances was not achieved and the offeror did not withdraw the condition. Withdrawing the condition would have meant having to launch a mandatory takeover bid, since the threshold of 30% had been surpassed.

- **Acquisition of a controlling interest by merger.** The CNMV can waive the requirement to launch a mandatory takeover bid to whoever has gained a controlling interest in a listed company by means of merger, provided that: (i) it did not vote in favor of the merger at the general meeting of the target company that decided on the transaction; and (ii) it can prove that the primary purpose of the merger was not to take control, but rather was industrial or business in nature.



The CNMV has granted a waiver in the following cases:

Table 9. Exceptions to mandatory takeover bids on taking control by merger (article 8(g) of Royal Decree 1066/2007)

Beneficiary	Company	Reason
Grupo Rayet (2008/04/16)	Afirma	Grupo Rayet acquired a 40.29% stake in Afirma following merger by Afirma with several companies in which it held stakes and with a company in the Rayet Group.
Smithfield Foods (2008/12/10)	Campofrío	Smithfield Foods acquired 37.26% of the voting rights in the company resulting from the merger of Groupe Smithfield Holdings and Campofrío.
Iberia (2009/06/16)	Vueling	Iberia acquired a 45.85% stake in Vueling on the merger of Vueling and Clickair.
Reig Jofre Investments (2014/12/16)	Natraceutical	The sole shareholder of Laboratorios Reig Jofre acquired 74% of the voting rights in Natraceutical on the merger of the two companies.
Siemens (2019/12/07)	Gamesa	Owing to the merger by absorption by Gamesa of Siemens Wind Holdco, Siemens Aktiengesellschaft reached a stake of approximately 59% in the company resulting from the merger.

The CNMV has sometimes made its authorization conditional on the assumption of certain commitments by the beneficiary. Specifically, it has made exemption conditional on: (i) the sale of a percentage of shares within a specific period, (ii) the prohibition from acquiring new shares or exercising certain voting rights for a given time, (iii) the prohibition from appointing or proposing the appointment of board members that would exceed the amount applicable if the right to proportional representation were exercised until a specific date, and (iv) preserving the industrial purpose of the transaction according to the structure set out in the request for exemption.

5. Voluntary takeover bids

5.1. Features of voluntary takeover bids

In considering the features of voluntary takeover bids, it is important to bear in mind that, unlike mandatory takeover bids, they are not an exit mechanism when the control of a company has passed into other hands, but a procedure that an investor may use to buy shares in a listed company and even to acquire a controlling interest in the company.

- **The bid can be partial** where the offeror is interested in acquiring only a certain percentage of the company's share capital.

There have been two cases of partial voluntary takeover bids since August 2007, namely, DURO FELGUERA (July 24, 2013) and ABERTIS (September 30, 2015). In both cases, the company made a partial bid for its own shares, offering its shareholders the chance to disinvest. Therefore, the takeover bids were a mechanism to enable their shareholders to cash out. As there was excess demand for both offers, they were performed on a *pro rata* basis.

Table 10. Partial voluntary takeover bids

Company	Offeror	Date registered	Percentage share capital targeted	Consideration	Resulting % equity
Duro Felguera	Duro Felguera	2013/07/24	9.59	Cash (not equitable)	34.62 (<i>pro rata</i>)
Abertis	Abertis	2015/09/30	6.50	Cash (not equitable)	48.10 (<i>pro rata</i>)

- **The bid may be conditional.** The CNMV has to agree that the condition complies with law, and the fulfilment of the condition must be verifiable before the end of the acceptance period.

In practice, voluntary takeover bids have been made conditional, for instance, on the following:

- Reaching a minimum level of acceptance. The actual percentage on which an bid is conditional may sometimes be set for business or strategic reasons or, at other times, to be able to force a squeeze-out ([see section 9](#)), or so that the transaction will qualify for the exceptions to mandatory takeover bids under article 8(g) of Royal Decree 1066/2007 ([see section 4.2](#)) or as a delisting bid under article 11(d) of Royal Decree 1066/2007 ([see section 10.2](#)).
- Approval of the bid by the offeror company's shareholders. The reasons why this approval may be necessary include the need for approval of the acquisition of essential assets ([see section 11.2](#)), compliance with procedures in place in certain jurisdictions when the offeror is a foreign entity, and approval of the issue required to carry out the swap in a mixed or exchange offer.
- Removal of anti-takeover measures from the target's bylaws. It should be noted that, by law, these anti-takeover measures will automatically cease to have effect if, on making a bid, the offeror acquires at least a 70% stake in the target company, unless the offeror is neither bound by equivalent neutralization measures nor has it put any in place ([see section 11.2](#)).
- Obtaining authorization from the antitrust authorities or other regulatory authorizations ([see section 11.1](#)).

The table below provides a breakdown of voluntary bids according to the conditions placed on the bid.

Table 11. Conditions placed on voluntary takeover bids

Minimum number of acceptances

Altadis (2007/11/07), Itinere (2009/06/03), Banco Guipuzcoano (2010/10/14), CASSA (2010/10/14), Banco Pastor (2012/01/18), Fersa (2012/07/10), Vueling (2013/02/27), CASSA (2013/06/12), Realia (2015/03/11), Jazztel (2015/05/26), and Fersa (2016/07/15)



Approval by the offeror's shareholders

Altadis (2007/11/07), Banco Guipuzcoano (2010/10/14), Banco Pastor (2012/01/18)

Removal of anti-takeover measures laid down in the bylaws

Altadis (2007/11/07), Banco Guipuzcoano (2010/10/14)

Obtaining antitrust / regulatory authorizations

Banco Pastor (2012/01/18), Campofrío (2014/05/14), Jazztel (2015/05/26), FCC (2016/06/29)

The announcement of the takeover bid for FERSA (July 10, 2012) made the bid conditional on, among others, the target not selling or encumbering the ownership, use, management, or operation of certain projects or the companies responsible for those projects. This condition was subsequently reworded as grounds for withdrawing the bid. In the prospectus, the offeror stated that the terms and conditions of the bid had been established bearing in mind that the target's bylaws did not put in place any anti-takeover measures in respect of voting, and that one of the essential goals of the takeover bid was for the target company to retain ownership and financial rights in certain projects, which were named. For this reason, the offeror reserved the right to walk away from the bid if those assets were sold or the bylaws were amended to include anti-takeover measures with respect to voting. In the end, the minimum number of acceptances on which the bid had been made conditional was not attained, and the offeror cancelled the bid.

- **The price of a voluntary takeover bid may be freely set.** The offeror can freely set the consideration price unless any of the extraordinary circumstances described in section 5.2 has occurred in the two years preceding the announcement of the bid. However, it should be noted that the price must be regarded as equitable, among others, for possible applicability of the exceptions to mandatory takeover bids under article 8(f) of Royal Decree 1066/2007 ([see section 4.2.](#)), and of delisting bids under article 11(d) of Royal Decree 1066/2007 ([see section 10.2.](#)).

The offeror can also freely determine the nature of the consideration; i.e., whether the price will be paid in cash, securities or a combination of both. Exceptionally, when the offeror or anyone acting in concert with it has acquired in cash, in the 12 months before the announcement of the bid, securities that grant at least 5% of the voting rights, it must include, at least as an alternative, a cash price that is at least financially equivalent to the offered exchange.

- **In voluntary takeover bids, the offeror commonly enters into “irrevocable agreements” with the target’s shareholders.** The offeror frequently enters into prior agreements with some of the target’s shareholders, whereby it agrees to launch the takeover bid at a price for a specified period and the shareholder(s) agree(s) to accept it. These “irrevocable agreements” afford the offeror significant advantages and are not expressly regulated in Royal Decree 1066/2007:

- i. They contribute to the success of the bid. Based on the terms and conditions of the agreement, the offeror can lock in the acquisition of a certain percentage of the share capital under the bid, making acquisition conditional on the success of the bid, thereby being able to settle the purchase at the end of the takeover process without having to put up the resources needed to take over the stake from the outset. This is particularly significant in cases where the offeror has no guarantee that it is going to obtain the minimum level of acceptances it intended in the takeover bid (e.g., to obtain control, exercise the squeeze-out or be able to apply the tax consolidation regime) because the shareholders signing the irrevocable agreements do not represent this minimum percentage of voting rights.
- ii. These terms and conditions make it possible to design the takeover of control of the listed company by means of a voluntary bid in which the price can, generally, be set freely and the bid can be made subject to conditions.

Caution is highly advisable when making agreements of this sort to avoid the risk of triggering a mandatory takeover bid.

The table below summarizes the agreements entered into with the target's shareholders in voluntary takeover bids. The offeror regarded that the offering price fulfilled the requirements for the CNMV to consider it as equitable in all these cases. Exceptionally, in the takeover of JAZZTEL (May 26, 2015) the price was not assessed because the mandatory takeover bid exception under article 8(f) of Royal Decree 1066/2007 did not apply.

Table 12. Prior agreements with the target's shareholders in voluntary takeover bids

Target company	Offeror(s)	Date registered	Condition (min. accept.)	Prior undertakings with shareholders				
				% irrevocable votes	Bid rejected	Bid accepted	Not available	Competing bids not accepted
Uralita	Nefinsa	2007/11/07	x	0.22	√			
Plarrega	Vancouver Gestión	2008/06/30	x	94.2		√(1)	√	√
Itínere	Pear Acquisition	2009/06/03	√ [46.02%]	56.72	√(2)	√(2)	√(2)	
Banco Guipuzcoano	Banco Sabadell	2010/10/14	√ [75%]	45.61		√		(3)
CEPSA	IPIC	2011/07/06	X	48.85		√(4)		√(4)
Banco Pastor	Banco Popular	2012/01/18	√ [75%]	52.28 (5)		√	√	√
Vueling	Veloz Holdco	2013/02/27	√ [4.16%]	45.85	√		√	
CASSA	Agbar	2013/06/12	√ [37.38%]	23.16		√	√	√



Target company	Offeror(s)	Date registered	Condition (min. accept.)	Prior undertakings with shareholders				
				% irrevocable votes	Bid rejected	Bid accepted	Not available	Competing bids not accepted
Deoleo	Ole Investments	2014/11/25	X	(6)	√(7)		√(8)	√(9)
Jazztel	Orange	2015/05/26	√ [50%]	14.68-14.80 (10)		√	√	√(11)
Fersa	Audax	2016/07/15	√ [50.01%]	45.17		√	√	√
Tecnocom	Indra	Pending	√	52.70		√	√	√

- (1) Conditional on the sole asset on the balance sheet being a company in the Dominican Republic.
- (2) The shareholders agreed to transfer their shares in several stages. Specifically, they agreed to transfer part of their shares during the takeover bid and to immobilize another part.
- (3) In the event of a competing bid, the shareholders could act "at their discretion," although they agreed to pay a penalty if they accepted a competing bid or if they did not accept the takeover bid for all of their shares on the first business day of the acceptance period for the bid.
- (4) Under the agreement with Odival, this company irrevocably agreed to accept the takeover bid during the first five days of the acceptance period, and not to withdraw its acceptance at any time (with certain exceptions specified in the agreement). Moreover, Odival and IPIC mutually granted themselves buying and selling rights whereby they could sell/acquire shares separately from the bid between February 15, 2011, and October 31, 2011. Exercising these rights would have triggered a mandatory takeover bid.
- (5) The agreements accepted by the shareholders were subject to the resolutive condition of obtaining the regulatory and antitrust authorizations.
- (6) The percentage varied for each agreement.
- (7) Agreement accepted by a shareholder holding 2.95%.
- (8) Shareholders accounting for a 23.94% stake agreed not to sell their shares for six months (later extended for three more months) unless they freely decided to accept the bid. Two shareholders accounting for 15.34% of the shares also agreed that they could sell them if a competing bid was launched.
- (9) Agreement accepted by shareholders holding 8.6% of the voting rights.
- (10) Depending on whether certain options were exercised during the acceptance period for the bid.
- (11) The shareholders agreed to abide by their irrevocable agreement to accept the bid if the offeror was willing to raise the price to above that of a competing bid.

5.2. Voluntary takeover bids launched in "extraordinary circumstances"

In 2012, a special regime was set up, limiting the offeror's freedom to establish the offering price of a takeover bid in certain cases to prevent bids from being launched at a price that did not reflect the value of the target company. Specifically, where, in the two years preceding the announcement of the bid:

- i. The securities against which the bid is directed show "reasonable signs of manipulation." In this sense, the CNMV has to have started penalty proceedings for an infringement involving market abuse and to have sent the interested party the list of charges.

- ii. Market prices or the price of the target company are subject to “extraordinary events.” The examples cited are restricted to natural catastrophes, war or disasters, or the like brought about by *force majeure*.
- iii. The target company has been subject to expropriation, confiscation, or another similar circumstance that could significantly alter the true value of its assets.

6. Constraints on the offeror’s action

6.1. Prohibitions

- Prohibition against releasing information not included in the announcement of the takeover bid. From the announcement’s publication date to submission of the takeover bid, the offeror must not disclose or publish information regarding the bid that was not included in the announcement.
- Prohibition against exercising corporate voting rights that exceed the control threshold. In the case of mandatory takeover bids, the offeror must not exercise voting rights in excess of the control threshold (30%) or appoint any further members to the management or executive bodies of the target company until the bid has been authorized.

For these purposes, the following rights derived from the securities are considered “political rights”: the attendance and voting right in the general meeting, the pre-emptive right in the capital increases and in the issuance of convertible instruments, the right to be part of the company’s governing bodies, the right to dispute the corporate agreements (unless these are contrary to law) and, in general, all rights that do not have an exclusively economic content.

- Prohibition against transferring shares in the target company. Neither the offeror nor any parties acting in concert with the offeror may assign any shares in the target company until the bid has been settled.
- Prohibition against transferring securities put up as consideration. In the case of an exchange or mixed offer, the offeror and any parties acting in concert with the offeror must not assign any securities to be handed over as consideration until the bid has been settled.

6.2. Effects of acquiring target securities outside the scope of the takeover bid

The offeror can at any time acquire shares in the target company outside the scope of the takeover bid procedure. However, these acquisitions may have the following consequences, depending on the type of bid and the consideration put forward:

- Where a bid is conditional on a minimum number of acceptances, that condition and any other conditions to which the bid is subject will be cancelled.
- Where, in a cash offer, the acquisition is made at a price higher than the price offered, the bid price will be raised and, as a consequence, the guarantees will be expanded.



- In the case of an exchange or mixed offer (in which the offeror's or a third party's securities are offered), the offeror must offer an alternative cash consideration equivalent to the highest price it has paid out.

7. Frustrating actions: duty of passivity of the target's directors and executives

The target's directors and executives, any of its management bodies, and the authorized signatories and respective members, as well as other companies belonging to the same group as the target company and any parties acting in concert with the above have a duty of passivity from the announcement of the bid to the publication of the outcome of the bid.

To prevent any conflict between the interest of the directors in keeping their posts and the interest of the target's shareholders in turning a profit on their investment from interfering with the success of the bid, the above persons cannot carry out any action that could hinder the success of the bid without the prior consent of the target's general meeting (adopted by an enhanced quorum and a qualified majority). In particular, they cannot carry out any of the following transactions if they may prevent the success of the bid: (i) agree to or begin any issuance of securities; (ii) directly or indirectly carry out or instigate transactions over the securities affected by the bid or over others, including actions intended to foster the purchase of those securities; (iii) proceed to the disposal, encumbrance or leasing of properties or other corporate assets; or (iv) distribute extraordinary dividends or remunerate in any way that does not follow the usual policy for the distribution of dividends to the shareholders or holders of securities of the target company, unless prior approval has been granted and made public for the corresponding corporate agreements by the competent corporate body.

No authorization by the general meeting is required:

- to search for competing offers ("white knights"); or
- when a foreign offeror or the group that controls it, in turn, can take frustrating actions without restriction (principle of reciprocity).

To exercise this principle of reciprocity, authorization issued by the general meeting in the 18 months before the bid is required. In practice, the general meetings of listed companies are not granting authorizations of this kind.

8. Competing bids

The current takeover bid regime brought in major changes with respect to competing bids, although they have not been implemented because of the scarcity of competing bids in recent years. Since the current regime took effect, there has only been one case of competing bids, REALIA (June 23, 2015), in which the procedure could not be put to the test because Hispania withdrew its initial bid when Inmobiliaria Carso launched its competing bid.

Competing takeover bids are those directed at the securities targeted by a previous takeover bid already submitted to the CNMV where the acceptance period has not yet ended and the requirements summarized below are fulfilled.

8.1. Time requirement

The competing bid may be launched at any time from the launch of the initial bid to five calendar days before the end of the acceptance period.

Mandatory competing bids (i.e., those that have to be launched on acquiring a controlling interest in a listed company against which a takeover bid has already been made) are not subject to this time limit and, therefore, may be launched up until the final day of the acceptance period. In any case, a mandatory competing takeover bid has to be launched immediately on acquiring a controlling interest, i.e., within the following five business days at the latest.

From the day following publication of the announcement of the competing takeover bid, the acceptance period of the initial bid is changed so that all the bids will end on the same day. If a second competing bid emerges, the acceptance period would be changed again, and so, hypothetically, it could remain open indefinitely.

8.2. Target requirement

The competing takeover bid has to be directed at securities already targeted, in whole or in part, by another takeover bid and has to seek to acquire at least the same number of securities as the last preceding bid. In any event, it has to better the preceding bid, either by raising the price or value of the consideration offered or by expanding the bid to a larger number of securities.

8.3. The right to act in concert

The offeror can join up with third parties to better its offer, as long as: (i) none of the parties participates in more than one bid, (ii) all parties assume joint and several liability for the amended takeover bid, and (iii) the change to the bid is set out in a prospectus supplement.

8.4. Break-up fee

The initial offeror may enter into an agreement with the target company whereby it will collect a commission (break-up fee) to cover the costs of having prepared the takeover bid if its bid is unsuccessful due to presentation of other competing bids. The amount of the fee cannot be greater than 1% of the total effective amount of the bid and needs to be approved by the target's board of directors and to obtain the favorable opinion of that company's financial advisors.



Since the current takeover bid regime took effect, only one break-up fee of this kind has been agreed to, for the benefit of Ole Investments in the takeover bid for DEOLEO (November 25, 14).

8.5. Option to accept more than one bid

In a process involving competing takeover bids, those with more or less stringent conditions and more or less attractive prices may coexist. Holders of securities of a target company that has received various competing bids are entitled to accept more than one bid at the same time, as long as they state their order of preference and notify the different offerors of their acceptances.

8.6. Sealed-bid auctions and the initial offeror's right to improve the bid

On the fifth business day after the deadline for submitting bids, all offerors that have not withdrawn their bids must submit a sealed envelope to the CNMV containing either their latest improved bid or their decision not to increase their bid. The CNMV will open the envelopes on the day of submission or on the next trading day and will notify the offerors and the marketplace of the conditions by publishing them on its website.

If it has not withdrawn its bid, the initial offeror is entitled to make a final improved bid provided it satisfies these two requirements:

- i. The bid it offered in the sealed envelope was not more than 2% less than the highest bid offered.
- ii. It improves the terms of the competing bid or bids either by raising the price or the value of the best consideration offered by at least 1%, or by expanding the initial bid to a number of securities at least 5% greater than the highest competing bid. Where the improvement does not involve simply raising the price or expanding the bid to a larger number of securities, an opinion by an independent expert attesting that the bid improves the last preceding bid must be submitted, unless the consideration initially offered was a securities exchange or swap, and the new one is a cash consideration for a larger amount.

9. Squeeze-outs / Sell-outs

Any party that has launched a takeover bid for all securities may, once the bid has been settled, compel shareholders who did not accept the bid to sell their holdings at an equitable price (squeeze-out) where, on the date of completion, the following **two thresholds** are attained:

- i. The offeror has acquired at least 90% of the company's voting rights.
- ii. The takeover bid has been accepted by at least 90% of the voting rights to which it was directed.

Conversely, shareholders who did not accept the bid may compel the offeror to purchase their holdings (sell-out) at an equitable price.

For the purposes of calculating this dual threshold:

- Where the takeover bid has been directed at the holders of securities that could potentially confer voting rights (e.g., convertible or exchangeable bonds), these will not be counted when calculating the dual threshold, although they will be targeted by the squeeze-out if the conditions for a squeeze-out are fulfilled.
- Unlike the case when calculating other thresholds (e.g., the threshold for the mandatory takeover bid exception by acquiring control through a voluntary takeover bid), the voting rights of shareholders who had entered into irrevocable agreements with the offeror before the bid was launched are not excluded from the count.

The **equitable price** for purposes of squeeze-out is the price paid as consideration in the takeover bid. In the case of an exchange offer, squeeze-out will be settled by exchanging the securities of the preceding bid.

The **deadline** for squeeze-out or sell-out is three months from the end of the acceptance period.

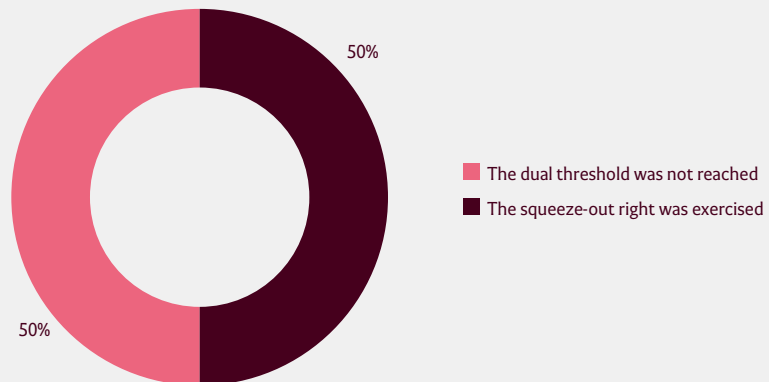
On June 18, 2008, the CNMV issued a reminder that the offeror must defray any **expenses** ensuing from squeeze-out.

The chart below shows that offerors who give notice of their intent to force a squeeze-out are successful only half the time. It also shows the types of offers where the offeror was and was not successful in pursuing this right, which is quite similar.

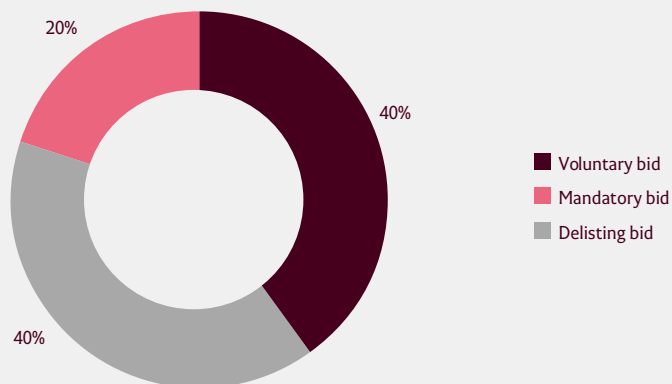


Chart 3. Outcome of exercising the right of squeeze-out

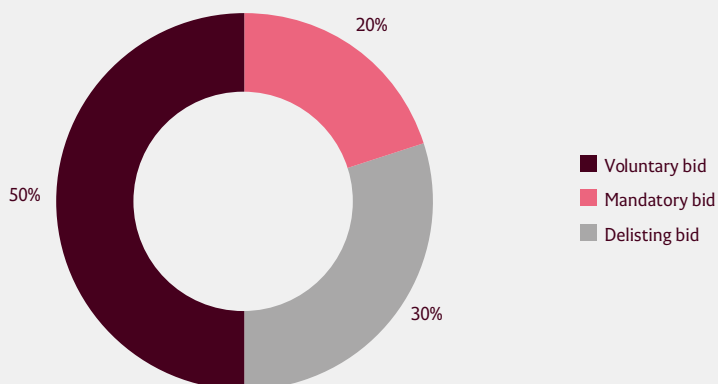
Outcome of exercising the squeeze-out



Types of bids in which the squeeze-out right was exercised



Types of bids in which the dual threshold was not reached



The following table lists cases in which an offeror stated its intention to force a squeeze-out if the requisite conditions were fulfilled.

Table 13. Exercise of squeeze-out rights

Target company	Offeror(s)	Date registered	Type of bid for all shares	Consideration	Percentage of shares at which the bid was directed	Squeeze-out	Dual threshold	
							% shareholders targeted ($\geq 90\%$)	% shares held by offeror ($\geq 90\%$)
Altadis	Imperial Tobacco	2007/11/07	Voluntary	Cash	100	√	95.81	95.81
Sogecable	Prisa	2008/03/26	Mandatory	Cash	49.6	√	96.07	97.71
Logista	Altadis	2008/04/16	Mandatory	Cash	40.4	√	92.37	96.92
Paternina	Inversora Mer	2009/12/09	Delisting	Cash	9	φ	85.36	98.69
Banco Guipuzcoano	Banco Sabadell	2010/10/14	Voluntary	Swap	100	√	97.10	97.10
CEPSA	IPIC	2011/07/06	Voluntary	Cash	53	√	97.22	98.53
Befesa	Proyectos de Inversiones Medioambientales	2011/07/06	Delisting	Cash	2.6	√	94.98	99.87
Banco Pastor	Banco Popular	2012/01/18	Voluntary	Swap	100	√	96.44	96.44
Vueling	Veloz Holdco	2013/02/27	Voluntary	Cash	54.15	φ	82.48	90.51
Corporación Dermoeestética	Pabellón Paladio	2013/05/09	Delisting	Cash	40.91	φ	79.83	91.75
CASSA	Agbar	2013/06/12	Voluntary	Cash	86.38	φ	74.20	77.71
Vueling	Veloz Holdco	2013/07/16	Delisting	Cash	9.49	φ	73.86	97.52
Campofrío	Sigma	2014/05/21	Mandatory	Cash	16.25	φ	80.93	96.90
Ahorro Familiar	Lindisfarme	2014/07/23	Delisting	Cash	29.274	φ	12.54 ^(*)	99.18
Deoleo	Ole Investments	2014/11/25	Voluntary	Cash	70.01	φ	25.85	48.09
Tavex	Ayuspe	2014/12/16	Delisting	Cash	49.518	√	93.25	96.66
Jazztel	Orange	2015/05/26	Voluntary	Cash	100	√	94.75	94.75
Realia	Inmobiliaria Carso	2015/06/23	Voluntary	Cash	75.05	φ	0.15	25.10
Testa	Merlin	2015/10/28	Mandatory	Cash	0.38	φ	81.24	99.93
Inverfiatc	Fiatc	2016/07/15	Delisting	Cash	18.13	√	94.80	99.06

√ Squeeze-out right exercised.

φ Offeror stated that it intended a squeeze-out but failed to reach the required thresholds.

^(*) The bid was accepted by 97.20% of targeted shareholders. However, according to the rules for calculating votes under article 5 of Royal Decree 1066/2007, 84.66% of the voting rights were ascribable to the offeror or to AXA Group and had to be excluded from the squeeze-out threshold calculation.



10. Delisting bids

10.1. Features of delisting bids

Companies that decide to remove their shares from trading on Official Spanish Secondary Markets have to launch a takeover bid to safeguard investors in view of the loss of liquidity that comes with delisting. The point is to allow shareholders to sell their shares at a supervised price before they are delisted and lose their liquidity.

A delisting bid may be launched by the company itself or by a third party (usually the majority shareholder) with the approval of the target's general meeting.

The whole takeover bid price must be paid in cash, and the amount will be supervised by the CNMV and has to be at least equal to (i) the equitable price calculated according to the rules for mandatory takeover bids ([see section 4.1](#)), or (ii) the price obtained by applying the valuation methods specified in article 10 of Royal Decree 1066/2007, whichever is greater.

Corporate transactions, where the shareholders of a listed company may be made members of an unlisted company, in whole or in part, are considered to be similar to a delisting, unless the shares of the unlisted company are admitted to trading within three months of registration of the corporate transaction in question.

This was what happened in the delisting of IBERIA (January 17, 2011), in which no takeover bid ensued, as the shareholders in Iberia became shareholders in IAG (a Public Limited Company traded on Spanish Stock Exchanges and on the London Stock Exchange).

The table below lists the delisting bids launched since the current takeover bids regime took effect (August 13, 2007) until February 28, 2017.

Table 14. Delisting bids

Target company	Offeror(s)	Date registered	Percentage share capital actually targeted	Resulting % equity	Squeeze-out
Estabanell y Pahisa	Estabanell y Pahisa	2008/04/30	20.9	17.2	
Aguas de Valencia	Aguas de Valencia	2009/04/22	39.3	4	
Federico Paternina	Inversora Mer	2009/12/09	9	7.6	φ
Agbar	Agbar	2010/05/06	10	9.1	
Mecalux	Mecalux	2010/06/14	7.4	7	
Befesa	Proyectos de Inversiones Medioambientales	2011/07/06	2.6	2.5	√

Target company	Offeror(s)	Date registered	Percentage share capital actually targeted	Resulting % equity	Squeeze-out
Rústicas	Inversiones Mobiliarias de Desarrollo	2011/12/18	1.4	0.8	
Metrovacesa	BBVA, Santander, Popular, and Sabadell	2013/04/18	4.41	4.29	
Corporación Dermoestética	Pabellón Paladio	2013/05/09	40.91	32.66	ϕ
Vueling	Veloz Holdco	2013/07/16	9.49	7.01	ϕ
Inmolevante	Inmolevante	2014/04/10	5.44	3.72	
CASSA	CASSA	2014/06/23	2.26	0.46	
Ahorro Familiar	Lindisfarme	2014/07/23	29.274	28.45	ϕ
Tavex	AYUSPE	2014/12/16	49.518	46.18	√
Damm	Damm	2015/03/11	32.88	13.05	
CVNE	CVNE	2015/10/28	17.18	8.60	
CLH	CLH	2015/11/12	0.85	0.61	
Inverfiatc	Fiatc	2016/07/15	18.13	17.19	√
Cementos Portland	FCC	2016/12/22	20.58	18.07	ϕ

√ Squeeze-out right exercised

ϕ Offeror stated that it intended a squeeze-out but failed to reach the required thresholds.

10.2. Exceptions to delisting bids

The regulations provide for cases in which no delisting bid for a company is required. The most noteworthy are the following:

- **Squeeze-out.** Where the conditions for squeeze-out are fulfilled ([see section 9](#)).
- **Intermediate procedure.** After a takeover bid is launched for all securities, a standing purchase order is issued at the same price as the takeover bid for at least one month in the six-month period following conclusion of the bid.

The table shown below sets out the cases where companies have been delisted following a standing purchase order.

Table 15. Instances of delisting using the intermediate procedure (article 11(d) of Royal Decree 1066/2007)

Date	Delisted company	Previous takeover bid for all shares
2009/07/23	Itinere	Voluntary (2009/06/03)
2014/07/24	Campofrio	Mandatory (2014/05/21)



- **Equivalent procedure.** A delisting procedure that, in the CNMV's view, provides the holders of the targeted securities protection equivalent to that of a takeover bid. The CNMV has authorized this exception for companies with a very small free float, the general meetings of which approved a standing purchase order at a price established on the basis of the valuation methods established in article 10 of Royal Decree 1066/2007.

Table 16. Instances of delisting using an equivalent procedure (article 11(e) of Royal Decree 1066/2007)

Date	Delisted company	% shares affected by the standing purchase order
2007/09/19	Promobanc	0.18
2010/08/05	Exide Technologies	1.58
2012/02/29	CELO	1.48

11. Takeover bids in antitrust, corporate governance, transparency, and market abuse legislation

11.1. Antitrust law

Takeovers often lead to concentrations between businesses that may reach the notification thresholds from the standpoint of antitrust law, either domestically or at EU level. Moreover, depending on the sector in which the companies operate, a takeover bid may also require authorization, or at least no active opposition, from an industry regulatory body.

The main difference between antitrust supervision and other administrative control bodies is that the former takes place in parallel without interfering with the normal progress of a takeover bid—although it prevents acquisition of control until there is an anti-trust authorization—whereas the latter will stop the takeover process in its tracks, preventing the CNMV from authorizing the bid until the corresponding authorization, non-opposition, or tacit administrative approval can be verified.

Depending on the size of the transaction, the offeror will have to provide evidence to the CNMV of the notice submitted to the Spanish National Markets and Competition Commission or the European Commission, as the case may be. This will determine the application of the procedures and requirements established in the Spanish Antitrust Act or in Regulation (EC) No. 139/2004, and their corresponding implementing provisions.

In relation to the exercise of the voting right it must be taken into account that:

- In mandatory offers, takeover bid regulations set out the suspension of the political rights of the shares that exceed the 30% threshold until a resolution of the competition authorities is issued.
- Anti-trust regulations indicate that the prohibition from not executing an economic concentration until the competition authorization has been issued and is enforceable will not

prevent the implementation of a takeover bid provided that: (i) the concentration is duly and timely notified, and (ii) the offeror “*does not exercise the voting rights attached to the securities in question or does so only to maintain the full value of its investment based on a derogation exemption granted*” by the competition authority. For these purposes, it is important to remember that the concept of “control” under anti-trust law (“*the possibility of exercising a decisive influence over the company*”) does not necessarily coincide with that of the law on takeover bids ([see section 3.1](#)).

The offeror may make the bid (whether mandatory or voluntary) conditional on obtaining the required authorizations from the antitrust authorities before the end of the acceptance period, so that if, during that time:

- i. the concentration is not opposed, the bid will take effect;
- ii. the transaction is ruled unlawful, the offeror will have to withdraw its bid;
- iii. the concentration is made contingent on fulfillment of any conditions, the offeror can withdraw its bid; and
- iv. no express or tacit decision is issued by the authorities, the offeror can withdraw its bid.

In the case of a mandatory takeover bid, if the offeror walks away from its bid, it must sell its holdings in excess of the control threshold or dissolve any agreement enabling it to attain the control threshold. These steps must be taken within three months.

11.2. Corporate governance

Anti-takeover defenses

The Good Governance Code recommends not including anti-takeover measures in the bylaws of listed companies. Despite this recommendation, the Spanish Companies Act allows a listed company to include a voting cap in its bylaws to restrict the number of votes that may be cast by any single shareholder, by companies belonging to the same group, or by parties acting in concert with either of them. However, any voting cap in the bylaws will automatically cease to have effect if, on making a takeover bid, the offeror acquires at least 70% of the votes of the listed company, unless the offeror is neither bound by equivalent neutralization measures nor has it put any in place (principle of reciprocity).

In addition to a voting cap, a listed company can also take other measures to deter takeover bids. The table below sets out some of the most common measures of this type:

Table 17. Anti-takeover defenses

Structure of share capital

Non-voting shares, multiple-vote shares, shareholder agreements, voting caps on the number of votes per shareholder in the bylaws, issues of convertible bonds or warrants.



Constraints on board appointments

Provisions in the bylaws that restrict the appointment of new board members.

Employee and director-related measures

Stock options and golden parachutes.

Agreements

Change of control clauses in relevant agreements (financial, technical or commercial)

Other anti-takeover measures laid down in the bylaws

Barriers to merger approval

General meeting approval for the acquisition of essential assets

When designing the transaction, the offeror should bear in mind that the acquisition, sale, or contribution of essential assets to another company requires the approval of the general meeting. To this effect, an asset is presumed to be essential in nature where the amount of the transaction exceeds 25% of the value of the assets on the latest balance sheet approved.

11.3. Transparency

There is a **special significant stake disclosure rule** that applies to takeover bids that, from the time a bid is announced until it is completed or withdrawn, requires disclosure of:

- acquisition of any securities that carry 1% or more of the voting rights; and
- any changes in the percentage of voting rights of any shareholders who already held a 3% stake.

11.4. Market abuse

- **Disclosure of inside information by the offeror.** Disclosure of inside information to the holders of securities of the target company by any party that intends to launch a takeover bid must conform to the new regulations on “market soundings,” namely: (i) the information must be necessary to enable the holders to decide whether they are willing to sell their holdings, and (ii) the holders’ willingness to sell their holdings must be reasonably necessary to be able to take a decision as to whether to launch the takeover bid.
- **Gathering of inside information by the offeror.** Any party that obtains inside information on the occasion of a takeover bid and uses it only for the purpose of launching the bid will be acting lawfully if all the information has been made public or has ceased to be inside information by the time the holders of securities of the target company have to accept the bid.

BRIEF DESCRIPTION OF THE TAKEOVER BID PROCEDURE

This section briefly explains the main milestones in the procedure for launching a mandatory or voluntary takeover bid, without going into a comprehensive examination of the details. **Attachments I and II** contain standard timetables for a mandatory and for a voluntary takeover bid conditional on a minimum number of acceptances.

1. Design of the takeover bid strategy

The takeover bid strategy should be designed considering the circumstances of the target company and the nature of the offeror. The following, among others, should be taken into account when deciding, for instance, whether to launch a mandatory or voluntary takeover bid, whether to make the bid conditional, or whether squeeze-out would be a viable option:

Table 18. Aspects to keep in mind when designing a takeover bid strategy

Target company	<ul style="list-style-type: none"> What is its shareholder structure? Does it do business in a regulated sector? Are there potential competing bidders? Does it hold any treasury stock? Are there any major shareholders who might be interested in entering into an agreement before the bid is launched? Will it be feasible to reach an agreement with the target's board of directors? Have any anti-takeover defenses been disclosed? For instance, voting caps, change of control clauses or golden parachutes?
Offeror	<ul style="list-style-type: none"> Does it hold shares in the target company? Is it a competitor? Is it a foreign company? Is it interested in conducting due diligence beforehand? Does it have access to the target's board of directors? Is it interested in a squeeze-out? Does acquisition of shares in the target company have to be approved by the general meeting?
Consideration	<ul style="list-style-type: none"> Cash, securities or a combination of the two? Is the bidder prepared to offer an equitable price?
Structure of the operation	<ul style="list-style-type: none"> Can due diligence be carried out beforehand? How is the bid being financed? Will the target company continue to be listed? Is a competing bid likely to be launched? Is authorization from antitrust authorities or other administrative authorities required? What is the time frame for the transaction? What percentage of voting rights is being sought?

The offeror will often perform due diligence before launching the takeover bid, and, in that case, it will be important to take market abuse regulations into account.



2. Announcing the takeover bid

2.1. Mandatory takeover bids

A party that gains control of a listed company must notify the marketplace immediately. The notice should state whether:

- a mandatory takeover bid will be launched;
- a waiver from the CNMV will be sought based on the nature of the transaction ([see section 4.2 in “Overview of the takeover bid regime in Spain”](#)); and
- the stake will be decreased to below the control threshold.

2.2. Voluntary takeover bids

In the case of a voluntary takeover bid, the offeror must notify the marketplace of its intention to launch the bid as soon as it has taken a decision and has made sure that it can put up the consideration.

3. Submitting the takeover bid

3.1. Mandatory takeover bids

The deadline for submitting the bid varies according to the type of bid:

- Mandatory takeover bids (direct control): one month after gaining control.
- Mandatory takeover bids (indirect or consequential control): three months after gaining control.

3.2. Voluntary takeover bids

Voluntary bids are to be submitted within one month of the announcement of the bid.

4. Documents related to a takeover bid

Initially, the offeror should submit to the CNMV (i) the request for authorization, (ii) documents attesting to the decision to make the bid, and (iii) the takeover bid prospectus.

Within the next seven business days, the offeror has to submit the rest of the bid documents (the “Supplementary Documents”), including those attesting to any guarantees securing payment of the consideration in its entirety.

5. Consideration

Takeover regulations contain two key principles in respect of the bid consideration:

- Principle of equal treatment. The offeror must treat equally all holders of securities who are in the same circumstances.
- Principle of freedom of choice. The offeror may choose whether to make the bid as a purchase (cash offer), an exchange (swap offer) or the two together (mixed offer). Exceptionally, the offeror will have to offer an alternative cash consideration where:
 - i. the takeover bid is mandatory;
 - ii. the consideration consists of “illiquid securities,” i.e., securities that are not traded on a regulated market in the EU, or securities that will not be admitted to trading on a regulated market in the EU within three months of publication of the result of the takeover bid; or
 - iii. the offeror or parties acting in concert with the offeror have acquired at least 5% of the target company’s voting rights in the 12 months before the announcement of the takeover bid, paying cash to do so.

Mandatory takeover bids must offer an equitable price, whereas most voluntary bids can set the price freely ([see section 5.1 in section “Overview of the takeover bid regime in Spain”](#)).

6. Guarantees

The type of guarantee will depend on the type of consideration offered.

6.1. Cash offers

For cash offers, a guarantee from a credit institution or documents attesting to cash deposits with a credit institution for the total amount of the bid must be submitted. The possibility of establishing a cash deposit as an alternative to a guarantee was one of the changes brought in by the 2007 reform and has been used mostly in delisting bids, in which the securities targeted by the bid in most cases account for a small percentage of the share capital.

6.2. Exchange or mixed offers

Where the consideration consists of already issued securities, the availability of the securities and their allocation to a successful bid must be proven by submitting a certificate of deposit issued by Iberclear.

In the case of securities to be issued by the offeror, the directors will be required to act in a way that *“is not inconsistent with the decision to launch the bid.”* If the CNMV observes *“insufficient earnestness,”* it may require additional guarantees.



7. Authorization of the takeover bid

The initial period for authorizing a takeover bid is 20 business days from receipt of the written application or of the Supplementary Documents if submitted at a later date. This initial authorization period may be extended if the CNMV requires further documents, in which case the period will start from receipt of those documents.

Estimating the period required to authorize a bid is complicated in practice, but it usually takes approximately 8 weeks. The charts below plot the authorization periods for offers broken down by type. The authorization periods for some of these offers were lengthy because the bid was revised while being processed, the offeror submitted Supplementary Documents, or disputes arose, resulting in challenges to shareholder agreements.

Chart 4. Authorization periods for mandatory takeover bids

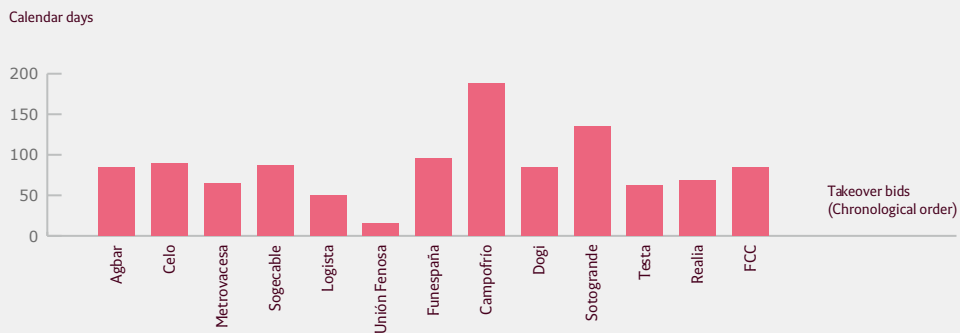


Chart 5. Authorization periods for voluntary takeover bids

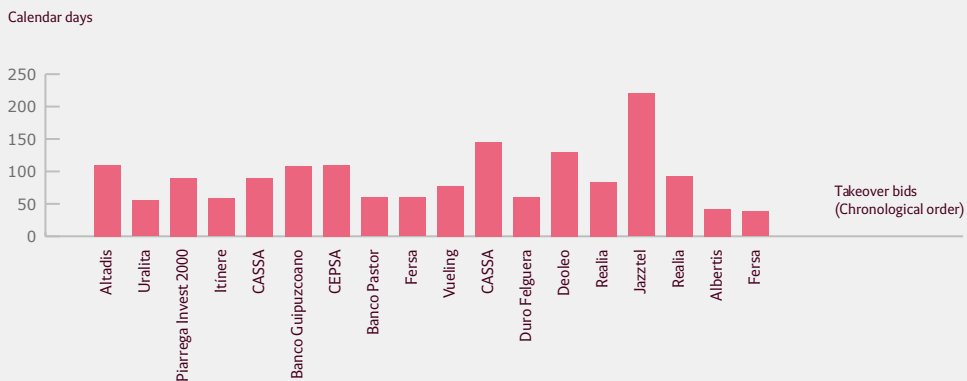


Chart 6. Authorization periods for delisting bids

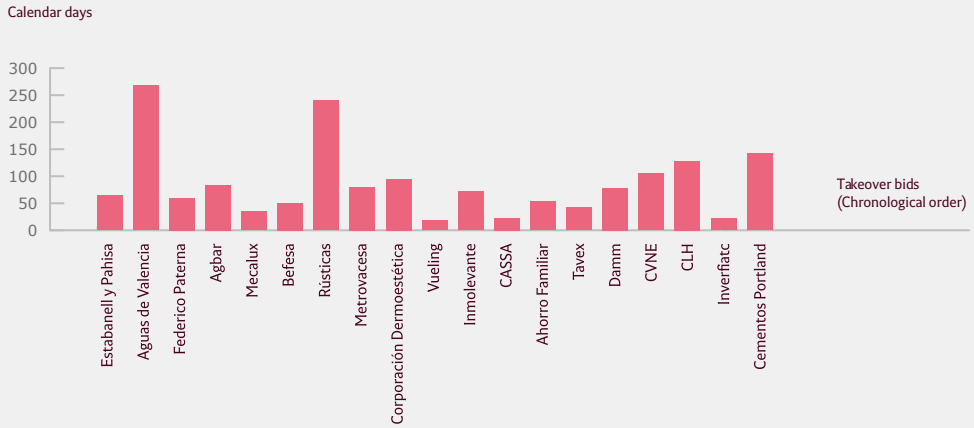
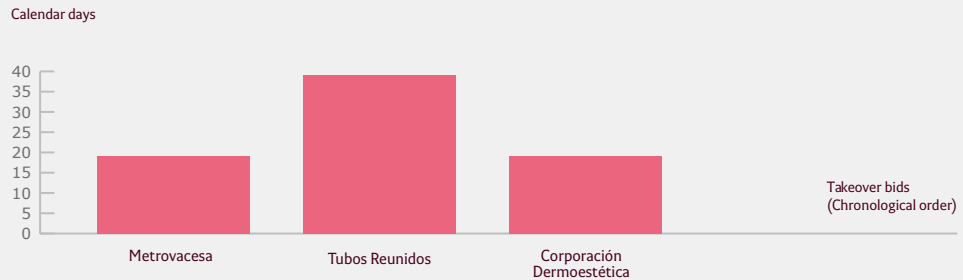


Chart 7. Authorization periods for bids for capital reduction



8. Bid acceptance period

The offeror may set an acceptance period for the bid lasting between 15 and 70 calendar days. The initial acceptance period can be extended, provided that the CNMV is given notice and that the maximum limit of 70 days is not exceeded.

The CNMV can extend the acceptance period either where a prospectus supplement is published, and the information it contains warrants extension, or in any other case in which it considers extension to be warranted.



9. Report by the target company's governing body

The governing body must draw up a detailed reasoned report on the bid enabling the shareholders to take an informed decision on it, to be released within 10 calendar days of the start of the acceptance period.

In practice, the target's board of directors ordinarily orders a fairness opinion in support of the views set out in its report.

10. Amending the takeover bid

The offeror can change the terms of the bid at any time before the final five calendar days of the acceptance period, as long as doing so favors the recipients and the principle of equal treatment is observed.

The table shown below lists cases in which a bid was changed and the reason for the change.

Table 19. Amendments to takeover bids

Company	Date of the change	Reason
Uralita	2007/10/23	The consideration was increased and conditions were removed.
Agbar	2017/04/10	A voluntary takeover bid was converted to a mandatory takeover bid.
Vueling	2013/04/04	The consideration was increased and the minimum number of acceptances decreased.
Campofrío	2014/01/02	An arrangement with a third party was made.
Deoleo	2014/12/12	The consideration was increased and the minimum acceptances condition was removed.

11. Withdrawal and termination of the effects of the takeover bid

The offeror can withdraw a takeover bid in the following circumstances:

- The bid cannot be completed or becomes patently unfeasible for reasons beyond the offeror's control, provided the CNMV gives its consent.
- The antitrust authorities do not issue any express or tacit decision or approve the transaction subject to conditions, before the acceptance period has expired. The offeror must withdraw the bid if the transaction is not approved by the competent authorities.
- A competing bid is authorized. To be able to withdraw a mandatory takeover bid, a competing bid that is not conditional or that improves the terms of the mandatory bid has to be in place on conclusion of the competing bid stage of the procedure.
- The general meeting of the target company approves a frustrating action against the bid that, in the offeror's judgment, prevents it from going through with its bid. This rule also applies

in cases where the governing body is not subject to the duty of passivity under the principle of reciprocity. In these cases the offeror can reduce the consideration offered instead of withdrawing the bid.

There has only been one instance in which a bid has been withdrawn since the current takeover bid regime took effect. After a competing bid was launched, HISPANIA gave notice on July 23, 2015, that it was withdrawing the voluntary bid it had launched to take over REALIA.

A bid ceases to have effect when the following conditions are not met:

- The minimum acceptances condition, unless the offeror waives the condition and acquires those securities that have accepted its bid.

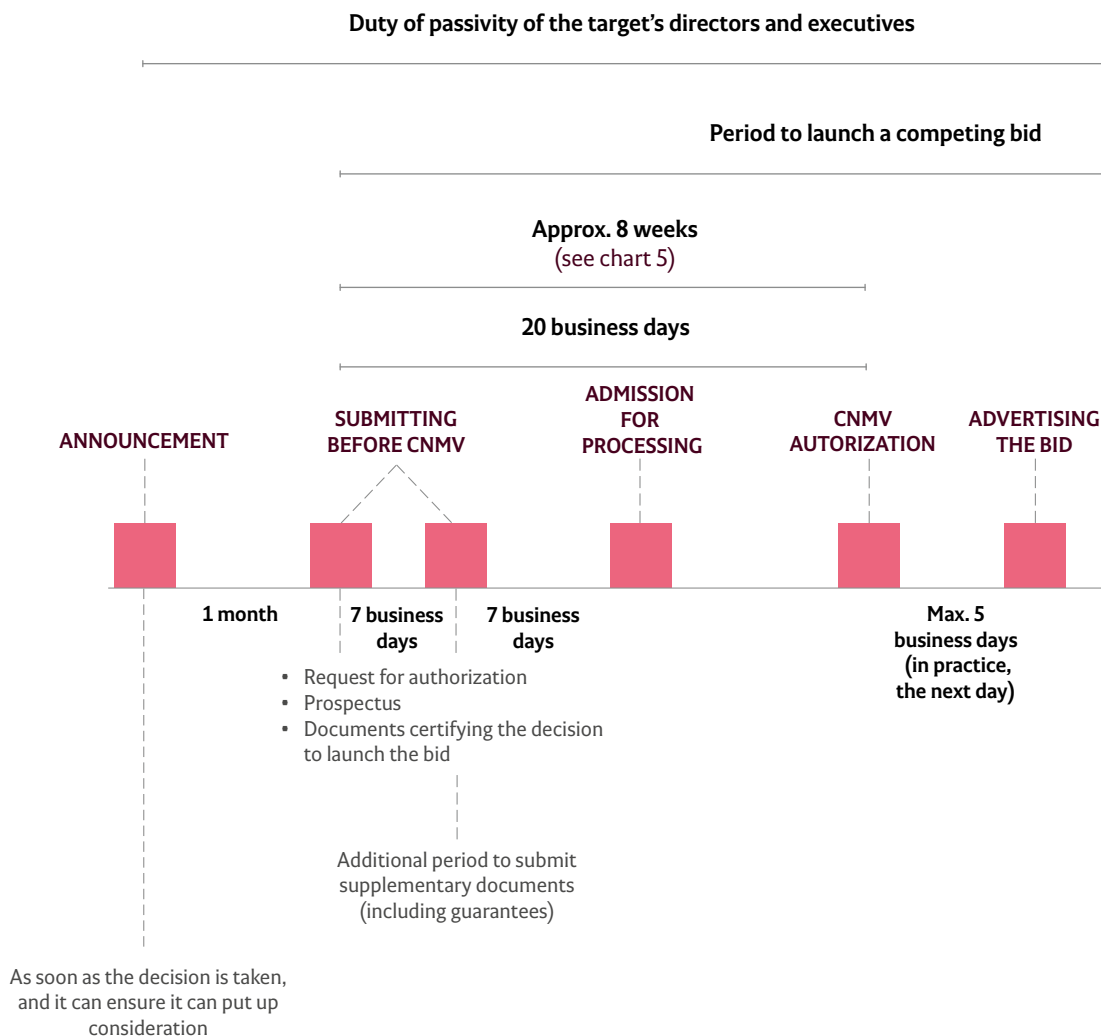
Since the current takeover bid regime took effect, there have been two cases in which the minimum number of acceptances on which a bid had been made conditional was not attained. In a takeover bid for FERSA (July 10, 2012), GREENTECH made the bid conditional on a minimum level of acceptance of more than 50% so that it would be able to benefit from the mandatory takeover bid exception after acquiring a controlling interest through a voluntary bid ([see section 4.2 in “Overview of the takeover bid regime in Spain”](#)). The percentage of acceptances came to 41.81%, and GREENTECH decided not to waive the condition, and the takeover bid ceased to have effect. Because it had not offered an equitable price, if GREENTECH had waived the condition, it would have had to launch a new mandatory takeover bid, since it had exceeded the 30% control threshold.

In contrast, AGBAR’s voluntary takeover bid for CASSA’s shares (October 14, 2010), which effectively controlled 89% of the voting rights, was accepted by only 2.1% of the share capital, and AGBAR decided to waive the minimum acceptances condition.

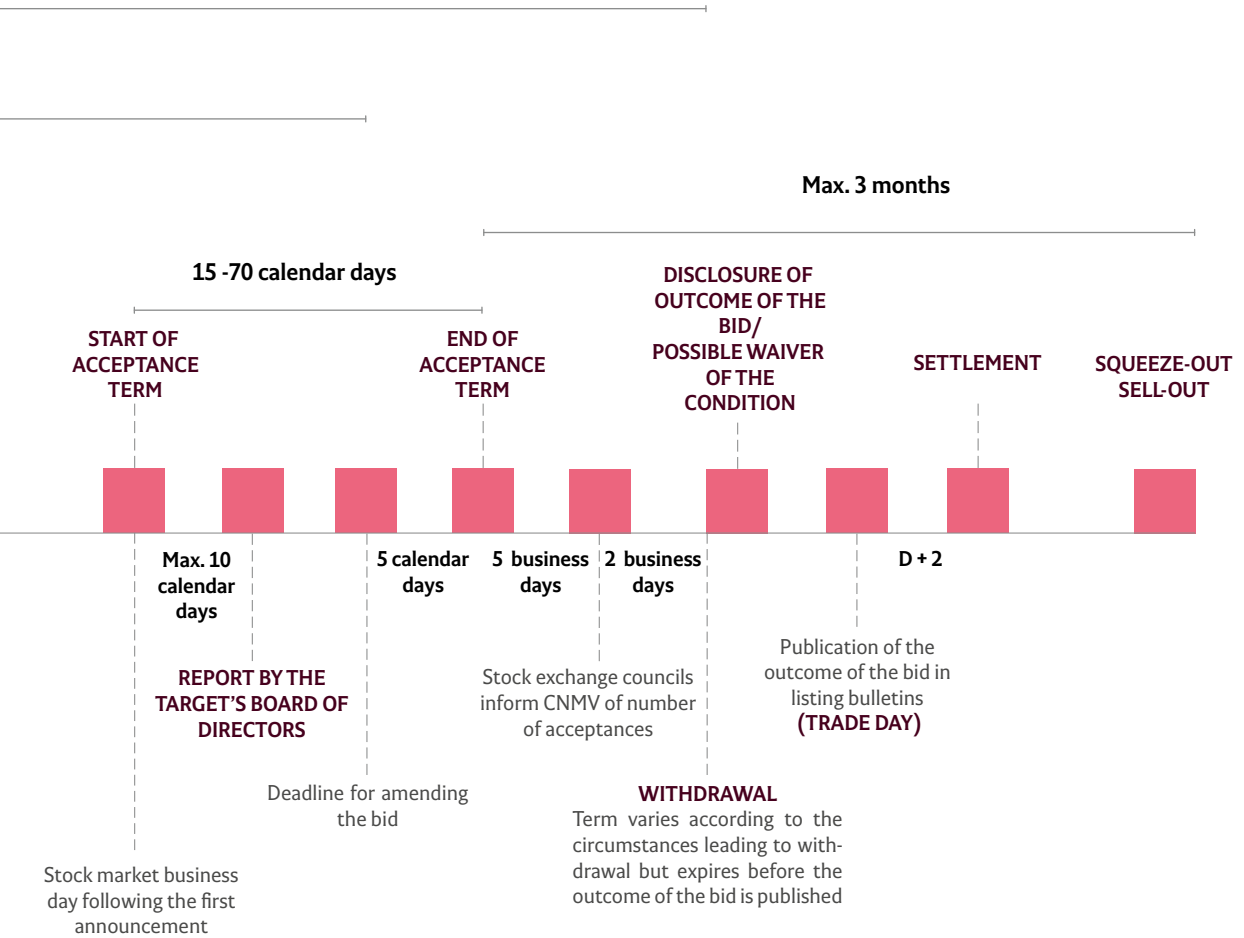
- Other conditions, unless fulfillment was waived by the offeror no later than the day before the end of the acceptance period. Unless stated otherwise, those who accepted the initial bid are then deemed to accept the unconditional bid.



Attachment I. Standard timetable for a conditional voluntary takeover bid (*)

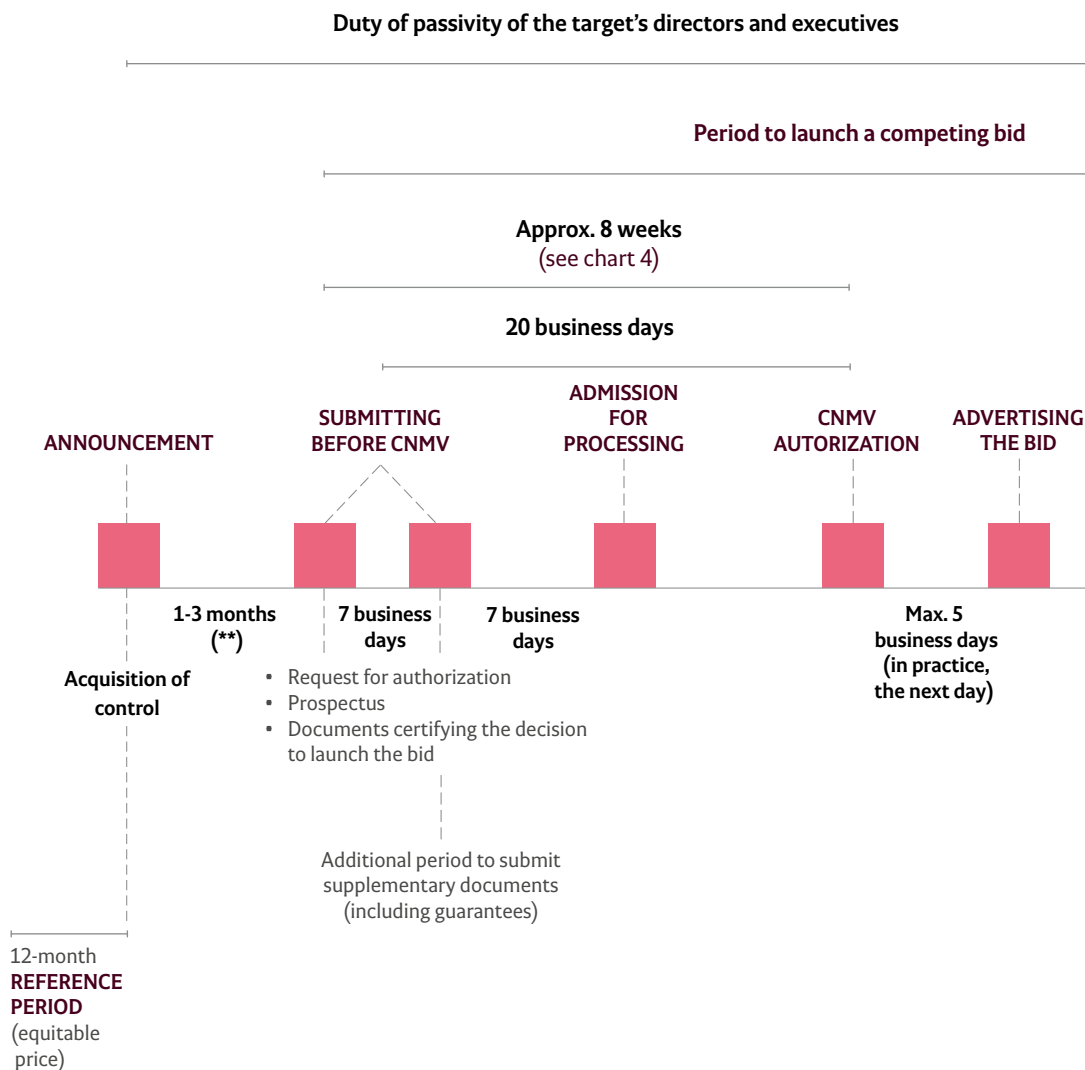


(*) Timetable for guidance purposes only. Cash offer conditional on reaching a minimum number of acceptances.



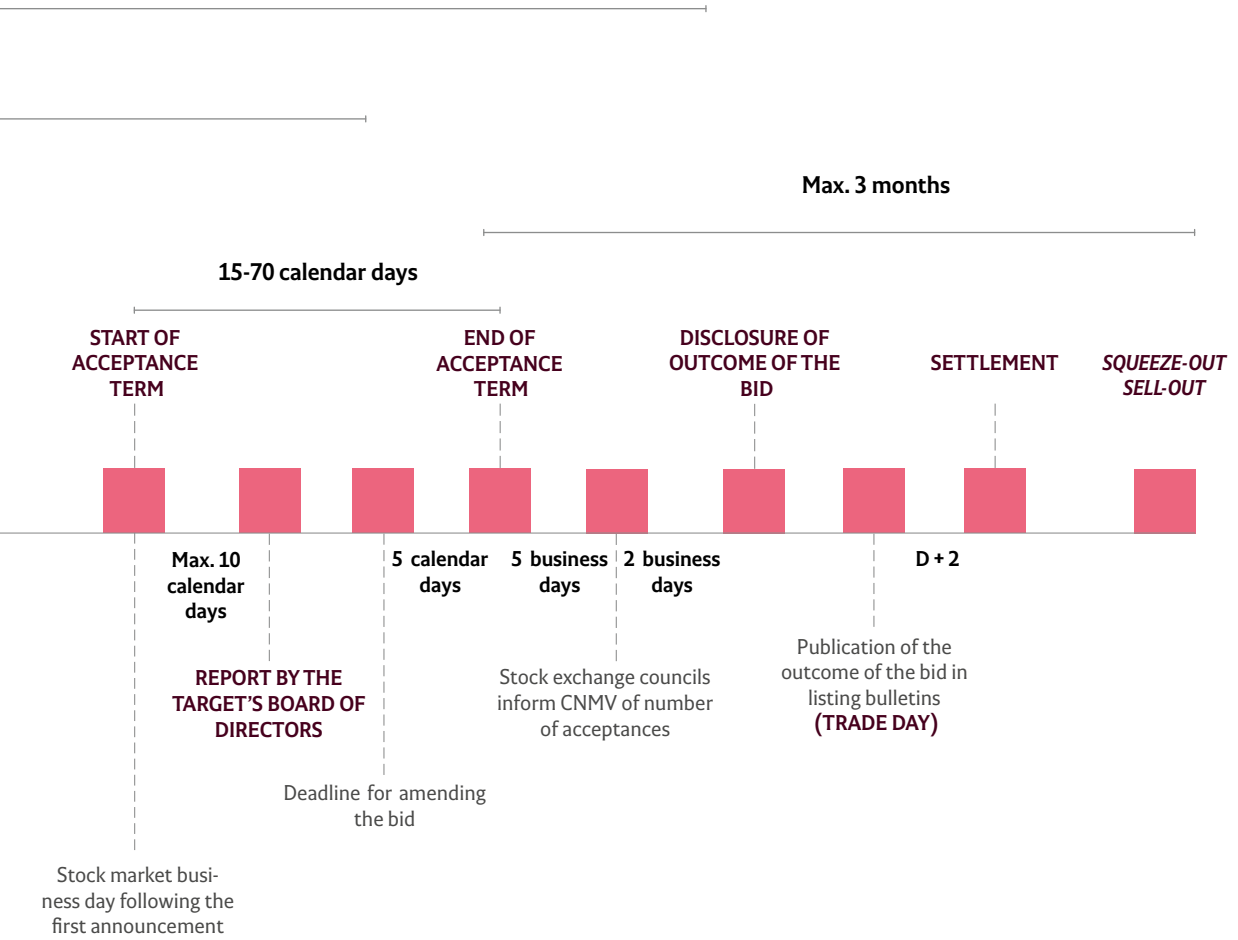


Attachment II. Standard timetable for a mandatory takeover bid (*)



(*) Timetable for guidance purposes only. Cash offer, no competing bids, not conditional on obtaining authorization from the antitrust authorities or other supervisory bodies.

(**) One month after gaining direct control and three months after gaining indirect or consequential control.





Attachment III. Legislation and regulations dealing with takeover bids

Basic Regulation	59
Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids	59
Royal Legislative Decree 4/2015, of October 23, approving the consolidated text of the Securities Market Act	79
Royal Decree 1066/2007, of July 27, on the regime for takeover bids for securities	98
CNMV Circular 8/2008, of December 10, approving the formats to which takeover bid notices and applications must conform	151
<hr/>	
Other relevant Regulation	157
Market abuse: Articles 9(4) and 11(2) of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014	157
Acquisition of “key assets”: Article 160 (f) of Royal Decree-Law 1/2010, of July 2, 2010, approving the consolidated text of the Spanish Companies Act	159
Anti-takeover defenses: Royal Decree-Law 1/2010, of April 16, 2010, and Code of Good Governance for Listed Companies, of February 18, 2015	160
Collection of fees in the exercise of squeeze-out: CNMV notice of June 18, 2008, on the collection of fees associated with squeeze-out transactions	161
Antitrust: Article 7 of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings and article 9 of Act 15/2007, of July 3, 2007, on the protection of competition	162
Disclosure of major holdings: Article 30(6) of Royal Decree 1362/2007, of October 19, 2007	164
Shareholders cooperation: ESMA Public Statement (ESMA/2014/677) on shareholder cooperation and acting in concert under Directive 2004/25/EC	165
Exceptions to the obligation to launch a takeover bid during bank restructuring: Royal Decree-Law 2/2011 and Royal Decree-Law 24/2012	171

Basic Regulation

Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids

(Text with EEA relevance)

The European Parliament and the Council of the European Union,

Having regard to the Treaty establishing the European Community, and in particular Article 44(1) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee,

Acting in accordance with the procedure laid down in Article 251 of the Treaty,

Whereas:

- (1) In accordance with Article 44(2)(g) of the Treaty, it is necessary to coordinate certain safeguards which, for the protection of the interests of members and others, Member States require of companies governed by the law of a Member State the securities of which are admitted to trading on a regulated market in a Member State, with a view to making such safeguards equivalent throughout the Community.
- (2) It is necessary to protect the interests of holders of the securities of companies governed by the law of a Member State when those companies are the subject of takeover bids or of changes of control and at least some of their securities are admitted to trading on a regulated market in a Member State.
- (3) It is necessary to create Community-wide clarity and transparency in respect of legal issues to be settled in the event of takeover bids and to prevent patterns of corporate restructuring within the Community from being distorted by arbitrary differences in governance and management cultures.
- (4) In view of the public-interest purposes served by the central banks of the Member States, it seems inconceivable that they should be the targets of takeover bids. Since, for historical reasons, the securities of some of those central banks are listed on regulated markets in Member States, it is necessary to exclude them explicitly from the scope of this Directive.
- (5) Each Member State should designate an authority or authorities to supervise those aspects of bids that are governed by this Directive and to ensure that parties to takeover bids comply with the rules made pursuant to this Directive. All those authorities should cooperate with one another.



- (6) In order to be effective, takeover regulation should be flexible and capable of dealing with new circumstances as they arise and should accordingly provide for the possibility of exceptions and derogations. However, in applying any rules or exceptions laid down or in granting any derogations, supervisory authorities should respect certain general principles.
- (7) Self-regulatory bodies should be able to exercise supervision.
- (8) In accordance with general principles of Community law, and in particular the right to a fair hearing, decisions of a supervisory authority should in appropriate circumstances be susceptible to review by an independent court or tribunal. However, Member States should be left to determine whether rights are to be made available which may be asserted in administrative or judicial proceedings, either in proceedings against a supervisory authority or in proceedings between parties to a bid.
- (9) Member States should take the necessary steps to protect the holders of securities, in particular those with minority holdings, when control of their companies has been acquired. The Member States should ensure such protection by obliging the person who has acquired control of a company to make an offer to all the holders of that company's securities for all of their holdings at an equitable price in accordance with a common definition. Member States should be free to establish further instruments for the protection of the interests of the holders of securities, such as the obligation to make a partial bid where the offeror does not acquire control of the company or the obligation to announce a bid at the same time as control of the company is acquired.
- (10) The obligation to make a bid to all the holders of securities should not apply to those controlling holdings already in existence on the date on which the national legislation transposing this Directive enters into force.
- (11) The obligation to launch a bid should not apply in the case of the acquisition of securities which do not carry the right to vote at ordinary general meetings of shareholders. Member States should, however, be able to provide that the obligation to make a bid to all the holders of securities relates not only to securities carrying voting rights but also to securities which carry voting rights only in specific circumstances or which do not carry voting rights.
- (12) To reduce the scope for insider dealing, an offeror should be required to announce his/her decision to launch a bid as soon as possible and to inform the supervisory authority of the bid.
- (13) The holders of securities should be properly informed of the terms of a bid by means of an offer document. Appropriate information should also be given to the representatives of the company's employees or, failing that, to the employees directly.
- (14) The time allowed for the acceptance of a bid should be regulated.
- (15) To be able to perform their functions satisfactorily, supervisory authorities should at all times be able to require the parties to a bid to provide information concerning themselves and should cooperate and supply information in an efficient and effective manner, without delay, to other authorities supervising capital markets.

- (16) In order to prevent operations which could frustrate a bid, the powers of the board of a target company to engage in operations of an exceptional nature should be limited, without unduly hindering the target company in carrying on its normal business activities.
- (17) The board of a target company should be required to make public a document setting out its opinion of the bid and the reasons on which that opinion is based, including its views on the effects of implementation on all the company's interests, and specifically on employment.
- (18) In order to reinforce the effectiveness of existing provisions concerning the freedom to deal in the securities of companies covered by this Directive and the freedom to exercise voting rights, it is essential that the defensive structures and mechanisms envisaged by such companies be transparent and that they be regularly presented in reports to general meetings of shareholders.
- (19) Member States should take the necessary measures to afford any offeror the possibility of acquiring majority interests in other companies and of fully exercising control of them. To that end, restrictions on the transfer of securities, restrictions on voting rights, extraordinary appointment rights and multiple voting rights should be removed or suspended during the time allowed for the acceptance of a bid and when the general meeting of shareholders decides on defensive measures, on amendments to the articles of association or on the removal or appointment of board members at the first general meeting of shareholders following closure of the bid. Where the holders of securities have suffered losses as a result of the removal of rights, equitable compensation should be provided for in accordance with the technical arrangements laid down by Member States.
- (20) All special rights held by Member States in companies should be viewed in the framework of the free movement of capital and the relevant provisions of the Treaty. Special rights held by Member States in companies which are provided for in private or public national law should be exempted from the 'breakthrough' rule if they are compatible with the Treaty.
- (21) Taking into account existing differences in Member States' company law mechanisms and structures, Member States should be allowed not to require companies established within their territories to apply the provisions of this Directive limiting the powers of the board of a target company during the time allowed for the acceptance of a bid and those rendering ineffective barriers, provided for in the articles of association or in specific agreements. In that event Member States should at least allow companies established within their territories to make the choice, which must be reversible, to apply those provisions. Without prejudice to international agreements to which the European Community is a party, Member States should be allowed not to require companies which apply those provisions in accordance with the optional arrangements to apply them when they become the subject of offers launched by companies which do not apply the same provisions, as a consequence of the use of those optional arrangements.
- (22) Member States should lay down rules to cover the possibility of a bid's lapsing, the offeror's right to revise his/her bid, the possibility of competing bids for a company's securities, the disclosure of the result of a bid, the irrevocability of a bid and the conditions permitted.



- (23) The disclosure of information to and the consultation of representatives of the employees of the offeror and the target company should be governed by the relevant national provisions, in particular those adopted pursuant to Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees, Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies, Council Directive 2001/86/EC of 8 October 2001 supplementing the statute for a European Company with regard to the involvement of employees and Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community — Joint declaration of the European Parliament, the Council and the Commission on employee representation. The employees of the companies concerned, or their representatives, should nevertheless be given an opportunity to state their views on the foreseeable effects of the bid on employment. Without prejudice to the rules of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse), Member States may always apply or introduce national provisions concerning the disclosure of information to and the consultation of representatives of the employees of the offeror before an offer is launched.
- (24) Member States should take the necessary measures to enable an offeror who, following a takeover bid, has acquired a certain percentage of a company's capital carrying voting rights to require the holders of the remaining securities to sell him/her their securities. Likewise, where, following a takeover bid, an offeror has acquired a certain percentage of a company's capital carrying voting rights, the holders of the remaining securities should be able to require him/her to buy their securities. These squeeze-out and sell-out procedures should apply only under specific conditions linked to takeover bids. Member States may continue to apply national rules to squeeze-out and sell-out procedures in other circumstances.
- (25) Since the objectives of the action envisaged, namely to establish minimum guidelines for the conduct of takeover bids and ensure an adequate level of protection for holders of securities throughout the Community, cannot be sufficiently achieved by the Member States because of the need for transparency and legal certainty in the case of crossborder takeovers and acquisitions of control, and can therefore, by reason of the scale and effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary to achieve those objectives.
- (26) The adoption of a Directive is the appropriate procedure for the establishment of a framework consisting of certain common principles and a limited number of general requirements which Member States are to implement through more detailed rules in accordance with their national systems and their cultural contexts.
- (27) Member States should, however, provide for sanctions for any infringement of the national measures transposing this Directive.

- (28) Technical guidance and implementing measures for the rules laid down in this Directive may from time to time be necessary, to take account of new developments on financial markets. For certain provisions, the Commission should accordingly be empowered to adopt implementing measures, provided that these do not modify the essential elements of this Directive and the Commission acts in accordance with the principles set out in this Directive, after consulting the European Securities Committee established by Commission Decision 2001/528/EC. The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission and with due regard to the declaration made by the Commission in the European Parliament on 5 February 2002 concerning the implementation of financial services legislation. For the other provisions, it is important to entrust a contact committee with the task of assisting Member States and the supervisory authorities in the implementation of this Directive and of advising the Commission, if necessary, on additions or amendments to this Directive. In so doing, the contact committee may make use of the information which Member States are to provide on the basis of this Directive concerning takeover bids that have taken place on their regulated markets.
- (29) The Commission should facilitate movement towards the fair and balanced harmonisation of rules on takeovers in the European Union. To that end, the Commission should be able to submit proposals for the timely revision of this Directive,

HAVE ADOPTED THIS DIRECTIVE:

Article 1. Scope

1. This Directive lays down measures coordinating the laws, regulations, administrative provisions, codes of practice and other arrangements of the Member States, including arrangements established by organisations officially authorised to regulate the markets (hereinafter referred to as 'rules'), relating to takeover bids for the securities of companies governed by the laws of Member States, where all or some of those securities are admitted to trading on a regulated market within the meaning of Directive 93/22/EEC in one or more Member States (hereinafter referred to as a 'regulated market').
2. This Directive shall not apply to takeover bids for securities issued by companies, the object of which is the collective investment of capital provided by the public, which operate on the principle of risk-spreading and the units of which are, at the holders' request, repurchased or redeemed, directly or indirectly, out of the assets of those companies. Action taken by such companies to ensure that the stock exchange value of their units does not vary significantly from their net asset value shall be regarded as equivalent to such repurchase or redemption.
3. This Directive shall not apply to takeover bids for securities issued by the Member States' central banks.



Article 2. Definitions

1. For the purposes of this Directive:
 - a) 'takeover bid' or 'bid' shall mean a public offer (other than by the target company itself) made to the holders of the securities of a company to acquire all or some of those securities, whether mandatory or voluntary, which follows or has as its objective the acquisition of control of the target company in accordance with national law;
 - b) 'target company' shall mean a company, the securities of which are the subject of a bid;
 - c) 'offeror' shall mean any natural or legal person governed by public or private law making a bid;
 - d) 'persons acting in concert' shall mean natural or legal persons who cooperate with the offeror or the target company on the basis of an agreement, either express or tacit, either oral or written, aimed either at acquiring control of the target company or at frustrating the successful outcome of a bid;
 - e) 'securities' shall mean transferable securities carrying voting rights in a company;
 - f) 'parties to the bid' shall mean the offeror, the members of the offeror's board if the offeror is a company, the target company, holders of securities of the target company and the members of the board of the target company, and persons acting in concert with such parties;
 - g) 'multiple-vote securities' shall mean securities included in a distinct and separate class and carrying more than one vote each.
2. For the purposes of paragraph 1(d), persons controlled by another person within the meaning of Article 87 of Directive 2001/34/EC (12) shall be deemed to be persons acting in concert with that other person and with each other.

Article 3. General principles

1. For the purpose of implementing this Directive, Member States shall ensure that the following principles are complied with:
 - a) all holders of the securities of a target company of the same class must be afforded equivalent treatment; moreover, if a person acquires control of a company, the other holders of securities must be protected;
 - b) the holders of the securities of a target company must have sufficient time and information to enable them to reach a properly informed decision on the bid; where it advises the holders of securities, the board of the target company must give its views on the effects of implementation of the bid on employment, conditions of employment and the locations of the company's places of business;
 - c) the board of a target company must act in the interests of the company as a whole and must not deny the holders of securities the opportunity to decide on the merits of the bid;

- d) false markets must not be created in the securities of the target company, of the offeror company or of any other company concerned by the bid in such a way that the rise or fall of the prices of the securities becomes artificial and the normal functioning of the markets is distorted;
 - e) an offeror must announce a bid only after ensuring that he/she can fulfil in full any cash consideration, if such is offered, and after taking all reasonable measures to secure the implementation of any other type of consideration;
 - f) a target company must not be hindered in the conduct of its affairs for longer than is reasonable by a bid for its securities.
2. With a view to ensuring compliance with the principles laid down in paragraph 1, Member States:
- a) shall ensure that the minimum requirements set out in this Directive are observed;
 - b) may lay down additional conditions and provisions more stringent than those of this Directive for the regulation of bids.

Article 4. Supervisory authority and applicable law

1. Member States shall designate the authority or authorities competent to supervise bids for the purposes of the rules which they make or introduce pursuant to this Directive. The authorities thus designated shall be either public authorities, associations or private bodies recognised by national law or by public authorities expressly empowered for that purpose by national law. Member States shall inform the Commission of those designations, specifying any divisions of functions that may be made. They shall ensure that those authorities exercise their functions impartially and independently of all parties to a bid.
2. a) the authority competent to supervise a bid shall be that of the Member State in which the target company has its registered office if that company's securities are admitted to trading on a regulated market in that Member State.
- c) If the target company's securities are not admitted to trading on a regulated market in the Member State in which the company has its registered office, the authority competent to supervise the bid shall be that of the Member State on the regulated market of which the company's securities are admitted to trading.

If the target company's securities are admitted to trading on regulated markets in more than one Member State, the authority competent to supervise the bid shall be that of the Member State on the regulated market of which the securities were first admitted to trading.

- d) If the target company's securities were first admitted to trading on regulated markets in more than one Member State simultaneously, the target company shall determine which of the supervisory authorities of those Member States shall be the authority competent to supervise the bid by notifying those regulated markets and their supervisory authorities on the first day of trading.



If the target company's securities have already been admitted to trading on regulated markets in more than one Member State on the date laid down in Article 21(1) and were admitted simultaneously, the supervisory authorities of those Member States shall agree which one of them shall be the authority competent to supervise the bid within four weeks of the date laid down in Article 21(1). Otherwise, the target company shall determine which of those authorities shall be the competent authority on the first day of trading following that four-week period.

- e) Member States shall ensure that the decisions referred to in (c) are made public.

In the cases referred to in (b) and (c), matters relating to the consideration offered in the case of a bid, in particular the price, and matters relating to the bid procedure, in particular the information on the offeror's decision to make a bid, the contents of the offer document and the disclosure of the bid, shall be dealt with in accordance with the rules of the Member State of the competent authority. In matters relating to the information to be provided to the employees of the target company and in matters relating to company law, in particular the percentage of voting rights which confers control and any derogation from the obligation to launch a bid, as well as the conditions under which the board of the target company may undertake any action which might result in the frustration of the bid, the applicable rules and the competent authority shall be those of the Member State in which the target company has its registered office.

3. Member States shall ensure that all persons employed or formerly employed by their supervisory authorities are bound by professional secrecy. No information covered by professional secrecy may be divulged to any person or authority except under provisions laid down by law.
4. The supervisory authorities of the Member States for the purposes of this Directive and other authorities supervising capital markets, in particular in accordance with Directive 93/22/EEC, Directive 2001/34/EC, Directive 2003/6/EC and Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading shall cooperate and supply each other with information wherever necessary for the application of the rules drawn up in accordance with this Directive and in particular in cases covered by paragraph 2(b), (c) and (e). Information thus exchanged shall be covered by the obligation of professional secrecy to which persons employed or formerly employed by the supervisory authorities receiving the information are subject. Cooperation shall include the ability to serve the legal documents necessary to enforce measures taken by the competent authorities in connection with bids, as well as such other assistance as may reasonably be requested by the supervisory authorities concerned for the purpose of investigating any actual or alleged breaches of the rules made or introduced pursuant to this Directive.
5. The supervisory authorities shall be vested with all the powers necessary for the purpose of carrying out their duties, including that of ensuring that the parties to a bid comply with the rules made or introduced pursuant to this Directive.

Provided that the general principles laid down in Article 3(1) are respected, Member States may provide in the rules that they make or introduce pursuant to this Directive for derogations from those rules:

- (i) by including such derogations in their national rules, in order to take account of circumstances determined at national level
and/or
- (ii) by granting their supervisory authorities, where they are competent, powers to waive such national rules, to take account of the circumstances referred to in (i) or in other specific circumstances, in which case a reasoned decision must be required.

6. This Directive shall not affect the power of the Member States to designate judicial or other authorities responsible for dealing with disputes and for deciding on irregularities committed in the course of bids or the power of Member States to regulate whether and under which circumstances parties to a bid are entitled to bring administrative or judicial proceedings. In particular, this Directive shall not affect the power which courts may have in a Member State to decline to hear legal proceedings and to decide whether or not such proceedings affect the outcome of a bid. This Directive shall not affect the power of the Member States to determine the legal position concerning the liability of supervisory authorities or concerning litigation between the parties to a bid.

Article 5. Protection of minority shareholders, the mandatory bid and the equitable price

1. Where a natural or legal person, as a result of his/her own acquisition or the acquisition by persons acting in concert with him/her, holds securities of a company as referred to in Article 1(1) which, added to any existing holdings of those securities of his/hers and the holdings of those securities of persons acting in concert with him/her, directly or indirectly give him/her a specified percentage of voting rights in that company, giving him/her control of that company, Member States shall ensure that such a person is required to make a bid as a means of protecting the minority shareholders of that company. Such a bid shall be addressed at the earliest opportunity to all the holders of those securities for all their holdings at the equitable price as defined in paragraph 4.
2. Where control has been acquired following a voluntary bid made in accordance with this Directive to all the holders of securities for all their holdings, the obligation laid down in paragraph 1 to launch a bid shall no longer apply.
3. The percentage of voting rights which confers control for the purposes of paragraph 1 and the method of its calculation shall be determined by the rules of the Member State in which the company has its registered office.
4. The highest price paid for the same securities by the offeror, or by persons acting in concert with him/her, over a period, to be determined by Member States, of not less than six months and not more than 12 before the bid referred to in paragraph 1 shall be regarded as the equitable price.



If, after the bid has been made public and before the offer closes for acceptance, the offeror or any person acting in concert with him/her purchases securities at a price higher than the offer price, the offeror shall increase his/her offer so that it is not less than the highest price paid for the securities so acquired.

Provided that the general principles laid down in Article 3(1) are respected, Member States may authorise their supervisory authorities to adjust the price referred to in the first subparagraph in circumstances and in accordance with criteria that are clearly determined. To that end, they may draw up a list of circumstances in which the highest price may be adjusted either upwards or downwards, for example where the highest price was set by agreement between the purchaser and a seller, where the market prices of the securities in question have been manipulated, where market prices in general or certain market prices in particular have been affected by exceptional occurrences, or in order to enable a firm in difficulty to be rescued. They may also determine the criteria to be applied in such cases, for example the average market value over a particular period, the break-up value of the company or other objective valuation criteria generally used in financial analysis.

Any decision by a supervisory authority to adjust the equitable price shall be substantiated and made public.

5. By way of consideration the offeror may offer securities, cash or a combination of both.

However, where the consideration offered by the offeror does not consist of liquid securities admitted to trading on a regulated market, it shall include a cash alternative.

In any event, the offeror shall offer a cash consideration at least as an alternative where he/she or persons acting in concert with him/her, over a period beginning at the same time as the period determined by the Member State in accordance with paragraph 4 and ending when the offer closes for acceptance, has purchased for cash securities carrying 5% or more of the voting rights in the target company.

Member States may provide that a cash consideration must be offered, at least as an alternative, in all cases.

6. In addition to the protection provided for in paragraph 1, Member States may provide for further instruments intended to protect the interests of the holders of securities in so far as those instruments do not hinder the normal course of a bid.

Article 6. Information concerning bids

1. Member States shall ensure that a decision to make a bid is made public without delay and that the supervisory authority is informed of the bid. They may require that the supervisory authority must be informed before such a decision is made public. As soon as the bid has been made public, the boards of the target company and of the offeror shall inform the representatives of their respective employees or, where there are no such representatives, the employees themselves.

2. Member States shall ensure that an offeror is required to draw up and make public in good time an offer document containing the information necessary to enable the holders of the target company's securities to reach a properly informed decision on the bid. Before the offer document is made public, the offeror shall communicate it to the supervisory authority. When it is made public, the boards of the target company and of the offeror shall communicate it to the representatives of their respective employees or, where there are no such representatives, to the employees themselves.

Where the offer document referred to in the first subparagraph is subject to the prior approval of the supervisory authority and has been approved, it shall be recognised, subject to any translation required, in any other Member State on the market of which the target company's securities are admitted to trading, without its being necessary to obtain the approval of the supervisory authorities of that Member State. Those authorities may require the inclusion of additional information in the offer document only if such information is specific to the market of a Member State or Member States on which the target company's securities are admitted to trading and relates to the formalities to be complied with to accept the bid and to receive the consideration due at the close of the bid as well as to the tax arrangements to which the consideration offered to the holders of the securities will be subject.

3. The offer document referred to in paragraph 2 shall state at least:
 - a) the terms of the bid;
 - b) the identity of the offeror and, where the offeror is a company, the type, name and registered office of that company;
 - c) the securities or, where appropriate, the class or classes of securities for which the bid is made;
 - d) the consideration offered for each security or class of securities and, in the case of a mandatory bid, the method employed in determining it, with particulars of the way in which that consideration is to be paid;
 - e) the compensation offered for the rights which might be removed as a result of the breakthrough rule laid down in Article 11(4), with particulars of the way in which that compensation is to be paid and the method employed in determining it;
 - f) the maximum and minimum percentages or quantities of securities which the offeror undertakes to acquire;
 - g) details of any existing holdings of the offeror, and of persons acting in concert with him/her, in the target company;
 - h) all the conditions to which the bid is subject;



- i) the offeror's intentions with regard to the future business of the target company and, in so far as it is affected by the bid, the offeror company and with regard to the safeguarding of the jobs of their employees and management, including any material change in the conditions of employment, and in particular the offeror's strategic plans for the two companies and the likely repercussions on employment and the locations of the companies' places of business;
 - j) the time allowed for acceptance of the bid;
 - k) where the consideration offered by the offeror includes securities of any kind, information concerning those securities;
 - l) information concerning the financing for the bid;
 - m) the identity of persons acting in concert with the offeror or with the target company and, in the case of companies, their types, names, registered offices and relationships with the offeror and, where possible, with the target company;
 - n) the national law which will govern contracts concluded between the offeror and the holders of the target company's securities as a result of the bid and the competent courts.
4. The Commission shall adopt rules for the application of paragraph 3 in accordance with the procedure referred to in Article 18(2).
5. Member States shall ensure that the parties to a bid are required to provide the supervisory authorities of their Member State at any time on request with all the information in their possession concerning the bid that is necessary for the supervisory authority to discharge its functions.

Article 7. Time allowed for acceptance

1. Member States shall provide that the time allowed for the acceptance of a bid may not be less than two weeks nor more than 10 weeks from the date of publication of the offer document. Provided that the general principle laid down in Article 3(1)(f) is respected, Member States may provide that the period of 10 weeks may be extended on condition that the offeror gives at least two weeks' notice of his/her intention of closing the bid.
2. Member States may provide for rules changing the period referred to in paragraph 1 in specific cases. A Member State may authorise a supervisory authority to grant a derogation from the period referred to in paragraph 1 in order to allow the target company to call a general meeting of shareholders to consider the bid.

Article 8. Disclosure

1. Member States shall ensure that a bid is made public in such a way as to ensure market transparency and integrity for the securities of the target company, of the offeror or of any other

company affected by the bid, in particular in order to prevent the publication or dissemination of false or misleading information.

2. Member States shall provide for the disclosure of all information and documents required by Article 6 in such a manner as to ensure that they are both readily and promptly available to the holders of securities at least in those Member States on the regulated markets of which the target company's securities are admitted to trading and to the representatives of the employees of the target company and the offeror or, where there are no such representatives, to the employees themselves.

Article 9. Obligations of the board of the target company

1. Member States shall ensure that the rules laid down in paragraphs 2 to 5 are complied with.
2. During the period referred to in the second subparagraph, the board of the target company shall obtain the prior authorisation of the general meeting of shareholders given for this purpose before taking any action, other than seeking alternative bids, which may result in the frustration of the bid and in particular before issuing any shares which may result in a lasting impediment to the offeror's acquiring control of the target company.

Such authorisation shall be mandatory at least from the time the board of the target company receives the information referred to in the first sentence of Article 6(1) concerning the bid and until the result of the bid is made public or the bid lapses. Member States may require that such authorisation be obtained at an earlier stage, for example as soon as the board of the target company becomes aware that the bid is imminent.

3. As regards decisions taken before the beginning of the period referred to in the second subparagraph of paragraph 2 and not yet partly or fully implemented, the general meeting of shareholders shall approve or confirm any decision which does not form part of the normal course of the company's business and the implementation of which may result in the frustration of the bid.
4. For the purpose of obtaining the prior authorisation, approval or confirmation of the holders of securities referred to in paragraphs 2 and 3, Member States may adopt rules allowing a general meeting of shareholders to be called at short notice, provided that the meeting does not take place within two weeks of notification's being given.
5. The board of the target company shall draw up and make public a document setting out its opinion of the bid and the reasons on which it is based, including its views on the effects of implementation of the bid on all the company's interests and specifically employment, and on the offeror's strategic plans for the target company and their likely repercussions on employment and the locations of the company's places of business as set out in the offer document in accordance with Article 6(3)(i). The board of the target company shall at the same time communicate that opinion to the representatives of its employees or, where there are no such representatives, to the



employees themselves. Where the board of the target company receives in good time a separate opinion from the representatives of its employees on the effects of the bid on employment, that opinion shall be appended to the document.

6. For the purposes of paragraph 2, where a company has a two-tier board structure 'board' shall mean both the management board and the supervisory board.

Article 10. Information on companies as referred to in Article 1(1)

1. Member States shall ensure that companies as referred to in Article 1(1) publish detailed information on the following:

- a) the structure of their capital, including securities which are not admitted to trading on a regulated market in a Member State, where appropriate with an indication of the different classes of shares and, for each class of shares, the rights and obligations attaching to it and the percentage of total share capital that it represents;
- b) any restrictions on the transfer of securities, such as limitations on the holding of securities or the need to obtain the approval of the company or other holders of securities, without prejudice to Article 46 of Directive 2001/34/EC;
- c) significant direct and indirect shareholdings (including indirect shareholdings through pyramid structures and cross-shareholdings) within the meaning of Article 85 of Directive 2001/34/EC;
- d) the holders of any securities with special control rights and a description of those rights;
- e) the system of control of any employee share scheme where the control rights are not exercised directly by the employees;
- f) any restrictions on voting rights, such as limitations of the voting rights of holders of a given percentage or number of votes, deadlines for exercising voting rights, or systems whereby, with the company's cooperation, the financial rights attaching to securities are separated from the holding of securities;
- g) any agreements between shareholders which are known to the company and may result in restrictions on the transfer of securities and/or voting rights within the meaning of Directive 2001/34/EC;
- h) the rules governing the appointment and replacement of board members and the amendment of the articles of association;
- i) the powers of board members, and in particular the power to issue or buy back shares;
- j) any significant agreements to which the company is a party and which take effect, alter or terminate upon a change of control of the company following a takeover bid, and the effects thereof, except where their nature is such that their disclosure would be seriously prejudicial

to the company; this exception shall not apply where the company is specifically obliged to disclose such information on the basis of other legal requirements;

- k) any agreements between the company and its board members or employees providing for compensation if they resign or are made redundant without valid reason or if their employment ceases because of a takeover bid.
2. The information referred to in paragraph 1 shall be published in the company's annual report as provided for in Article 46 of Directive 78/660/EEC and Article 36 of Directive 83/349/EEC.
 3. Member States shall ensure, in the case of companies the securities of which are admitted to trading on a regulated market in a Member State, that the board presents an explanatory report to the annual general meeting of shareholders on the matters referred to in paragraph 1.

Article 11. Breakthrough

1. Without prejudice to other rights and obligations provided for in Community law for the companies referred to in Article 1(1), Member States shall ensure that the provisions laid down in paragraphs 2 to 7 apply when a bid has been made public.
2. Any restrictions on the transfer of securities provided for in the articles of association of the target company shall not apply vis-à-vis the offeror during the time allowed for acceptance of the bid laid down in Article 7(1).

Any restrictions on the transfer of securities provided for in contractual agreements between the target company and holders of its securities, or in contractual agreements between holders of the target company's securities entered into after the adoption of this Directive, shall not apply vis-à-vis the offeror during the time allowed for acceptance of the bid laid down in Article 7(1).

3. Restrictions on voting rights provided for in the articles of association of the target company shall not have effect at the general meeting of shareholders which decides on any defensive measures in accordance with Article 9.

Restrictions on voting rights provided for in contractual agreements between the target company and holders of its securities, or in contractual agreements between holders of the target company's securities entered into after the adoption of this Directive, shall not have effect at the general meeting of shareholders which decides on any defensive measures in accordance with Article 9.

Multiple-vote securities shall carry only one vote each at the general meeting of shareholders which decides on any defensive measures in accordance with Article 9.

4. Where, following a bid, the offeror holds 75% or more of the capital carrying voting rights, no restrictions on the transfer of securities or on voting rights referred to in paragraphs 2 and 3 nor any extraordinary rights of shareholders concerning the appointment or removal of board members provided for in the articles of association of the target company shall apply; multiple-



vote securities shall carry only one vote each at the first general meeting of shareholders following closure of the bid, called by the offeror in order to amend the articles of association or to remove or appoint board members.

To that end, the offeror shall have the right to convene a general meeting of shareholders at short notice, provided that the meeting does not take place within two weeks of notification.

5. Where rights are removed on the basis of paragraphs 2, 3, or 4 and/or Article 12, equitable compensation shall be provided for any loss suffered by the holders of those rights. The terms for determining such compensation and the arrangements for its payment shall be set by Member States.
6. Paragraphs 3 and 4 shall not apply to securities where the restrictions on voting rights are compensated for by specific pecuniary advantages.
7. This Article shall not apply either where Member States hold securities in the target company which confer special rights on the Member States which are compatible with the Treaty, or to special rights provided for in national law which are compatible with the Treaty or to cooperatives.

Article 12. Optional arrangements

1. Member States may reserve the right not to require companies as referred to in Article 1(1) which have their registered offices within their territories to apply Article 9(2) and (3) and/or Article 11.
2. Where Member States make use of the option provided for in paragraph 1, they shall nevertheless grant companies which have their registered offices within their territories the option, which shall be reversible, of applying Article 9(2) and (3) and/or Article 11, without prejudice to Article 11(7).

The decision of the company shall be taken by the general meeting of shareholders, in accordance with the law of the Member State in which the company has its registered office in accordance with the rules applicable to amendment of the articles of association. The decision shall be communicated to the supervisory authority of the Member State in which the company has its registered office and to all the supervisory authorities of Member States in which its securities are admitted to trading on regulated markets or where such admission has been requested.

3. Member States may, under the conditions determined by national law, exempt companies which apply Article 9(2) and (3) and/or Article 11 from applying Article 9(2) and (3) and/or Article 11 if they become the subject of an offer launched by a company which does not apply the same Articles as they do, or by a company controlled, directly or indirectly, by the latter, pursuant to Article 1 of Directive 83/349/EEC.
4. Member States shall ensure that the provisions applicable to the respective companies are disclosed without delay.

5. Any measure applied in accordance with paragraph 3 shall be subject to the authorisation of the general meeting of shareholders of the target company, which must be granted no earlier than 18 months before the bid was made public in accordance with Article 6(1).

Article 13. Other rules applicable to the conduct of bids

Member States shall also lay down rules which govern the conduct of bids, at least as regards the following:

- a) the lapsing of bids;
- b) the revision of bids;
- c) competing bids;
- d) the disclosure of the results of bids;
- e) the irrevocability of bids and the conditions permitted.

Article 14. Information for and consultation of employees' representatives

This Directive shall be without prejudice to the rules relating to information and to consultation of representatives of and, if Member States so provide, co-determination with the employees of the offeror and the target company governed by the relevant national provisions, and in particular those adopted pursuant to Directives 94/45/EC, 98/59/EC, 2001/86/EC and 2002/14/EC.

Article 15. The right of squeeze-out

1. Member States shall ensure that, following a bid made to all the holders of the target company's securities for all of their securities, paragraphs 2 to 5 apply.
2. Member States shall ensure that an offeror is able to require all the holders of the remaining securities to sell him/her those securities at a fair price. Member States shall introduce that right in one of the following situations:
 - a) where the offeror holds securities representing not less than 90% of the capital carrying voting rights and 90% of the voting rights in the target company,
or
 - b) where, following acceptance of the bid, he/she has acquired or has firmly contracted to acquire securities representing not less than 90% of the target company's capital carrying voting rights and 90% of the voting rights comprised in the bid.

In the case referred to in (a), Member States may set a higher threshold that may not, however, be higher than 95% of the capital carrying voting rights and 95% of the voting rights.



3. Member States shall ensure that rules are in force that make it possible to calculate when the threshold is reached.

Where the target company has issued more than one class of securities, Member States may provide that the right of squeeze-out can be exercised only in the class in which the threshold laid down in paragraph 2 has been reached.

4. If the offeror wishes to exercise the right of squeeze-out he/she shall do so within three months of the end of the time allowed for acceptance of the bid referred to in Article 7.
5. Member States shall ensure that a fair price is guaranteed. That price shall take the same form as the consideration offered in the bid or shall be in cash. Member States may provide that cash shall be offered at least as an alternative.

Following a voluntary bid, in both of the cases referred to in paragraph 2(a) and (b), the consideration offered in the bid shall be presumed to be fair where, through acceptance of the bid, the offeror has acquired securities representing not less than 90% of the capital carrying voting rights comprised in the bid.

Following a mandatory bid, the consideration offered in the bid shall be presumed to be fair.

Article 16. The right of sell-out

1. Member States shall ensure that, following a bid made to all the holders of the target company's securities for all of their securities, paragraphs 2 and 3 apply.
2. Member States shall ensure that a holder of remaining securities is able to require the offeror to buy his/her securities from him/her at a fair price under the same circumstances as provided for in Article 15(2).
3. Article 15(3) to (5) shall apply *mutatis mutandis*.

Article 17. Sanctions

Member States shall determine the sanctions to be imposed for infringement of the national measures adopted pursuant to this Directive and shall take all necessary steps to ensure that they are put into effect. The sanctions thus provided for shall be effective, proportionate and dissuasive. Member States shall notify the Commission of those measures no later than the date laid down in Article 21(1) and of any subsequent change thereto at the earliest opportunity.

Article 18. Committee procedure

1. The Commission shall be assisted by the European Securities Committee established by Decision 2001/528/EC (hereinafter referred to as 'the Committee').

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to Article 8 thereof, provided that the implementing measures adopted in accordance with this procedure do not modify the essential provisions of this Directive.

The period referred to in Article 5(6) of Decision 1999/468/EC shall be three months.

3. Without prejudice to the implementing measures already adopted, four years after the entry into force of this Directive, the application of those of its provisions that require the adoption of technical rules and decisions in accordance with paragraph 2 shall be suspended. On a proposal from the Commission, the European Parliament and the Council may renew the provisions concerned in accordance with the procedure laid down in Article 251 of the Treaty and, to that end, they shall review them before the end of the period referred to above.

Article 19. Contact committee

1. A contact committee shall be set up which has as its functions:
 - a) to facilitate, without prejudice to Articles 226 and 227 of the Treaty, the harmonised application of this Directive through regular meetings dealing with practical problems arising in connection with its application;
 - b) to advise the Commission, if necessary, on additions or amendments to this Directive.
2. It shall not be the function of the contact committee to appraise the merits of decisions taken by the supervisory authorities in individual cases.

Article 20. Revision

Five years after the date laid down in Article 21(1), the Commission shall examine this Directive in the light of the experience acquired in applying it and, if necessary, propose its revision. That examination shall include a survey of the control structures and barriers to takeover bids that are not covered by this Directive.

To that end, Member States shall provide the Commission annually with information on the takeover bids which have been launched against companies the securities of which are admitted to trading on their regulated markets. That information shall include the nationalities of the companies involved, the results of the offers and any other information relevant to the understanding of how takeover bids operate in practice.

Article 21. Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive no later than 20 May 2006. They shall forthwith inform the Commission thereof.



When Member States adopt those provisions, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law that they adopt in the fields covered by this Directive.

Article 22. Entry into force

This Directive shall enter into force on the 20th day after that of its publication in the Official Journal of the European Union.

Article 23. Addressees

This Directive is addressed to the Member States.

Royal Legislative Decree 4/2015, of October 23, approving the consolidated text of the Securities Market Act

Transcription of the articles relevant to the regime for takeover bids. This is a loose translation, which has been prepared for information purposes only

Title IV. Official Secondary Securities Markets

Chapter IV. Negotiation and trading in an Official Secondary Market

Article 81. Delisting

1. The Spanish Securities and Exchange Commission (“**CNMV**”) is entitled to delist (i) any securities that do not meet the dissemination, frequency or trading volume requirements, as established by regulation; (ii) any securities whose issuer does not perform its obligations, particularly relating to submitting and publishing information; and (iii) companies in the liquidation phase under Insolvency Act 22/2003, of July 9, or in the corporate liquidation phase under the consolidated text of the Spanish Companies Act approved by Royal Legislative Decree 1/2010, of July 2.

Without prejudice to any interim measures that may be adopted, these decisions can only be made after the issuing company has been given the opportunity to state its position, except when delisting is decided because the insolvency liquidation phase is open or because the company has entered the corporate liquidation phase.

This authority will lie with the autonomous government with jurisdiction over financial instruments traded exclusively on markets within the autonomous region.

2. The CNMV must immediately publish the resolution for delisting and notify the European Securities and Markets Authority and the competent authorities of the other Member States where that instrument is traded so that they can delist it from their regulated markets, multilateral trading systems and systematic internalizers under their supervision, unless this could cause serious harm to the interests of investors or the market's orderly operation.

The CNMV, where appropriate, will also report the delisting resolution to the authorities of third-party countries whose markets may be affected by the decision.

Likewise, when the competent authority of another Member State notifies the CNMV of a delisting resolution, the Commission will delist that financial instrument from the official secondary markets, the Spanish multilateral trading systems and the systematic internalizers under its supervision, unless this could cause serious harm to the interests of investors or the market's orderly operation.

3. Moreover, the governing body of an official secondary market can delist any financial instrument that ceases to comply with market rules under the terms provided in the market regulations, unless this resolution could cause serious harm to the interests of investors or the market's



orderly operation. As soon as the resolution has been passed, the governing body must notify the CNMV and publish it. As provided in the section above, the CNMV will notify the competent authorities of the other Member States.

4. The governing bodies of the multilateral trading systems and the other entities mentioned in Chapter III of Title XI must delist the financial instrument once the delisting resolution has been published.

Article 82. Voluntary delisting

1. The issuing entity can also request the delisting of a financial instrument in an official secondary market.

Any corporate transaction through which the shareholders of a listed company become, in whole or in part, shareholders of a different unlisted company will be considered equivalent to delisting.

2. When a company decides to delist its shares from an official secondary market, it must launch a takeover bid for all securities affected by the delisting.
3. The general shareholders meeting must approve the delisting resolution and resolutions concerning the takeover bid and the price offered.

When a meeting of the governing body is called to approve the bid, a detailed directors' report setting out the reasons for the takeover bid and the price offered must be made available to all holders of securities affected by the delisting.

4. The CNMV can waive the obligation to make a takeover bid if any other equivalent measure is applied to ensure the protection of the legitimate interests of the holders of the shares affected by the delisting and of those pertaining to the holders of convertible bonds or other securities conferring entitlement to the subscription of those shares.
5. If a bid is made before delisting, the limit on acquisition of treasury stock will be 20% of the share capital, as provided in Royal Decree-Law 1/2010 of July 2, approving the consolidated text of Spanish Companies Act for shares listed on an official secondary market. If the amount of treasury stock held exceeds that limit as a result of the bid, it must be redeemed or disposed of within one year.
6. The conditions for determining the price and other requirements for takeover bids covered by this section will be established by regulation.

Chapter IX. Takeover bids

Article 128. Mandatory takeover bid

Anyone who attains control of a listed company must launch a takeover bid for all the shares or other securities that directly or indirectly confer the right to subscription or acquisition, offering all their holders an equitable price, where that person gained control:

- a) through the acquisition of shares or other securities that directly or indirectly confer the right to subscription or acquisition of shares with voting rights in the company;
- b) through shareholders agreements with other holders of securities; or
- c) as a result of any other similar circumstances provided for by regulation.

Article 129. Scope of application

1. The obligations provided for in this chapter are understood to apply to all companies whose shares are listed, in whole or in part, on a Spanish official secondary market and have their registered address in Spain.
2. The obligations provided for in this chapter also apply, as established by regulation, to companies that do not have their registered address in Spain and whose securities are not listed on a regulated market in the EU Member State where the company has its registered address, under the following circumstances:
 - a) The company's securities are admitted to trading only on a Spanish official secondary market.
 - b) The first admission of the securities to trading on a regulated market was on a Spanish official secondary market.
 - c) The company's securities are admitted to trading simultaneously on regulated markets in more than one Member State and on a Spanish official secondary market, and the company gives notice of this circumstance to those markets and their authorities on the first day the securities are admitted to trading.
 - d) On May 20, 2006, the company's securities were already admitted to trading simultaneously on regulated markets in more than one Member State and on a Spanish official secondary market, and the CNMV had so agreed with the authorities of the other markets on which those securities were admitted to trading or, in the absence of such agreement, it had so been decided by the company.
3. Likewise, the provisions of this chapter also apply, as established by regulation, to companies that have their registered address in Spain and whose securities are not admitted to trading on a Spanish official secondary market.



Article 130. Equitable price

1. The price will be considered equitable when it is at least equal to the highest price paid by the person obliged to make the takeover bid or by those acting in concert with that person for the same securities over a period preceding the bid to be established by regulation and under the terms established.
2. However, the CNMV may change the price calculated by that means in certain circumstances and according to the criteria established by regulation.

Those circumstances may include the following: where the highest price was determined by agreement between the purchaser and the seller; where the market price of the securities in question has been manipulated; where market prices in general, or certain prices in particular, have been affected by exceptional circumstances; or where the aim is to favor the restructuring of the company.

These criteria may include the average market price over a given period, the break-up value of the company, or other commonly used objective assessment criteria.

3. If the price is altered as provided in the preceding paragraph, the CNMV will publish on its website the decision that the takeover bid must be made at a price other than the equitable price, giving reasons for that decision.

Article 131. Control of the company

1. For the purposes of this chapter, it is understood that an individual or entity has individual control of a company or joint control of a company with other persons acting in concert with them when they, directly or indirectly, attain at least 30% of voting rights or where they have attained a lower percentage of voting rights and they appoint, as established by regulation, a number of directors that, in addition to any directors previously appointed by them, represents over half the members of the company's governing body.
2. The CNMV may waive, as established by regulation, the obligation to launch a takeover bid under article 128 if another person or entity, directly or indirectly, holds a percentage of voting rights that is equal to or greater than the percentage held by the person obliged to make the bid.

Article 132. Consequences of failing to launch a takeover bid

1. Anyone who does not fulfill the obligation to launch a takeover bid will be barred from exercising the political rights pertaining to any securities of the listed company to which they would otherwise be entitled to, without prejudice to the penalties provided for in Title VIII. This will also apply to securities held indirectly by the person who must make a takeover bid and to the securities held by others who act in concert with that person.
2. Anyone who fails to make a takeover bid or who makes a bid after the deadline or with material irregularities will be considered to have breached the obligation to make the bid.

3. Any resolutions passed by the governing bodies of a company where the constitution of those governing bodies or the approval of the resolutions required the inclusion of securities whose political rights have been suspended under the provisions of this section will be void.
4. The CNMV will be entitled to exercise the pertinent actions for challenge within one year from the date the resolution is brought to its attention, without prejudice to that same entitlement pertaining to others.

The CNMV will be entitled to challenge resolutions passed by the board of directors of the listed company within one year from the date the resolutions are brought to its attention.

Article 133. Other provisions

1. When the consideration offered is securities to be issued by the company that is obliged to launch the takeover bid, it will be considered that the pre-emptive subscription right established for former shareholders and holders of convertible debentures in article 93 of Royal Legislative Decree 1/2010, approving the consolidated text of the Spanish Companies Act, will not apply.
2. Regardless of article 130, takeover bids will be subject to article 137.2 when any of the circumstances specified in section 3 of this article occur.
3. The provisions of this chapter will not apply if using the recovery and settlement instruments, competences and mechanisms of credit institutions and investment service companies.
4. Regulation will establish:
 - a) the securities to be covered by the takeover bid;
 - b) the rules and terms for calculating the percentage of votes that confers control of a company, taking into account direct and indirect stakes as well as arrangements, agreements and situations of joint control;
 - c) the person who is obliged to launch a takeover bid in the event of a shareholders agreement or situations of *de facto* control where the obligation to make a bid arises;
 - d) the terms according to which the bid will be irrevocable or under which it may be made subject to any condition or change;
 - e) the guarantees that must be provided, depending on whether the consideration offered is cash, existing securities or securities whose issue has yet to be resolved by the offeror company or entity;
 - f) the procedure for administrative supervision by the CNMV and, in general, the procedure for takeover bids;
 - g) the regime governing potential competing bids;



- h) the allotment rules;
- i) the transactions not falling within the scope of this regime;
- j) the equitable price, types of consideration and any applicable exceptions;
- k) the information to be publicly announced before launching a takeover bid, once the decision to make the bid has been passed, during the offer and once the offer has finished;
- l) the term within which a takeover bid must be made from the date of its announcement;
- m) the rules on expiry of bids;
- n) the rules applicable to the publication of the outcomes of bids;
- o) the information to be provided by the governing bodies, or management of the target company and of the offeror to the representatives of their respective employees, or, in the absence of these representatives, to the employees themselves, as well as the procedure applicable to that obligation, without prejudice to the provisions of employment law; and
- p) all other factors whose regulation is considered necessary.

Article 134. Obligations of the governing bodies and management

1. Within the term and under the conditions established by regulation, the governing and managing bodies of the target company or the companies belonging to its corporate group must obtain the prior consent of the general shareholders meeting, as provided in article 194 of the consolidated text of the Spanish Companies Act, approved under Royal Legislative Decree 1/2010 of July 2, before taking any action that could frustrate the success of the bid, with the exception of seeking other bids and, in particular, before commencing any issue of securities that could prevent the offeror from attaining control of the target company.

Regarding resolutions adopted before the term provided in the preceding paragraph begins, and before they are applied in whole or in part, the general shareholders meeting must approve or confirm, under article 194 of the consolidated text of the Spanish Companies Act, approved under Royal Legislative Decree 1/2010, of July 2, any resolution that does not fall within the scope of the company's ordinary business and the application of which could frustrate the success of the bid.

Where the target company has a two-tier board structure, the provisions of the preceding paragraphs will be considered to apply also to the supervisory board.

2. The general shareholders meeting mentioned in this section can be called 15 days before its scheduled date with an announcement in the Official Bulletin of the Commercial Registry and in one leading daily newspaper in the province, stating the date of meeting at first call and all the business to be dealt with at the meeting.

The Official Bulletin of the Commercial Registry will publish the call for the meeting immediately on receiving it.

3. A company may choose not to apply the provisions of paragraph 1 and 2 if it is the target of a takeover bid made by an entity that does not have its registered office in Spain and is not subject to the same or equivalent regulations, including those dealing with the rules regarding resolutions passed by the general shareholders meeting, or by another entity controlled directly or indirectly by that entity, under article 42 of the Commercial Code.

Any resolution passed in accordance with the provisions of the preceding paragraph will require the approval of the general shareholders meeting, in accordance with article 194 of the consolidated text of the Spanish Companies Act, approved under Legislative Royal Decree 1/2010, of July 2, no earlier than 18 months before the date the takeover bid was made public.

4. The target company's governing body must publish a detailed report on the takeover bid under the terms and by the deadlines established by regulation.

Article 135. Optional breakthrough measures

1. A company can decide whether to apply the following breakthrough measures:
 - a) Suspend, during the term for acceptance of the bid, any restrictions on the transfer of securities established in the shareholders agreements affecting the company.
 - b) Suspend, at the general shareholders meeting that will resolve on the possible defensive measures provided for in article 134.1, any restrictions on voting rights provided for in the target company's bylaws and in any shareholders agreements concerning that company.
 - c) Suspend the restrictions provided for in section a) above, and any of those provided for in section b) above that are included in shareholders agreements if, after a takeover bid, the offeror has attained a stake of 70% or more in share capital conferring voting rights.
2. Any bylaw provisions that directly or indirectly establish in general a maximum number of votes that can be cast by a single shareholder, the companies belonging to a single corporate group or anyone acting in concert with them will be void if, following a takeover bid, the offeror has acquired a stake of at least 70% in share capital conferring voting rights, unless that offeror or its group or those acting in concert with them are not subject to or have not adopted equivalent breakthrough measures.
3. The resolution to apply the provisions of section 1 of this article must be passed by the general shareholders meeting, fulfilling the requisites for quorum and majorities stipulated for amending the bylaws of public limited companies under Royal Decree-Law 1/2010, approving the consolidated text of the Spanish Companies Act. This resolution must be notified to the CNMV and to the supervisors of the Member States where the company's shares are admitted to trading or where application has been made for admission. The CNMV must make that notice public under the terms and by the deadlines established by regulation.



The general shareholders meeting can revoke at any time the resolution to apply the provisions of section 1 of this article, fulfilling the requisites for quorum and majorities stipulated for amending the bylaws of public limited companies under Royal Decree-Law 1/2010, of July 2, approving the consolidated text of the Spanish Companies Act. The majority required under this paragraph will be the same as the majority required under the preceding paragraph.

4. If the company resolves to apply the measures specified in section 1, it must provide for suitable indemnity for the loss sustained by the holders of the rights mentioned there.
5. When a company is the target of a takeover bid launched by an entity or group or persons acting in concert with them that have not adopted equivalent breakthrough measures, the company can choose not to apply the breakthrough measures that it has in place based on section 1 of this article.

Any resolution passed in accordance with the provisions of the preceding paragraph will require the approval of the general shareholders meeting, fulfilling the requisites for quorum and majorities stipulated for amendment of bylaws of public limited companies provided for in Royal Decree-Law 1/2010, of July 2, approving the consolidated text of the Spanish Companies Act, granted no earlier than 18 months before the date the takeover bid was made public.

6. Any other particulars whose determination are considered necessary for implementing the provisions of this article can be established by regulation.

Article 136. Squeeze-out and sell-out

1. If, as a result of a takeover bid for all the securities, as provided in articles 128 to 133 and 137, the offeror has securities representing at least 90% of the share capital conferring voting rights and the bid has been accepted by the owners of securities representing at least 90% of voting rights, other than those already held by the offeror:
 - a) the offeror can demand that the owners of the remaining securities sell the offeror those securities at an equitable price; and
 - b) the owners of securities of the target company can demand that the offeror purchase their securities at an equitable price.
2. In the circumstances regulated in this article, if the securities concerned in the squeeze-out or sell-out are attached due to administrative action or court ruling, or if they are subject to any lien, including encumbrances, limited *in rem* rights or financial guarantees, the securities will be released from these liens, which will be placed on the price paid or the securities delivered by the offeror as payment of the price for the sale.

The person holding the securities on deposit must keep the price of the sale or, as the case may be, the securities delivered on deposit and must notify the court or administrative authority that ordered the attachment or the beneficiary of any other liens concerning the application of this procedure.

If any portion of the price is not required for performance of the obligations guaranteed by the attachment or attachments in place or by the liens on the securities once the provisions of this section have been applied, that portion of the price will be placed immediately at the disposal of the owner of the securities.

The procedures and requisites applicable to mandatory sale, as mentioned in this section, will be established by regulation.

Article 137. Voluntary takeover bids

1. Any takeover bid made voluntarily for acquisition of shares or other securities that directly or indirectly confer voting rights in a listed company must be addressed to all holders of those shares or securities, must be subject to the same procedural regulations as provided in this chapter, and may be made, under the conditions established by regulation, for a number of securities that is less than the total number of securities in question.

The mandatory bid provided for in article 128 will not be enforceable if control has been attained after a voluntary bid for all of the target company's securities, addressed to all the holders of those securities, as long as all the requisites provided for in this chapter have been fulfilled.

2. If, within the two years before the takeover bid is announced, any of the circumstances specified in section 3 below has occurred, the offeror must deliver an independent expert's report on the assessment methods and criteria applied to determine the bid price, including the average market listing during a given period, the company's asset value, the value of the consideration paid by the offeror for the same securities during the 12 months before the takeover bid was announced, the book value of the company and other generally accepted objective assessment criteria that will safeguard the shareholders' rights.

The report must justify the respective weight of each method used for the assessment. The bid price cannot be lower than the higher between the equitable price provided for in article 130 and the price calculated using the methods stated in the report with full justification of their respective weight.

Likewise, where the bid is formulated as an exchange of securities, in addition to the above, it must also include, at least as an alternative, a cash price or consideration that is at least financially equivalent to the exchange offered.

To ensure that the bid meets the requisites provided for in this section, the CNMV may adapt the administrative proceedings to extend the terms to the extent necessary and require any information and documents it considers appropriate.

3. The circumstances mentioned in the preceding section are as follows:
 - c) Where the market prices of the securities concerned in the bid show reasonable evidence of manipulation or where they have been the subject of disciplinary proceedings commenced



by the CNMV for violation of article 231, the Securities Market Act, without prejudice to application of the pertinent penalties and provided that the interested party has been notified of the pertinent charges.

- d) Where market prices in general, or the market price of the target company in particular, have been affected by exceptional circumstances, such as natural disaster, war, calamity or other *force majeure* circumstances.
 - e) Where the target company has been subject to expropriation, confiscation or other analogous circumstances causing material alteration of the value of its assets.
4. Other factors considered to require regulation for the implementation of the provisions of this article will be so regulated.

Title VIII. Supervision, inspection and sanctioning regime

Chapter V. Very serious infractions

Article 280. Infractions related to the takeover bid

The following acts or omissions constitute very serious infractions:

Breach of the obligations provided for in articles 128-133 and 137 and in the regulations enacted under the provisions of these articles.

In particular:

- a) Breach of the obligation to launch a takeover bid, launch of a takeover bid after the established term has expired or with essential irregularities making it impossible for the CNMV to consider it to have been launched or to authorize it, or launch of a takeover bid without due authorization.
 - b) Failure to publish or to submit to the CNMV the information and documents that must be published or submitted to that Commission, as a result of actions giving rise to the obligation to launch a takeover bid, during the course of such a bid or on completion of such a bid, where that information is material or where the amount of the bid or the number of investors affected is substantial.
 - c) Publication or delivery of information or documents concerning a takeover bid with omission of information or containing incorrect, false or misleading information, where such information or documents are material or where the amount of the bid or the number of investors affected is substantial.
2. Breach by the governing and management bodies of the obligations provided for in article 134 and in its implementing regulations.
3. Breach of the obligations provided for in articles 82 and 135 and their implementing regulations.

Chapter VI. Serious and minor infractions

Article 293. Infractions relative to the takeover bid

The following acts or omissions constitute serious infractions:

1. Failure to publish or to submit to the CNMV the information and documents that must be published or submitted, as a result of actions giving rise to the obligation to launch a takeover bid, during the course of such a bid or on completion of such a bid, where that infraction is not very serious.
2. Publication or delivery of information or documents concerning a takeover bid with omission of information or containing incorrect, false or misleading information, where that infraction is not very serious.

[...]

Chapter VII. Prescription of infractions

Article 301. Prescription of infractions

1. Very serious and serious infractions are time barred after five years, and minor infractions after two years.
2. The time-barring term for infractions starts on the date the infraction was committed. The starting date of an infraction arising from an ongoing activity will be the date the activity was finalized or the final act in which the infraction culminates.
3. Time barring will be suspended on the commencement of disciplinary proceedings, with notification to the interested party, and will start again if the disciplinary proceedings remain inactive for three months for any reason not attributable to the parties against whom they are directed.

Chapter VIII. Penalties

Article 302. Penalties for very serious infractions

One or more of the following penalties will be imposed on the infringer for a very serious infraction:

1. A fine of up to the greatest of the following amounts:
 - five times the gross profit obtained from the acts or omissions comprising the infraction;
 - 5% of the equity of the infringer entity;
 - 5% of the total funds, whether own funds or third party funds, used in the infraction; or
 - €600,000.



If investment management companies fail to comply with the rules contained in Regulation (EU) no. 575/2013, of June 26, or if they commit the very serious infractions referred to in article 275.4.a), the fine imposed will be up to the greatest of the following amounts:

- five times the profit obtained as a result of the actions or omissions constituting the infraction;
- 10% of the company's total annual net turnover in the previous financial year, including gross income from receivable interest and similar earnings, income from stocks and other fixed-income or equity securities, and fees or brokerage receivables, in accordance with article 316 of Regulation (EU) no. 575/2013, of June 26;
- the equity of the infringing entity;
- 5% of the total funds, whether own funds or third-party funds, used in the infraction; or
- €10,000,000.

If the company to which this section refers is a subsidiary of a parent company, the relevant gross income will be the gross income resulting from the parent company's consolidated financial statements in the previous financial year.

If the central securities depositories and the designated credit institutions referred to in article 54.2.b) of Regulation (EU) no. 909/2014, of July 23, 2014, commit the very serious infractions cited in article 288.1 and 3, the fine imposed will amount to, at least, double the amount of the gross profit obtained as a result of the actions or omissions constituting the infraction, if it can be determined and, at most, the greatest of the following figures:

- five times the profit obtained as a result of the acts or omissions constituting the infraction;
- 10% of the infringing entity's total annual turnover, according to the latest available financial statements approved by the governing body;
- 5% of the total funds, whether own funds or third-party funds, used in the infraction; or
- €20,000,000.

If the infringing entity is a parent or subsidiary of the parent company that must prepare consolidated financial statements, the total annual turnover applicable will be the amount that appears in the most recent consolidated financial statements available.

In the event of a breach of the obligations contained in articles 118 to 126, which constitutes a very serious infraction, the fine imposed will be:

- i. for legal entities, up to the greater of the following amounts:
 - €10,000,000 or 5% of the total annual turnover, according to the most recent annual financial statements available. If the legal entity is a parent or subsidiary of a parent company that must prepare consolidated financial statements under commercial law, the total turnover taken into account will be the total annual turnover or the corresponding type of income, in accordance with the applicable accounting standards, reported on the most recent consolidated annual financial statements available from the parent company.

- Twice the amount of the profits obtained or the losses avoided as a result of the infraction, if they can be determined.
 - ii. For natural persons, up to the greater of the following amounts: €2,000,000 or twice the profits obtained or the losses avoided as a result of the infraction, if they can be determined.
2. Suspension or limitation of the type or volume of transactions or activities that the infringing entity may carry out by on the securities market for up to five years.
 3. Suspension of member status of the official secondary market or of the corresponding multilateral trading system for a term not exceeding five years.
 4. Exclusion from trading financial instruments on a secondary market or a multilateral trading system.
 5. Revocation of authorization in the case of investment management companies, public debt market management companies, or other entities registered with the CNMV. In the case of investment management companies authorized in another EU Member State, this revocation penalty will be replaced with a prohibition on new transactions in Spanish territory.
 6. Suspension for up to five years in the exercise of the management or administrative offices that the infringer holds at the financial institution.
 7. Removal of the infringer from the management or administrative office held at the financial institution, with the disqualification to assume management or administrative offices at the same institution for up to five years.
 8. Removal of the infringer from the management or administrative office held at any financial institution, with the disqualification to assume management or administrative offices at any another institution cited in articles 233.1.a) and 233.c).2, 4 and 5 for up to 10 years.

In the event of infringement under article 282.8, the penalty specified in section 1 of this article will be imposed without exception, and the imposed fine will not be less than €30,000, as well as one of the penalties specified in sections 2, 3 or 5 of this article, as appropriate given the infringer's condition.

Likewise, in the event of breach of the reservation of activity provided for in article 278.2, the infringer will be subject to the penalty specified in section 1 of this article, with gross profit understood, in this instance, as the income obtained by the infringer in the course of the reserved activity, without the imposed fine being less than €600,000.

If an investment management company acquires an interest despite the opposition of the CNMV, regardless of any other penalty that may be imposed, the suspension of the exercise of the corresponding voting rights, whether the annulment of the votes cast or the possibility of their annulment, will be ordered.

For infractions committed by those mentioned in article 233.1.b), penalties will be imposed under the provisions of article 275, without prejudice to the power of other European Union authorities to impose penalties under the provisions of Regulation (EC) 1060/2009, of September 16.



Article 303. Penalties for serious infractions

One or more of the following penalties will be imposed on the infringer for serious infractions:

1. A fine of up to the greatest of the following amounts:

- twice the gross profit obtained from the acts or omissions comprising the infraction;
- 2% of the equity of the infringer entity;
- 2% of the total funds, whether own funds or third party funds, used in the infraction; or
- €300,000.

If investment management companies fail to comply with the rules contained in Regulation (EU) no. 575/2013, of June 26, or if they commit the serious infractions referred to in article 275.4.a), the fine to be imposed will be up to the greatest of the following amounts:

- twice the gross profit obtained as a result of acts or omissions constituting the infraction;
- 5% of the company's total annual net turnover in the previous financial year, including gross income from receivable interest and similar earnings, income from stocks and other fixed-income or equity securities, and fees or brokerage receivables, in accordance with article 316 of Regulation (EU) no. 575/2013, of June 26.
- 2% of the total funds, whether own funds or third-party funds, used in the infraction; or
- €5,000,000.

If the company to which this section refers is a subsidiary of a parent company, the relevant gross income will be the gross income resulting from the consolidated financial statements of the parent company in the previous financial year.

If the central securities depositories and the designated credit institutions referred to in article 54.2.b) of Regulation (EU) no. 909/2014, of July 23, 2014, commit the serious infractions cited in article 298.3 and 4, the fine imposed will amount to, at least, double the amount of the gross profit obtained as a result of the acts or omissions constituting the infraction, if it can be determined, and, at most, the greatest of the following figures:

- twice the profit obtained as a result of acts or omissions constituting the infraction;
- 5% of the infringing entity's total annual turnover, according to the most recent available financial statements approved by the governing body;
- 2% of the total funds, whether own funds or third-party funds, used in the infraction; or
- €10,000,000.

If the infringing entity is a parent or subsidiary of a parent company that must prepare consolidated financial statements, the total annual turnover applicable will be the amount that appears in the most recent consolidated financial statements available.

2. Suspension or limitation of the type or volume of transactions or activities that may be undertaken by the infringing entity on the security market for a term not exceeding one year.
3. Suspension of member status of the official secondary market or of the corresponding multilateral trading system for a term not exceeding one year.
4. Suspension for a term not exceeding one year in the exercise of the management or administrative office occupied by the infringer at the financial institution.

In the event of infringement under article 295.5, concerning the breach of the obligations established in article 227, the penalty established in section 1 of this article will be imposed without exception, as well as one of the penalties cited in sections 2 or 3, without the imposed fine being less than €12,000.

The commission of the infraction provided for in article 296.9 will, without exception, include the registration cancellation of the representative or proxy in the records of the CNMV.

If an investment management company acquires a significant interest despite the opposition of the CNMV, regardless of any other penalty that may be imposed, suspension of the exercise of the corresponding voting rights will be ordered, whether the annulment of the votes cast or the possibility of annulling them.

Article 304. Publication of infractions

Penalties imposed for serious infractions will be published in the Official Gazette of the Spanish State when they are no longer subject to administrative appeal.

[...]

Article 306. Complementary penalty for individuals holding administrative or management offices who commit very serious infractions

In addition to the penalty applicable to the infringer for very serious infractions, if the infringer is a legal entity, one or more of the following penalties may be imposed on individuals holding administrative or management offices with that entity and who are responsible for the infraction:

1. Fine of up to €400,000.

If investment management companies fail to comply with the rules established in Regulation (EU) no. 575/2013, of June 26, or if they commit the very serious infractions referred to in article 275.4.a), the fine to be imposed will be up to €5,000,000.

If the central securities depositories and the designated credit institutions referred to in article 54.2.b) of Regulation (EU) no. 909/2014, of July 23, 2014, commit the very serious infractions cited in article 288.1 and 3, the fine to be imposed will be up to €5,000,000.



2. Suspension from the administrative or management office held by the infringer for up to three years.
3. Removal from office with a ban on holding any administrative or management office with the same company for up to five years.
4. Removal from office with a ban on holding any administrative or management office held with any company of the types provided for in article 233.1.a) or with any credit institution for up to 10 years.
5. Public caution in the Official Gazette of the Spanish State identifying the infringer and the nature of the infraction, or private caution.

In the event of the infraction provided for in section 282.6, the penalty provided for in section a) above will be imposed in any event, with the fine being at least €30,000.

Article 307. Complementary penalty for individuals holding administrative or management offices who commit serious infractions

In addition to the penalty applicable to the infringer for serious infractions, if the infringer is a legal entity, one or more of the following penalties may be imposed on the individuals holding administrative or management offices with that entity and who are responsible for the infraction:

1. Fine of up to €250,000.

If investment management companies fail to comply with the rules contained in Regulation (EU) no. 575/2013, of June 26, or if they commit the serious infractions referred to in article 275.4.a), the fine to be imposed will be up to €2,500,000.

If the central securities depositories and the designated credit institutions referred to in article 54.2.b) of Regulation (EU) no. 909/2014, of July 23, 2014, commit the serious infractions cited in article 298.3 and 4, the fine to be imposed will be up to €2,500,000.

2. Suspension from any administrative or management office held by the infringer with the company for up to one year.
3. Public caution in the Official Gazette of the Spanish State identifying the infringer and the nature of the infraction, or private caution.

In the event that the infraction provided for in article 295.5, regarding the breach of obligations established in article 227, the penalty provided for in section 1 above will be imposed in any event, with the fine being at least €12,000.

Article 308. Publication of complementary penalties

Penalties imposed under articles 306 and 307 will be published in the Official Gazette of the Spanish State when they are no longer subject to administrative appeal.

[...]

Sixth additional provision. The *Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores* and the companies that own the central counterparty entities, central securities depositories, and Spanish official secondary markets

1. The “*Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores*” (“the Systems Company”), will serve as central securities depository under articles 97 to 102 of this law and will perform other functions the government entrusts to it, based on a report from the CNMV.

The Systems Company assumes the functions of the *Sistema de Compensación y Liquidación de Valores* (Securities Clearing and Settlement Service) and the Bank of Spain, as managers of the securities registration, clearing and settlement systems on the markets entrusted to them. The Systems Company is created through the transformation of the company *Promotora para la Sociedad de Gestión de los Sistemas Españoles de Liquidación, S.A.*, formed from a stake of the *Sistema de Compensación y Liquidación de Valores* and the Bank of Spain.

The Systems Company effectively assumes its functions after modifying the purpose *and name of Promotora para la Sociedad de Gestión de los Sistemas Españoles de Liquidación, S.A.*, and the after corporate change involving the distribution of the Systems Company’s share capital among the shareholders of the *Sistema de Compensación y Liquidación de Valores* and the Bank of Spain, with the required capital increases or reductions. Non-monetary contributions received by the Systems Company will be valued by an expert appointed by the mutual consent of the *Sistema de Compensación y Liquidación de Valores* and the Bank of Spain, who will provide the effects detailed in chapter II title III of the consolidated text of the Corporate Enterprises Act, approved by Royal Legislative Decree 1/2010, of July 2.

Articles 304, 334 and 343 of the consolidated text of the Spanish Companies Act, approved by Royal Legislative Decree 1/2010, of July 2, do not apply to previous corporate transactions.

The appointment of the members of the board of directors, general managers and the like of the Systems Company will be subject to the approval of the CNMV.

As long as the Systems Company does not establish further provisions and resolutions in the exercise of the management and administrative functions attributed to it by this law, the provisions and resolutions governing the securities registration, clearing, and settlement system from the date the Systems Company assumes its functions from the *Sistema de Compensación y Liquidación de Valores* and the Bank of Spain will remain in force.

The Systems Company and the Bank of Spain will ensure proper coordination to replace the current rules with the Systems Company standards approved in the future.

The minutes and documents legally required for the corporate transactions referred to in this article are exempt from taxes and levies. Similarly, these minutes and documents will not accrue tariff duties, notary expenses or registry fees.



Without prejudice to the competencies of the autonomous communities for securities registration, clearing and settlement systems and secondary markets, the Spanish government, following the submission of a report by the CNMV and having consulted the autonomous communities with competency in that regard, and at the proposal of the Minister for the Economy and Finance, can authorize one or more entities to acquire, directly or indirectly, all the share capital or a directly or indirectly controlling stake in the share capital of some or all the companies that manage securities registration, clearing and settlement systems and Spanish official secondary markets, and for that share capital then to be owned by that entity or those entities.

Any stake that, under the provisions of Chapter IX of Title IV and their implementing regulations, would create the obligation to launch a takeover bid for all the share capital of the pertinent company will be considered a controlling stake.

3. The CNMV will be competent to authorize the bylaws governing those acquiring entities and any amendments to those bylaws, with any exceptions established by regulation, and to authorize the appointment of the members of their boards of directors and their general managers, who must conform to the requisites of article 152.1.f). If the acquiring entities do not have their registered offices in Spain and their bylaws, and any amendments to those bylaws and the requisites to be fulfilled by the members of their boards of directors and their general managers have been checked by the competent authority of another EU Member State or by the supervisory of any other country whose regime for organization and functioning is similar to that of the CNMV, the latter will be responsible for checking those circumstances.
4. The Spanish government will determine by Royal Decree the regime applicable to offers for acquisition of the shares representing the share capital of those entities, the regime for disclosure to which their shareholding stakes will be subject, the regime to which those entities must conform to include in their bylaws any restriction or special condition concerning the rights inherent in their shares and any other factor necessary to apply this provision and to ensure the proper supervision of those entities.
5. The Spanish government's authorization will be required for the entity or entities that directly or indirectly own all the share capital or a controlling stake in all or some of the companies mentioned in the preceding section to be able to accomplish any act of disposal through which they may cease to own, directly or indirectly, all the share capital they hold in each of those companies or through which they may relinquish the direct or indirect control of those companies. Authorization will be granted after the autonomous communities that are competent in the matter have been consulted and the CNMV has delivered a report, and at the proposal of the Minister for the Economy and Finance.
6. The regime for significant stakes provided for in articles 48.1 and 99 will not apply to transfers subject to the official authorization provided for in this provision.
7. The CNMV will be responsible for supervising the above entities.

[...]

First transitional provision. Regime for certain increases in stakes in listed companies

Any person who on August 13, 2007, has a percentage of voting rights of a listed company of at least 30% and less than 50% will be obliged to launch a takeover bid as provided in Chapter IX of Title IV of this act if, after that date, any of the following circumstances arise:

- a) They acquire shares in that company through a single transaction or multiple transactions that increase their stake by at least 5% in a 12-month period.
- b) They attain at least 50% of voting rights.
- c) They acquire an additional stake and appoint a number of directors that, in addition to any directors previously appointed by them, represents over half the members of the company's governing body.

The government can establish any measures it considers necessary to apply this provision, and the transactions exempt from this regime.

Under the terms established by regulation, the CNMV will conditionally waive the obligation to launch a takeover bid, as provided in section a) above, if another person or entity, directly or indirectly, has a percentage of voting rights equal to or greater than those of the person or entity obliged to launch the takeover bid.

Royal Decree 1066/2007, of July 27, on the Regime for takeover bids for securities

This is a loose translation, which has been prepared for information purposes only.

I

Act 6/2007, of April 12, reforming the Securities Market Act 24/1988, to amend the regime for takeover bids and for transparency of issuers of securities, provides a new text for article 34 and for Chapter V of Title IV of the Securities Market Act. The purpose of the act is twofold: to introduce the amendments required for implementing Directive 2004/25/EC of the European Parliament and of the Council on takeover bids, and to amend pertinent aspects of regulation to ensure that takeover bids are made within a comprehensive legal framework and with full legal certainty.

This Royal Decree on takeover bids is meant to complete the changes introduced under Act 6/2007 with the aim of pursuing the two abovementioned objectives. These precepts provide the framework for the starting point and the authority required to promulgate this Royal Decree.

The importance of the changes made to the act and, therefore, the importance of the changes included in this Royal Decree, justify derogation of Royal Decree 1197/1991, on the regime for takeover bids for securities, and its replacement by a new royal decree containing comprehensive regulation of all phases of carrying out takeover bids for shares in listed companies.

II

This Royal Decree has 50 articles, divided into 11 chapters, two additional provisions, one transitional provision, one derogation provision and four final provisions.

Chapter I sets out the basic rules on the scope of application. It establishes that the Royal Decree applies to all takeover bids, whether voluntary or mandatory, made for any listed company. Under the provisions of the act, it stipulates the circumstances for crossborder application of the Royal Decree, specifying which aspects of a bid are subject to the provisions of this Royal Decree and which issues will be subject to the law of the country where the company has its registered office.

Chapter II sets out the specific rules applicable to mandatory takeover bids when control of a company is attained, whether directly or consequentially. If the circumstances fitting the definition of control arise, a bid must be made for all the company's share capital at an equitable price. Nevertheless, such a bid will not be mandatory in cases where the CNMV grants a waiver, or in other cases that are excluded from this law. It also specifies the cases in which the bid price can or must be raised or lowered.

Chapter III deals with other cases of takeover bids. Thus, in addition to mandatory bids when control is attained, two other circumstances are provided in which a bid is mandatory, namely bids for delisting securities and bids when a company wishes to reduce its share capital by acquiring treasury

stock for subsequent redemption. It also provides for the possibility of voluntary takeover bids if a person wishes to acquire a large stake by making an offer to all shareholders. These bids can be made for all or part of the company's share capital. In general, the rules applicable to them are the same as those for mandatory bids, with certain exceptions, which are mentioned in this chapter.

In Chapter IV, the Royal Decree deals with aspects relating to the consideration offered and the guarantees provided for the bid. The consideration offered in exchange for shares in the company may consist of cash or securities or a combination of both. Certain cases are provided for where a cash consideration must be offered as an alternative to ensure due protection of shareholders. To assure that bids are made seriously, the offeror is required to provide the appropriate guarantees as evidence that it can pay the consideration offered in the bid.

The Royal Decree regulates all the phases of the procedure to be followed in takeover bids. Thus, according to Chapter V, the process begins with announcing the intention (where the bid is voluntary) or the obligation (where it is mandatory) to make a takeover bid. That announcement must be made as soon as the decision to launch a bid is taken or as soon as the circumstances arise where a bid is mandatory.

Once a takeover bid has been announced, the offeror must apply to the CNMV for permission, and submit the documents needed to analyze the bid. When permission is granted, the offeror must announce the takeover bid definitively, with the aim of informing the market, particularly all of the target company's shareholders. The employees of the offeror and the target company must be kept informed throughout this process.

The offeror must allow shareholders a given term to accept the bid, if they wish to do so. Before the end of that term, the target company's board of directors must issue a document setting out its opinion of the bid.

This chapter also sets out the regime applicable to possible authorization by administrative bodies other than the CNMV.

Chapter VI elaborates on the provisions of the act regarding the duty of passivity of the target company's board of directors and regarding the optional breakthrough measures against anti-takeover defenses. In the first case, it lists specific matters that must have the approval of the general shareholders meeting. For both cases, precautionary measures are established to ensure that the general shareholders meeting can decide with full knowledge of the proposals being made.

Although takeover bids are, in theory, irrevocable, Chapter VII provides for cases where voluntary bids may be made subject to compliance with certain conditions. As regards mandatory takeover bids, the possibility of withdrawal is provided for where, at the end of proceedings involving all competing bids, there is still a bid not subject to conditions that is better than the mandatory bid, or, under certain conditions, where the bid is subject to approval by authorities in connection with antitrust law. There is also a generic clause allowing withdrawal of any bid in the event of exceptional circumstances that make the bid unfeasible.

The Royal Decree also allows the offeror the possibility of improving the bid presented initially.



In addition to the restrictions on the offeror's conduct, the Royal Decree includes provisions regarding the effect on the bid if the offeror acquires shares in the target company in the course of the bid but outside the scope of that procedure. The aim of those measures is to allow certain leeway for action on the part of the offeror, as long as the shareholders' interests are not adversely affected.

A takeover bid concludes with the term for acceptance, calculation of the number of acceptances received, and settlement, as provided in Chapter VIII.

Chapter IX deals with the procedures applicable to competing takeover bids; i.e., if a bid is made for a company that is already the target company of a bid and the term for acceptance of that bid has not yet expired.

Chapter X of the Royal Decree elaborates on the procedure applicable to a new component of Spanish law, namely that of mandatory purchases and sales (squeeze-out/sell-out), as defined in the act.

Lastly, the Royal Decree concludes with an outline of the regime for supervision, inspection and sanctions applicable to the matters regulated in the Royal Decree.

This Royal Decree expressly derogates Royal Decree 1197/1991 on the regime for takeover bids for securities and it has been drafted exercising the authority provided for in articles 34, 60, 60 bis, 60 ter and 60 quater of the Securities Market Act 24/1988, and in Final Provision Three of Act 6/2007, reforming the Securities Market Act, to amend the regime for takeover bids and transparency.

By virtue of the above, at the proposal of the Minister for the Economy and Finance and with the prior approval of the Minister of Government, in accordance with the Council of State and after deliberation by the Cabinet at its meeting of July 27, 2007, I hereby

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Chapter I

Scope of application

Article 1. Subjective scope of application

1. The provisions of this Royal Decree apply to any natural or legal person that launches or must launch a takeover bid for shares of a listed company or any other securities that confer entitlement to acquisition or subscription of those shares.

A listed company is any company whose shares are admitted, in whole or in part, to trading on a Spanish official secondary market and that has its registered office in Spain. If such a company does not have its registered office in Spain, the provisions of sections 2, 3 and 4 below will apply.

The provisions of this Royal Decree do not apply to takeover bids for shares in open-ended investment companies ("SICAVs") or to bids for shares in the central banks of EU Member States.

2. The rules set out in the following section will apply to companies that do not have their registered offices in Spain and whose shares are not admitted to trading on a regulated market in the EU Member State where the company has its registered office under any of the following circumstances:
- a) Where the company's shares are admitted to trading only on a Spanish official secondary market.
 - b) Where the first listing of the shares on a regulated market was on a Spanish official secondary market.
 - c) Where the company's shares are admitted to trading simultaneously on regulated markets in more than one Member State and on a Spanish official secondary market and the company decides that circumstance by notifying those markets and their competent authorities from the first day of listing of the securities.
 - d) Where, from May 20, 2006, the company's shares were already admitted to trading simultaneously on regulated markets in more than one Member State and on a Spanish official secondary market, and the CNMV had so agreed with the competent authorities of the other markets where those shares were listed, or, failing such agreement, that circumstance had been decided by the company.

The CNMV will publish its designation as the competent authority for granting permission for takeover bids made for the companies mentioned in sections c) and d) above on its website on the business day following the date of notice or the date of the resolution mentioned in those sections.

3. In the circumstances provided for in the preceding section, the following rules will apply:
- a) The decision regarding permission for the takeover bid will be made by the CNMV.
 - b) All matters relating to the consideration or price offered in the takeover bid proceedings and, in particular, information regarding the offeror's decision to make the bid, the content of the prospectus and dissemination of the bid, and all matters relating to competing bids, will be subject to the provisions of this Royal Decree.
 - c) Regarding the information that must be provided to the target company's employees and in all matters relating to corporate law, particularly the percentage of voting rights considered to confer control and the exceptions to the obligation to launch a takeover bid and the conditions under which the governing or management body of the target company may take any action that could interfere with the accomplishment of the bid, the applicable law and the competent authorities will be those of the EU Member State where the target company has its registered office.



4. Where the target company does not have its registered office in Spain or in any other EU Member State and its shares have been admitted to trading on a Spanish official secondary market, the provisions of points a) and b) of section 3 will apply.
5. Where the target company has its registered office in Spain, but its securities are not admitted to trading on a Spanish official secondary market, the provisions of point c) of section 3 will apply.

Article 2. Objective scope of application

This Royal Decree applies to mandatory takeover bids, as provided in articles 3, 7, 10 and 12, and also to voluntary takeover bids, as provided in article 13.

Chapter II

Takeover bid when control is acquired

Article 3. Mandatory takeover bid when control is acquired

1. The obligation to launch a takeover bid for securities addressed to all holders of those securities for an equitable price will arise for anyone who acquires control of a listed company, whether that control is acquired:
 - a) through acquisition of shares or other securities that, directly or indirectly, confer voting rights in the company;
 - b) through shareholders agreements with other holders of securities, under the terms of article 5.1.b); or
 - c) as a result of the circumstances of indirect or consequential acquisition of control as provided in article 7.
2. The takeover bid must be addressed to:
 - a) all holders of shares in the listed company, including holders of all shares with no voting rights that, at the time of application for permission for the bid, are entitled to vote under current applicable law; and
 - b) any holders of rights to subscription of shares and any holders of convertible or exchangeable debentures that may be exchanged for shares.

The takeover bid may, but need not, be addressed to the holders of any warrants or other securities or financial instruments that confer an option to acquire or subscribe shares, except those mentioned in point b) of this section, whether already issued or to be issued. If the bid is addressed to them, it must be addressed to all holders of the warrants, securities or financial instruments in question.

3. In the case of action in concert, shareholders agreement or any other circumstances that, as provided in article 5, involve attributing to a given person the percentage of votes relating to several shareholders, the person with the greatest percentage of voting rights will be obliged to launch the takeover bid. Where the percentages of two or more shareholders are the same, they will all be obliged to launch the bid jointly.
4. The takeover bid must be launched as soon as possible and, at the latest, within one month from the date control is acquired.

Article 4. Controlling stake

1. For the purposes of this Royal Decree, it will be understood that a natural or legal person, whether individually or jointly with other persons acting in concert with them, has a controlling stake in a company when any of the following circumstances arises:
 - a) they, directly or indirectly, acquire at least 30% of voting rights; or
 - b) they have, directly or indirectly, acquired a lower percentage of voting rights and, within 24 months from the date of acquisition of that lower percentage, they appoint, under the terms provided for in article 6, a number of directors that, in addition to any directors previously appointed by them, represents over half the members of the company's governing body.
2. The CNMV will waive the obligation to launch a takeover bid, as provided in articles 3 and 7, when the percentage specified in point a) of the preceding section is attained, if another person or entity (whether individually or jointly with other persons acting in concert with them) holds a percentage of voting rights that is equal to or greater than the percentage held by the person obliged to make the bid.

Nevertheless, that exemption will be conditional on that person or entity not reducing its stake to less than the stake held by the shareholder that has benefited from the exemption or on the latter not appointing more than half the members of the board of directors, as provided in article 6. In that event, or if they fail to obtain the waiver because the circumstance provided for in the preceding paragraph does not exist, the party concerned will be obliged to launch a takeover bid unless, within three months, it disposes of the number of securities needed to reduce the excess number of voting rights to below the specified threshold or terminate the shareholders agreement, covenant or concert through which they had attained that percentage and, until such time, they do not exercise the voting rights that exceed those percentages.

The concerned party must apply for the waiver and at the same time give notice of this to the target company. Once the application for a waiver has been submitted, the target company will have three business days to submit its arguments to the CNMV. Within 10 business days from the date of the application, or from the date of entry of the documents or information that may be required, the CNMV will inform the concerned party and the target company of its reasoned decision and will post that decision on its website.



3. Where a waiver has been granted as provided in the preceding section and it becomes necessary to launch a mandatory takeover bid, the equitable price will be calculated as the greater of the prices calculated under articles 9 and 10.

Article 5. Calculation of voting rights

The following rules will apply to calculating the percentages of voting rights provided for in the above article:

1. The percentages of voting rights relating to the following persons or entities will be attributed to a single person:
 - a) Those belonging to the same group in accordance with the definition given in article 4 of the Securities Market Act 24/1988 and those belonging to members of their governing body, unless proven otherwise.
 - b) Those belonging to other persons who act in their own name but on behalf of or in concert with that person. It will be understood that action in concert exists where two or more persons cooperate through an agreement, whether express or tacit and whether oral or written, with the aim of acquiring control of the target company. It will be assumed that persons act in concert when they have reached an agreement of the sort provided for in article 112 of the Securities Market Act 24/1988 that aims to establish a common policy regarding company management or intends to materially influence that management, or any other agreement that, with the same objective, regulates voting rights on the board of directors or the executive or management committee.
 - c) The voting rights that that person is entitled to exercise freely and permanently through a power of attorney granted by the owners or holders of the shares, in the absence of any specific instructions regarding those voting rights.
 - d) The voting rights relating to shares held by any intermediary, understood as any third party held harmless, in whole or in part, by the person obliged to make the takeover bid against the risks involved in acquisitions or transfers or in the possession of shares.

This section is understood to apply also to voting rights corresponding to shares that comprise the underlying asset or object of financial contracts or swaps, where these contracts or swaps cover, in whole or in part, the risks involved in owning the securities and, consequently, have a similar effect to that of holding the shares through an intermediary.

2. Voting rights conferred by ownership of the shares, as well as to voting rights conferred by usufruct or pledge or by virtue of any other contractual title will be taken into account for the calculations under this section.
3. Calculation of the percentage of voting rights will be based on the total number of shares with voting rights, including where the exercise of these voting rights has been suspended. Any shares that, according to the information available on the date of the calculation, belong directly or

indirectly to the target company will be excluded. Shares not conferring voting rights will only be included in the calculation if they entail voting rights under current applicable law.

4. Any acquisition or other transaction that merely involves redistribution of voting rights will not give rise to the obligation to launch a takeover bid if those voting rights, under the provisions of section 1, belong to the same person.

Nor will that obligation arise in the event of acquisition of securities or other financial instruments that confer entitlement to subscription, conversion, exchange or acquisition of shares conferring voting rights until such time as the subscription, conversion, exchange or acquisition occurs.

Article 6. Appointment of directors

For the purposes of the obligation to make a takeover bid in cases where control is acquired as provided in article 3, it will be assumed, unless proven otherwise, that the owner of the stake has appointed members of the target company's governing body in the following cases, if:

- a) the director has been appointed by the owner of the stake or by a company belonging to that person's group exercising the right to proportional representation;
- b) the appointees are, or have been in the 12 months preceding their appointment, directors, senior managers, employees or regular suppliers of services to the owner of the stake or any company belonging to its group;
- c) the resolution for appointment could not have been passed except with the affirmative votes cast by the owner of the stake, by companies belonging to its group or by the members of the governing body appointed previously by the owner of the stake;
- d) the appointee is the owner of the stake in question or a company belonging to its group;
- e) in the corporate documents substantiating the director's appointment, including minutes, certificates, deeds of record or other documents drafted for the purpose of registration, or the information made public by the target company or by the owner of the stake in question, or any other target company documents, the owner of the stake acknowledges that it has appointed the director, that the director represents it or that the director holds that office in the target company due to its relationship with the owner of the stake.

Under the rules for corporate governance set out in article 116 of the Securities Market Act 24/1988, under no circumstance will the appointment of members of the governing body who are considered independent directors or proprietary directors representing the interests of other shareholders who do not act in concert with the holder of the stake in question be attributed to the holder of that stake.



Article 7. Indirect or consequential acquisition of control

1. The following rules will apply to a merger with or acquisition of control of another company or entity, including companies not admitted to trading on any market or not having their registered offices in Spain, having a direct or indirect stake in the share capital of a third listed company:
 - a) If, because of the merger or acquisition of control, the percentage of voting rights specified in article 4 is attained directly or indirectly in the listed company, a takeover bid must be made.
 - b) The takeover bid must be launched within three months from the date of the merger or acquisition of control and the rules for determining the equitable price set out in article 9 will apply.

Nevertheless, it will not be mandatory to launch a takeover bid if the necessary securities are disposed of to reduce the excess voting rights to below the specified threshold within the abovementioned term and, in the meantime, the voting rights exceeding that threshold are not exercised, or if a waiver is obtained from the CNMV, as provided in article 4.

2. Where a shareholder of a listed company attains any of the percentages of voting rights specified in article 4 as a result of a capital reduction, that shareholder will not be entitled to exercise its voting rights that exceed those percentages without launching a takeover bid.

That takeover bid must be made within three months from the date of the capital reduction and the rules for determining the equitable price set out in article 9 will apply.

Nevertheless, the obligation to launch a takeover bid will not arise if that shareholder disposes of the necessary shares to reduce the excess voting rights to below the specified threshold within three months from the date of the capital reduction and, in the meantime, does not exercise the voting rights exceeding that threshold, or if it obtains a waiver from the CNMV, as provided in article 4.

3. Where a shareholder attains any of the percentages of voting rights specified in article 4 as a result of exchange, subscription, conversion or acquisition of the shares of a listed company due to acquisition of the securities or instruments mentioned in the second paragraph of article 5.4, that shareholder will not be entitled to exercise the voting rights that exceed those percentages without launching a takeover bid for all the company's share capital.

That takeover bid must be made within three months from the date of the subscription or conversion and the rules for determining the equitable price set out in article 9 will apply.

Nevertheless, the obligation to make a takeover bid will not arise if that shareholder disposes of the necessary shares to reduce the excess voting rights to below the specified threshold within three months from the date of the exchange, subscription, acquisition or conversion and, in the meantime, does not exercise the voting rights exceeding that threshold, or if it obtains a waiver from the CNMV as provided in article 4.

4. Where any shareholder attains any of the percentages of voting rights specified in article 4 as a result of variations in treasury stock, that shareholder will not be entitled to exercise the voting rights that exceed those percentages without launching a takeover bid for all the company's share capital.

That takeover bid must be made within three months from the date the company announces the variations in treasury stock and the rules for determining the equitable price set out in article 9 will apply.

Nevertheless, the obligation to make a takeover bid will not arise if the shareholder obliged to launch the takeover bid or the company itself disposes of the necessary shares to reduce the excess voting rights to below the specified threshold within three months from the date the company announces the variations in treasury stock and, in the meantime, that shareholder does not exercise the voting rights exceeding that threshold, or if it obtains a waiver from the CNMV, as provided in article 4.

5. Any finance company, or any other person or entity that, in performing an agreement or agreeing to underwrite an issue or a public offering for sale of securities of a listed company, attains the percentage of voting rights specified in article 4 must launch a takeover bid for all the company's share capital and, in the meantime, will not be entitled to exercise the voting rights that exceed those percentages.

That takeover bid must be made within three months from the closing date of the issue, and the rules for determining the equitable price set out in article 9 will apply.

Nevertheless, the obligation to launch a takeover bid will not arise if the person or entity concerned disposes of the necessary shares to reduce the excess voting rights to below the specified threshold within the specified term and, in the meantime, that person or entity does not exercise the voting rights exceeding that threshold, or if it obtains a waiver from the CNMV, as provided in article 4.

Article 8. Cases excluded from mandatory takeover bid when control is acquired

A mandatory takeover bid will not be required in the following cases:

- a) Acquisitions or other transactions carried out by deposit guarantee funds at banks, savings banks or credit unions, or by the Investment Guarantee Fund, the Insurance Guarantee Consortium or other such legally established institutions, or acquisitions consisting of adjudications agreed by those organizations and subject to the publicity rules and competition for bids provided for in the applicable regulations.

The exclusion will extend to the indirect acquisition of control provided for in article 7.1 of this Royal Decree, regardless of the percentage of voting rights attained as a result of the adjudication if, in the competent supervisory body's opinion, as reported to the CNMV, that exclusion is expedient to ensure the success and financial feasibility of the reorganization transaction in question, based on the cost of that indirect acquisition of control.



That exclusion will not apply to any subsequent transfer or other transactions carried out by the beneficiary of the adjudication that is made by those organizations as provided in the first paragraph of this section.

- b) Acquisitions or other transactions carried out under the Compulsory Expropriation Act, or other acquisitions or transactions resulting from the competent authorities exercising the powers of public law as provided in current applicable law.
- c) All the owners of the target company's securities agree unanimously to sell or exchange all or part of their shares or other securities that, directly or indirectly, confer voting rights in the company or decide not to sell or exchange their shares within the regime for takeover bids.

Nevertheless, those owners of securities must resolve at the same time to delist those securities from trading on the Spanish official secondary markets where they have been admitted to trading.

- d) Acquisitions or other transactions originating from the conversion or capitalization of credits into shares in listed companies whose financial viability is in serious and imminent danger, although they are not in bankruptcy, on the condition that these transactions are aimed at ensuring the company's long-term financial recovery.

The CNMV will resolve, within 15 days from the date an application is submitted by an interested party, on whether a takeover bid is necessary. The waiver agreement will not be required if the transactions described in this section were carried out as a direct consequence of a judicially certified refinancing agreement in accordance with the fourth additional provision of Insolvency Act 22/2003, of July 9, as long as it has been favorably reviewed by an independent expert, under article 71 bis 4 of this act.

- e) *Mortis causa* acquisitions for no consideration or *inter vivos* acquisitions for no consideration, on the condition, in the latter case, that the acquirer has not acquired shares or other securities conferring entitlement to acquisition or subscription of shares within the preceding 12 months and that there is no agreement or concert with the transferor.
- f) Control has been acquired after a voluntary bid for all securities under any of the following circumstances: the bid has been made at an equitable price as provided in article 9; or it has been accepted by holders of securities representing at least 50% of the voting rights to which it was addressed, not including any securities that were already held by the bidder or that correspond to any shareholders that had reached an agreement with the offeror in connection with the bid.
- g) In the event of merger, the shareholders of the companies or entities involved will be exempt from the obligation to make a takeover bid if, as a result of the merger, they directly or indirectly attain in the listed company the percentage of voting rights specified in article 4, on the condition they did not vote in favor of the merger at the target company's corresponding general meeting and can demonstrate that the transaction did not have acquisition of control as its principal motive, but was carried out to pursue an industrial or business aim.

The CNMV will resolve, within 15 days from the date an application has been submitted by the shareholder, on whether a takeover bid is necessary when it has been established that the circumstances provided for in the preceding paragraph have arisen.

Article 9. Equitable price

1. The takeover bids provided for in this chapter must be made for a price or consideration that is not less than the highest price that the offeror or persons acting in concert with the offeror have paid or agreed for the same securities during the 12 months before the takeover bid is announced.
2. To determine the equitable price, the full amount of the consideration paid or agreed in each case by the offeror or persons acting in concert with the offeror will be taken into account. In particular, the following rules will apply:
 - a) If the purchase and sale is due to a prior call option being exercised, the price of the purchase and sale will be increased by the amount of any premium agreed for granting the option.
 - b) If the purchase and sale is due to a prior put option being exercised, the price of the purchase and sale will be reduced by the amount of any premium agreed for granting the option.
 - c) With other derivative financial instruments, the price will be the exercise price plus the amount of the premium paid for the derivative.
 - d) In the above cases, if the exercise prices are calculated on several transactions, the applicable price will be the highest price at which the shareholder in question has concluded transactions.
 - e) If the securities have been acquired through exchange or conversion, the price will be calculated as the weighted average market price of the securities concerned on the acquisition date.
 - f) If the acquisition includes any compensation in addition to the price paid or agreed, or where a deferral of payment is agreed, the price for the takeover bid must be at least equal to the highest price, including the amount of that additional compensation or deferral.
3. Where the mandatory takeover bid must be made without any prior acquisition of shares in the target company by the offeror or by persons acting in concert with the offeror within the preceding 12 months, the equitable price must be at least equal to the price calculated in accordance with the valuation rules set out in article 10.
4. The CNMV may change the price calculated in accordance with the preceding sections if any of the following circumstances arise:
 - a) The quotation of the target company's securities has been affected during the reference period by payment of a dividend, a corporate transaction or any exceptional occurrence allowing an objective correction of the equitable price.



- b) The quotation of the target company's securities has shown credible signs of manipulation during the reference period leading to the CNMV starting disciplinary proceedings for infringement of article 83 ter of the Securities Market Act 24/1988, without prejudice to the corresponding penalties being imposed, providing the interested party has been notified of the statement of objections.
- c) The equitable price is lower than the range of quotations of the securities on the date of acquisition determining the equitable price, in which case the bid price must be at least equal to the lowest value of that range of quotations.
- d) The equitable price corresponds to an acquisition of a relatively insignificant volume, providing it has been made at a quotation price, in which case the highest price paid or agreed in the other acquisitions made during the reference period will apply.
- e) The acquisitions made during the reference period include compensation in addition to the price paid or agreed, in which case the bid price must be at least equal to the highest price including the amount of that additional compensation.
- f) The target company is experiencing demonstrable and serious financial difficulties, in which case the consideration for the bid will be calculated using the valuation methods set out in article 10.

In all the above cases, the CNMV may require the offeror to submit a report on the valuation criteria and methods applied to determine the equitable price. Those criteria may include average market value over a given period, the break-up value of the company, the amount of the consideration paid by the offeror for the same securities in the 12 months before the bid is announced, the book value of the company or other generally accepted valuation criteria that would ensure the protection of shareholders' rights.

The CNMV will post its decision on its website for the takeover bid to be made for a price other than as established in the preceding sections.

5. Where the takeover bid is not made within the term provided for in article 17, interest will accrue on the equitable price at the legal rate for money until the date the takeover bid is made, without prejudice to the applicable penalties being imposed.

Chapter III

Other circumstances of takeover bids: delisting, capital reduction through acquisition of treasury stock and voluntary bids

Article 10. Takeover bid for delisting

1. Under article 34 of the Securities Market Act 24/1988, when a company resolves to delist its shares from trading on a Spanish official secondary market, it must launch a takeover bid under the terms of this article, unless, due to any of the circumstances provided for in article 11 of this

Royal Decree, a delisting bid is not required. Delisting will be considered to include any corporate transaction through which the shareholders of a listed company can become, in whole or in part, partners in an unlisted company or in a company that fails to gain admission of its shares to trading within three months from the date of entry of the pertinent corporate transaction on the commercial registry. Where the company has not been admitted to trading by the end of that term, a takeover bid must be made as provided in this article.

2. The takeover bid must be addressed to:

- a) all holders of shares in the listed company, including holders of all shares with no voting rights that, at the time of application for authorization of the bid, are entitled to vote under current applicable law; and, where they exist,
- b) any holders of rights to subscription of shares and any holders of convertible debentures that may be exchanged for shares.

The bid may, but need not, be addressed to the holders of any warrants or other securities or financial instruments that confer an option to acquire or subscribe shares, except those mentioned in point b) of this section, whether already issued or to be issued. If the takeover bid is addressed to them, it must be addressed to all holders of the warrants, securities or financial instruments.

However, the takeover need not be addressed to the holders who voted for delisting and who immobilize their securities until the term for acceptance provided for in article 23 expires. The prospectus for the bid must state that circumstance clearly and identify the securities that have been immobilized and their holders.

3. The delisting bid may only be made as a purchase and sale transaction and the full price must be paid in cash.
4. The resolution for delisting and the resolutions concerning the bid and the price offered must be passed by the general shareholders meeting of the company that has issued the securities to be delisted.

The delisting bid may be made by the company that has issued the securities to be delisted or by any other person or entity providing they have the consent of the general shareholders meeting of the company being delisted.

Where the bid is made by the company that has issued the securities to be delisted, the securities acquired by the bid must be redeemed or disposed of, unless, due to the fulfillment of any of the requisites provided for in article 75 of the Spanish Public Limited Companies Act as amended, approved under Royal Decree 1564/1989, this redemption or disposal is not required. For these purposes, the limit on acquisition of treasury stock will be 10% of share capital. *[NOTE: this threshold was subsequently raised to 20% of share capital].*

Delisting bids will not require the report by the target company's governing body provided for in article 24.



5. The valuation report provided for in article 34.5 of the Securities Market Act 24/1988 must set out detailed justification of the proposal and the price offered based on the results obtained by the following methods:

- a) The book value of the company and its consolidated group, if any, based on the most recent audited annual accounts and the latest financial statements if they are more recent than those annual accounts.
- b) The break-up value of the company and its consolidated group, if any. If applying this method gives significantly lower results than those obtained through the other methods, it need not be calculated, providing the report mentions that circumstance.
- c) Weighted average quotation of the securities during the six months immediately preceding the announcement of the proposal for delisting through publication of a relevant fact, regardless of the number of sessions during which they were traded.
- d) Amount of the consideration previously offered, if another takeover bid was made during the year before the date of the resolution to apply for delisting.
- e) Other valuation methods applicable to the specific case and generally accepted by the international financial community, including cash flow discounting, and multiples of comparable transactions and companies.

The report must state the respective relevance of each of the methods used for valuation.

6. The price for the bid determined by the company that has issued the securities to be delisted must be at least equal to the equitable price provided for in article 9, or the price based on the methods provided for in section 5 considered jointly, and with justification of their respective relevance, whichever is higher.

The prospectus must set out information regarding justification of the price and have the valuation report as a supplementary document.

7. The securities will be delisted when the transaction has been settled, as provided in article 37.

Article 11. Exceptions to takeover bids for delisting

No delisting bid will be necessary in the following circumstances:

- a) The conditions provided for in article 47 for exercising squeeze-out rights are met.
- b) All the holders of the securities concerned agree unanimously to the delisting and waive the sale of their securities under a takeover bid.
- c) The company is wound up through a corporate transaction in which the shareholders of the wound-up company become shareholders in another listed company.

- d) There has been a previous takeover bid for all the share capital of the target company where the intention to delist the shares from trading has been announced, and the price is justified as provided in sections 5 and 6 of article 10 with a valuation report, and the sale of all the securities is facilitated under an order for their purchase, at the same price as offered in the previous bid, for at least one month in the six months following finalization of the preceding bid.
- e) The general shareholders meeting and, as the case may be, the general assembly of debenture holders, of the company that has issued the securities to be delisted, agree to a procedure that, in the judgment of the CNMV, under article 34.2 of the Securities Market Act 24/1988, is equivalent to a takeover bid because it ensures protection of the legitimate interests of the holders of the securities affected by the delisting.

Article 12. Takeover bid for capital reduction through acquisition of treasury stock

1. Without prejudice to the minimum requirements provided for in article 170 of the Public Limited Companies Act as amended, approved under Royal Decree 1564/1989, where a Spanish listed company reduces its share capital by acquiring treasury stock for redemption, a takeover bid must be made as provided in this Royal Decree.

Where the number of shares covered by statements of acceptance exceeds the maximum amount specified for the bid, the distribution and pro rata rules provided for in article 38 will apply.

2. Where such acquisition is made under the provisions of EC Regulation 2273/2003 of the Commission, applying Directive 2003/6/EC of the European Parliament and of the Council on exemptions for buy-back programs and stabilization of financial instruments, and does not exceed 10% of the company's share capital with voting rights, no takeover bid will need to be launched.

Article 13. Voluntary takeover bids

1. Including when they are not mandatory under the provisions of this Royal Decree, takeover bids may be made voluntarily for shares of listed companies or for other securities that may directly or indirectly confer entitlement to subscription or acquisition of these shares.
2. Voluntary takeover bids may be made subject to the following conditions, providing those conditions can be shown to have been met, or not met, when the term for acceptance expires:
 - a) Approval of amendments of bylaws or structural changes or approval of other resolutions by the general shareholders meeting of the target company.
 - b) Acceptances of the takeover bid by a given minimum number of the target company's securities.
 - c) Approval of the bid by the general shareholders meeting of the offeror company.
 - d) Any other condition the CNMV considers to be in accordance with law.



3. Without prejudice to the special conditions set out in this article, voluntary takeover bids will be subject to the same rules as established for mandatory takeover bids in this Royal Decree.
4. A voluntary takeover bid may be made for a number of securities that is less than the total of those securities by any person who will not acquire a controlling stake as a result of that bid or by any person that already has a controlling stake and may freely increase its stake in the target company without being subject to the obligation to make a mandatory takeover bid.
5. Voluntary takeover bids do not need to be made at an equitable price.
6. If, while a voluntary takeover bid is being made, it becomes mandatory, the bid must comply with the provisions of this Royal Decree for mandatory takeover bids. The CNMV will adjust all the applicable deadlines when necessary to allow the offeror to comply with its obligation arising as a result of the mandatory nature of the bid and to ensure due protection of the persons to whom the bid is addressed.

Chapter IV

Consideration and guarantees for the takeover bid

Article 14. Consideration offered

1. Takeover bids may be made as a sale and purchase, a swap, or a combination of both, and they must ensure that all the holders of securities that are in the same circumstances receive the same treatment
2. Under the following circumstances, the takeover bid must include, at least as an alternative, a consideration or price in cash that is at least financially equivalent to the exchange being offered:
 - a) The offeror or any person acting in concert with the offeror has acquired securities in cash within the 12 months immediately before the takeover bid is announced that confer 5% or more of the voting rights in the target company.
 - b) A mandatory takeover bid is made on acquisition of control, in accordance with the provisions of Chapter II.
 - c) The bid is made as a swap, unless securities offered in exchange are admitted to trading on a Spanish official secondary market or on an EU regulated market, or are securities to be issued by the offeror company, providing, in the latter case, its share capital, in whole or in part, is admitted to trading on any of those markets and that the offeror expressly agrees to apply for admission of the new securities to trading within three months from publication of the outcome of the takeover bid. However, a consideration or price in cash must be included subsequently if the offeror company fails to approve the issue of new securities.

Where the securities offered in exchange are not admitted to trading on any of the markets mentioned in the preceding paragraph, an independent expert's report must be submitted, determining the value of those securities.

3. In a sale and purchase, the cash price must be specified in euros per each security.
4. Any proposed swap must be described clearly in terms of the nature, assessment and characteristics of the securities offered in exchange and in terms of the proportions for the exchange.

The offeror must state the equivalent cash price resulting from applying to the exchange ratio the weighted average quotation of the securities delivered in exchange for the quarter preceding the announcement of the takeover bid. The weighted average quotation of the securities delivered in exchange will be determined by the CNMV.

5. Where the consideration offered consists in whole or in part of securities to be issued by the offeror, the governing body, at the same session in which the resolution to make the takeover bid is passed, must resolve to call a general shareholders meeting to decide on the issue of the securities offered in exchange.

It will not be necessary to call this general shareholders meeting if the offeror can demonstrate that it has the authorization of the general shareholders meeting to issue those securities.

The announcement of the call for the general shareholders meeting, as provided in article 97 of the Spanish Public Limited Companies Act as amended, approved under Royal Decree 1564/1989, must be published before publishing the first of the announcements provided for in article 22 of this Royal Decree to disclose the content of the takeover bid or, at the latest, on the same date that the first announcement is published. The general shareholders meeting must be scheduled, at first call, within a term of one month to 40 days from the business day following the date the announcements are published, and there must be no more than 48 hours between the first and second calls. If the offeror does not have its registered office in Spain, the call for the meeting and its accomplishment must be made under the requisites applicable in the country where it has its registered office.

Where appropriate, the term for acceptance of the takeover bid will be extended, so there is a 15-calendar-day period between the business day the general shareholders meeting approves the issue of the securities and the final day for acceptance, inclusive.

The issue must be resolved to be made for the maximum amount needed to comply with the bid and with the possibility of incomplete subscription.

6. In the circumstance provided for in the preceding section, where the offeror company has its registered office in Spain, it will be understood that the pre-emptive subscription right provided for in article 158 of the Spanish Public Limited Companies Act as amended, approved under Royal Decree 1564/1989, for the former shareholders and holders of convertible bonds, does not exist.



Article 15. Guarantees for the bid

1. The offeror must prove to the CNMV that it has provided guarantees to ensure performance of the obligations arising as a result of the takeover bid.
2. Where the consideration offered consists in whole or in part of cash, the offeror may comply with the provisions of the preceding section by delivering a bank guarantee or documents substantiating a cash deposit with a credit institution to guarantee payment in full of the cash consideration to members of the market or settlement system, and to those that accept the takeover bid, and to allow its use by the clearing and settlement system of the market where the securities concerned in the bid are traded, as set out in the regulations applicable to clearing and settlement systems.

The CNMV may determine, through circulars, the specifications that these guarantees must meet.

3. Where the consideration is securities that have already been issued, proof must be supplied of their availability and their attachment to the outcome of the bid.
4. Where the consideration is securities to be issued by the offeror company, its directors must not act in any manner that is contradictory to the decision to make the takeover bid. If, given the circumstances of the case, the CNMV detects an insufficient degree of seriousness in making the takeover bid, it may require those directors to supply guarantees to secure any liability they might incur for damages that may be caused if the corresponding securities are not issued in the stated terms. The guarantee will be released once the resolution has been passed for the capital increase and, as the case may be, after six months have passed from the date the announcements provided for in article 22 of this Royal Decree have been published and no interested party has given notice of any legal claim relating to such liability.

Chapter V

Announcement, presentation and authorization of the takeover bid

Article 16. Announcement of the takeover bid

1. In the case of a voluntary takeover bid, as soon it has been decided to make a takeover bid, and providing assurance is given of the ability to pay any cash consideration or all reasonable measures are adopted to guarantee compliance with any other type of consideration, the offeror must announce and disclose its decision in the terms provided for in article 82 of the Securities Market Act 24/1988.
2. Any person finding themselves in any of the circumstances provided for in articles 3 and 7 must publicly announce that fact and disclose it in the terms provided for in article 82 of the Securities Market Act 24/1988, including, where appropriate, their intention to apply for a waiver, make a takeover bid, or reduce their stake to below the threshold at which a takeover bid becomes

mandatory. If a waiver is denied, the offeror must announce and disclose its decision to make the takeover bid, under the same terms as established here.

3. Where acquisition or transfer of ownership or control of the securities concerned in the takeover bid requires official authorization or verification before the bid can be made, that circumstance must be stated.
4. Where a takeover bid for a company has been authorized, if the term for presenting a competing bid has expired, no further voluntary takeover bid for the same company can be announced until the term for accepting previous bids has expired.
5. The CNMV may determine, through circulars, the standard form for the announcements referred to in this article.

Article 17. Presentation of the takeover bid

1. Any natural or legal person that is obliged to launch a takeover bid or will be making a takeover bid as provided in Chapter III must apply to the CNMV for authorization. To do so, they must submit an application for authorization signed by the offeror or by a person empowered to carry out obligations on its behalf and set out the transactions' main characteristics, conforming to the standard form, if any, determined by the CNMV through circulars. The application must be accompanied with documentary proof of the resolution or decision to make the takeover bid by the competent body or person and the prospectus for the bid, signed by the person responsible, setting out all the information needed to allow the persons to whom the takeover bid is addressed to make an informed judgment of the bid.

The application will be entered immediately on the registry of regulated information provided for in article 92 of the Securities Market Act 24/1988.

A voluntary takeover bid must state whether the decision to make the bid is conditional on the approval of the offeror's general shareholders meeting and, if so, documentation proving this must be submitted when it is obtained.

All the other documents required under the provisions of article 20 may be submitted with the application or within seven business days.

2. The application for authorization must be submitted within one month from the date the decision to make the takeover bid is announced, as provided in article 16.1. Where control has been acquired or more than half the members of the governing body have been appointed, the application for authorization must be submitted within one month from the date the obligation to make a takeover bid arose. Likewise, in the circumstances provided for in article 7 of this Royal Decree, the takeover bid must be made within three months from the date control was acquired.
3. The CNMV will examine the application for authorization and the documents submitted with it and will announce, as the case may, its admission to processing within seven business days from the date the documentation provided for in section 1 above is completed and will give notice to



that effect to the interested parties. If the CNMV fails to make that announcement within the established term, the application will be understood to have been admitted to processing.

On the date the decision is made, the CNMV will post on its website the applications admitted to processing, as well as those that are not admitted, stating the reasons for that decision.

4. An application for authorization of a takeover bid will not be admitted to processing if any of the following circumstances arise and they are not remedied within the term provided for in the preceding section:
 - a) The prospectus contains material errors or omits any of the minimum information required as provided in Appendix I.
 - b) The documentation does not substantiate the provision of guarantees, or any of the other documents listed in article 20 are missing or are submitted with material defects or errors.
 - c) The application clearly fails to comply with the provisions of this Royal Decree.

Article 18. Content of the prospectus

1. All pages of the prospectus for the takeover bid must be signed by a person with sufficient power of attorney, it must be drafted in a way that is easy to analyze and understand, and it must include the information specified in the Appendix to this Royal Decree.
2. The prospectus should include any other information that the offeror considers appropriate, so that the persons to whom the takeover bid is addressed can make an informed judgment of the bid. The CNMV may require the offeror to include in the prospectus additional information it considers necessary and to submit supplementary documents it considers appropriate. Likewise, the CNMV may include caveats and remarks in the prospectus to facilitate its analysis and comprehension.
3. The CNMV may waive the obligation to include in the prospectus any of the information required under this article and the Appendix to this Royal Decree when that information is not available to the offeror, if this omission does not concern any fact or circumstance that is essential for making an informed judgment of the takeover bid.
4. The CNMV may approve, through circulars, the standard forms of the takeover bid prospectus that must be filed in each case.
5. If, after the prospectus has been published, any circumstance arises that requires more information or figures, the offeror may provide them as a supplement, under the terms the CNMV may establish through circulars.
6. Where the consideration offered is securities, whether already issued or to be issued subsequently, the offeror can choose either to include (i) information in the prospectus on those securities that is equivalent to the information that would be required in the case of a public offering for sale or subscription of securities as provided in Royal Decree 1310/2005 elaborating in part on

the Securities Market Act 24/1988, in respect of admission of securities to trading on secondary official markets, public offerings for sale or subscription and the prospectus required for those purposes; or (ii) an authorized and valid prospectus that complies with the provisions of that Royal Decree by referring to it in the prospectus for the bid.

7. The prospectus must be written in Spanish, except information included for reference, as provided in the preceding section. In that case, the summary of the prospectus included for reference must be translated into Spanish.
8. Additionally, the prospectus may include information by referring to one or more documents that have been published before or at the same time as the approval of the prospectus. These documents must have been approved by or filed with the CNMV, or approved by or filed with the competent authorities of another EU Member State, providing that Member State is the country of origin of the issuer of the securities offered as consideration.

Article 19. Crossborder validity of the prospectus

1. Where the takeover bid does not require authorization by the CNMV, the prospectus authorized by the competent authority of another EU Member State will be valid for the takeover bid for shares of companies whose shares are admitted to trading on a Spanish official secondary market.
2. The CNMV may require that supplementary information be included on the formalities to be completed to accept the takeover bid and receive the consideration, and on the tax regime to which the consideration offered will be subject.
3. The prospectus must be translated, at the offeror's choice, into Spanish, or a language that is normally used in international finance, or any other language accepted by the CNMV. The CNMV may request that the offeror translate a summary of the prospectus into Spanish.

Article 20. Supplementary documentation

1. In addition to the prospectus for the takeover bid, the following documents must be submitted:
 - a) Documents substantiating the guarantees for the takeover bid as provided in article 15.
 - b) Application for official authorization or verification, or, as the case may be, documents substantiating that authorization or verification, if the transaction so requires.
 - c) Documentation concerning the price of the takeover bid and valuation reports when required.
 - d) Ownership certificates substantiating the immobilization of the target company's securities, where appropriate.
 - e) Samples of the announcements to be published, as provided in article 22, and a certificate substantiating any planned forms of publicity or disclosure of the takeover bid in any other way.



2. Where the offeror is a legal person:

- a) Certificate of the incorporation of the offeror and its current bylaws issued by the pertinent commercial registry in the case of companies having their registered offices in Spain, or in the corresponding legal form in other cases. Where the company's shares are admitted to trading on a Spanish official secondary market, that obligation will be held to have been performed if its current bylaws are on file with the CNMV.
- b) Audited financial statements of the offeror and, as the case may be, its group, for at least the most recent closed or approved corporate year, unless they are already on file with the CNMV or unless the company is not obliged by law to have its accounts audited.

Where the offeror is inactive or has been created specifically to make the bid, the audited financial statements for the most recent closed or approved corporate year for its controlling partners or shareholders and, as the case may be, their respective groups, providing they are legal persons, must be submitted.

If the offeror has published financial statements in any form after the closing date of the annual accounts mentioned in the preceding paragraphs, those financial statements must also be submitted, unless they are already on file with the CNMV.

3. Where the consideration is securities already issued by a company other than the offeror, the audited financial statements of the issuer company and, as the case may be, its group, for at least the most recent corporate year, must be submitted, along with the documents specified in point a) of section 2, unless those documents are already on file with the CNMV.

Article 21. Authorization of the takeover bid

1. The CNMV will examine the prospectus submitted and the supplementary documents, and will authorize or deny authorization for the takeover bid. The CNMV may request that the offeror submit additional necessary information.
2. The resolution to deny authorization must be reasoned and based on failure to comply with the provisions of the Securities Market Act 24/1988, this Royal Decree, or any other applicable regulations.
3. The resolution to grant or deny authorization must be made within 20 business days from the date of the application.

Where supplementary documents are submitted later than the application as provided in article 17, or where additional information or documents are requested, the term provided for in the preceding paragraph will start on the date those documents or information are received.

As provided in article 16 of the Securities Market Act 24/1988, the resolution by the CNMV will mark completion of administrative formalities and it may be appealed before a contentious administrative court, without prejudice to a possible demand for reconsideration.

4. The CNMV will give notice of its resolution to the offeror, the target company, the Stock Exchange Councils (“*Sociedades Receptoras*”) and the Stock Exchange Company (“*Sociedad de Bolsas*”), as well as any other organizations or authorities considered necessary to notify, and it will post the resolution on its website.
5. Where necessary, the CNMV may adapt the procedures, terms and other formal requisites applicable to takeover bids made simultaneously on a Spanish official secondary market and on another market in a country that is not an EU Member State.

Article 22. Publication of the takeover bid by the offeror

1. Once the offeror has received notice of authorization of the takeover bid, it must make a public and general announcement of the bid within five business days. It must publish the pertinent announcements in the quotation bulletins for the Stock Exchanges where the securities concerned are admitted to trading, in all of the Stock Exchanges quotation bulletins if the securities are included in the Spanish Automated Quotation System, and in at least one national newspaper.
2. The CNMV may require that those announcements be repeated or expanded and they must set out the essential particulars of the takeover bid as stated in the prospectus and be drafted in the form registered as a supplementary document to the prospectus, and they must state the places where the prospectus and the corresponding documents are available to interested parties.
3. In any event, from the stock market business day following the date the first announcement is published, the offeror must make available to interested parties copies of the prospectus for the takeover bid and the documents that must accompany it, as provided in article 20 of this Royal Decree.

The prospectus and the documents that must accompany it will be considered to have been made available to the public if they are published, at the offeror’s choice, in any of the following media:

- a) In one or more national newspapers.
 - b) In printed form made available to the public, free of charge, at the Spanish Stock Exchanges or on the markets where the securities are admitted to trading or at the registered offices of the offeror, the target company, or the entity acting as intermediary and clearing house for the takeover bid.
 - c) Electronically on the websites of the offeror, the target company, or the Spanish Stock Exchanges or markets where the securities are admitted to trading.
 - d) Electronically on the CNMV’s website, where it offers that service for the prospectuses that it approves.
4. The CNMV, at its option, will post on its website either all the prospectuses approved in the preceding 12 months, or a list of those prospectuses including, where appropriate, a hypertext link to the prospectus posted on the website of the offeror or of the market.



5. Where the prospectus is available electronically, the offeror must also provide a free printed copy when requested by any investor.

Article 23. Term for acceptance

1. The term for acceptance of the takeover bid will be determined by the offeror and may not be less than 15 calendar days or more than 70 calendar days from the next stock market business day following the date the first announcement is published, as provided in article 22.
2. Providing it does not exceed the maximum term provided for in the preceding section, the offeror may extend the term specified initially by giving notice to the CNMV. The extension must be announced in the same media in which the takeover bid was published, at least three days before the initial term expires, stating the circumstances that justify the extension.
3. The term for acceptance will extend automatically, where appropriate, to ensure that there are at least 15 calendar days between the date of the general shareholders meeting that will approve the issue of the securities offered in consideration or decide the conditions to which the takeover bid has been made subject and the final day of the acceptance term.
4. If a supplement to the prospectus is published, the CNMV may extend the terms for acceptance if the information in the supplement merits this.
5. Likewise, the CNMV may resolve to extend the term for acceptance in other cases if that extension is necessary. The resolution must be reasoned and based on the successful completion of the bid and protection of the interests of the persons it is addressed to.
6. The CNMV must announce the term for acceptance and any extension of that term on its website, stating the reasons for the extension.

Article 24. Report by the governing body of the target company

1. The target company's governing body must draft a detailed and reasoned report on the takeover bid, including its remarks in favor of or against the bid and stating whether there is any agreement between the target company and the offeror or their directors or partners, or between the latter and the members of the target company's governing body, as well as their opinion on the takeover bid, and also whether the members of the governing body who are direct or indirect holders of the securities intend to accept or not accept the bid.

The report must also address the possible impact of the takeover bid and the offeror's strategic plans as set out in the prospectus on the overall interests of the company, employment and the location of its workplaces.

Any member of the governing body who has a conflict of interest must disclose the situation and explain the nature of that conflict.

Where the members of the governing body take differing positions regarding the takeover bid, the opinion of those in the minority must also be included in the report.

The report must state the offeror company's securities held directly or indirectly by the target company or by persons with which it acts in concert, and the target company's securities held or represented directly or indirectly by the members of the target company's governing body, as well as those that they might hold in the offeror company.

2. The report by the target company's governing body must be published by the company itself in any of the forms provided for in article 22.1, within 10 calendar days from the beginning of the term for acceptance of the takeover bid. Likewise, it must be submitted within that same 10-calendar-day term to the CNMV to be included in the file on the takeover bid, and also to the representatives of the target company's employees. If the target company's governing body receives a report from the employees' representatives within the terms provided for in this article that expresses a different opinion on the repercussions on employment, that report must be attached to the target company's report.

Article 25. Information for employees

1. As soon as a takeover bid is announced, the target company's governing or management bodies and the offeror must inform the representatives of their respective employees, or, in the absence of representatives, the employees themselves.
2. When the prospectus for the takeover bid is published, the target company's governing or management bodies and the offeror must submit it to the representatives of their respective employees, or, in the absence of representatives, the employees themselves.
3. The representatives of the target company's employees and the offeror, or, in the absence of representatives, the employees themselves, must have quick and easy access to the prospectus for the takeover bid and its supplementary documents.
4. The provisions of this Royal Decree are understood to be without prejudice to the provisions of employment law regarding information, consultation and participation of employees.

Article 26. Authorization required from other supervisory bodies and antitrust authorities

1. Where the takeover bid might entail the existence of an economic concentration, of European, Spanish or other dimension, the pertinent regulations regarding defense of competition will apply. Proof of notice to the competent antitrust authorities must be submitted to the CNMV, if necessary.

The offeror may make its takeover bid conditional on the pertinent authorization or non-objection of the antitrust authorities, so that:

- a) If the competent antitrust authorities do not object to the concentration before the end of the term for acceptance, the takeover bid will be fully effective.
- b) If the competent antitrust authorities declare the concentration to be inadmissible before the end of the term for acceptance, the offeror must withdraw the takeover bid.



- c) If the competent antitrust authorities make their authorization dependent on a condition before the end of the term for acceptance, the offeror may withdraw the takeover bid.
- d) If the competent antitrust authorities fail to make any express or tacit resolution before the end of the term for acceptance, the offeror may withdraw the takeover bid.

In the case of mandatory takeover bids and until the pertinent resolution has been made, the offeror cannot exercise the voting rights corresponding to its stake that exceeds the threshold that triggers the obligation to launch the bid. Likewise, where the offeror withdraws the takeover bid under the provisions of points b), c) and d), it must have sufficient securities to reduce its percentage of voting rights to below the controlling stake within three months, or terminate within the same term the shareholders agreement, covenant or concert through which it had acquired that stake.

Where the offeror chooses not to make its takeover bid subject to the pertinent authorization or non-opposition of the competent antitrust authorities, or chooses to perform the takeover bid in spite of not having obtained a resolution from the antitrust authorities, the provisions of the corresponding antitrust law will apply. The law regarding mandatory takeover bids will also apply.

2. Where the takeover bid requires the authorization or non-opposition of any other official body or prior notice of the transaction to any other official body, the application for authorization of the takeover bid may be submitted without first having applied for or obtained that authorization, non-opposition or simple notice. However, the CNMV will not authorize the takeover bid until proof is submitted that the applicable authorization, non-opposition or simple notice has been attained, except where the terms have expired and it is understood that authorization has been granted through administrative silence.

In the case of mandatory takeover bids, the offeror cannot exercise the voting rights corresponding to its stake that exceeds the threshold that triggers the obligation to launch the bid until the pertinent resolution has been made. Likewise, where the resolution is negative, the offeror must transfer sufficient securities to reduce its percentage of voting rights to below the controlling stake within three months from the date of notice of the corresponding resolution or terminate within the same term the shareholders agreement, covenant or concert through which it had acquired that stake.

Article 27. Suspension of political rights

1. Any person who fails to abide by the obligation to make a takeover bid as provided in article 60.3 of the Securities Market Act 24/1988 will not be entitled to exercise the political rights conferred by any of the securities of the listed company in any way, or by any securities held indirectly by the person obliged to launch the takeover bid, or by the securities held by persons acting in concert with it.

For those purposes, the following will be considered political rights conferred by securities: right to attend and vote at general shareholders meetings and general assemblies, right to information,

right to pre-emptive subscription, right to form part of the company's governing bodies, right to challenge corporate resolutions unless those resolutions are contrary to law, and, in general, all rights that are not exclusively economic in content.

2. The political rights suspended by virtue of the preceding section may only be recovered through a takeover bid for all of the company's securities at a price determined as provided in article 10, or with the unanimous consent of the other holders of securities stated individually.
3. Mere resale of the securities obtained in violation of the obligation to make a takeover bid will not prevent the corresponding official penalties from being imposed; nor will it allow exercise of the political rights conferred by the securities held and not resold. The person who acquires the securities that are resold will only be able to exercise the political rights conferred by them if the acquirer does not have a relationship with the transferor as provided in articles 5 and 6 of this Royal Decree.

Chapter VI

Defenses against takeover bids

Article 28. Limitation of actions by governing and management bodies of the target company and its group

1. From the date a takeover bid is announced as provided in article 16, and until the outcome of the bid is published, the target company's governing and management bodies, and any body delegated or empowered by them, their respective members and the companies belonging to the target's group and anyone acting in concert with them, must obtain prior authorization of the general shareholders meeting as provided in article 103 of the Spanish Public Limited Companies Act as amended, approved under Royal Decree 1564/1989, before taking any action that could frustrate the successful outcome of the bid, particularly before commencing any issue of securities that could prevent the offeror from acquiring control of the target company.

In particular, they may not:

- a) Resolve for or commence any issue of securities that could frustrate the successful outcome of the bid.
- b) Carry out or promote, whether directly or indirectly, any transaction involving securities affected by the takeover bid or other securities, including actions aimed at encouraging the purchase of such securities, where those actions could frustrate the successful outcome of the bid.
- c) Carry out the disposal, encumbrance or lease of property or other corporate assets, where those actions could frustrate the successful outcome of the bid.
- d) Distribute extraordinary dividends or remunerate in any other way that is not consistent



with the usual policy on distribution of dividends to the shareholders or holders of other securities of the target company, except where the pertinent corporate resolutions have been passed in advance by the competent corporate body and made public.

2. Regarding resolutions passed before the period provided for in the preceding section that have not yet been applied in whole or in part, the general shareholders meeting must approve or confirm any resolution that does not fall within the scope of the company's normal business activity and whose application could frustrate the successful outcome of the bid.
3. The following will not be subject to the limitation provided for in this article:
 - a) Search for a white knight. Where access is provided during this process to any non-public information on the target company, the equality of all potential offerors must be ensured under the provisions of article 46 of this Royal Decree.
 - b) Any actions or transactions that, after the announcement of the takeover bid, are expressly authorized by the general shareholders meeting under the provisions of article 103 of the Spanish Public Limited Companies Act as amended, approved under Royal Decree 1564/1989.
4. For the purposes of the provisions of the preceding sections:
 - a) The general shareholders meeting, unless it is an ordinary general meeting, cannot resolve on any matter other than authorization or confirmation of the action or transaction.
 - b) The company's directors must draft a detailed written report setting out the reasons for the actions to be taken for which they are requesting authorization or confirmation by the general shareholders meeting. That report must state how each director has voted regarding approval of the report. The report must be made available to shareholders from the time the general shareholders meeting is called.
 - c) The call for the general shareholders meeting must state clearly the actions for which authorization or confirmation is being requested.
 - d) The call for the general shareholders meeting must state shareholders' right to examine the full text of the proposed resolution and the report on that resolution at the company's registered office and to request free delivery or dispatch of those documents.
5. A company can choose not to apply the provisions of the preceding paragraph if it is the target of a takeover bid made by an entity that does not have its registered office in Spain and is not subject to the same or equivalent regulations, including those dealing with the rules regarding resolutions passed by the general shareholders meeting, or by another entity controlled directly or indirectly by such an entity, under the provisions of article 4 of the Securities Market Act 24/1988.

Any resolution passed in accordance with the provisions of the preceding paragraph will require approval of the general shareholders meeting, in accordance with article 103 of the Spanish Public Limited Companies Act as amended, approved under Royal Decree 1564/1989, granted no earlier than 18 months before the date the takeover bid was made public.

For those purposes:

- a) The directors of the company must draft a written report setting out in detail the reasons for the resolution to be passed. That report must state how each director has voted regarding approval of the report. The report must be made available to shareholders from the time the general shareholders meeting is called.
- b) The call for the general shareholders meeting must state clearly the resolution proposed for approval.
- c) The call for the general meeting must state shareholders' right to examine the full text of the proposed resolution and the report on that resolution at the company's registered office and to request free delivery or dispatch of those documents.

Article 29. Option to break through anti-takeover defenses

1. Under article 60 ter.2 of the Securities Market Act 24/1988, companies must submit to the CNMV, within 15 business days from the date of the general shareholders meeting provided for in that article, the information regarding the resolution to apply the following neutralization measures:

- a) Suspension, during the term for acceptance of the bid, of any restrictions on transfer of securities provided for in shareholders agreements affecting the company.
- b) Suspension, at the general shareholders meeting that will resolve on the possible defensive measures provided for in article 60 bis 1 of the Securities Market Act 24/1988, of restrictions on voting rights provided for in the target company's bylaws and in any shareholders agreements concerning that company.
- c) Suspension of the restrictions provided for in the preceding points where, subsequent to a takeover bid, the bidder has attained a stake of 75% or more in share capital conferring voting rights.

The CNMV will post that information on its website immediately.

2. The resolution to apply the breakthrough measures must be passed by the general shareholders meeting, in accordance with article 103 of the Spanish Public Limited Companies Act as amended, approved under Royal Decree 1564/1989.

For those purposes:

- a) The directors of the company must draft a detailed written report setting out the reasons for the resolution to be passed. Among other requirements, that report must:
 - (i) describe the restrictions on transfer of shares provided for in the shareholders agreements that have been reported to the company;
 - (ii) describe the restrictions on voting rights provided for in the company's bylaws and in the shareholders agreements that have been reported to the company;



- (iii) set out in detail which measures provided for in section 1 above will be proposed for approval by the general shareholders meeting and the terms under which the restrictions will be suspended;
 - (iv) explain why the directors have decided to propose suspension of the above-mentioned restrictions in the cases where that proposal is made;
 - (v) set out in detail any agreement that has been reached or is being negotiated by the company with a potential offeror regarding shares in the company, or reached or negotiated by anyone other than the company but which the company is aware of;
 - (vi) state how each director has voted on approval of the report.
- b) The directors' report must be made available to shareholders from the time the general shareholders meeting is called.
 - c) The call for the general shareholders meeting must state clearly the resolution that will be proposed for approval.
 - d) The call for the general meeting must state shareholders' entitlement to examine the full text of the proposed resolution and the report on that resolution at the company's registered office and to request free delivery or dispatch of those documents.
3. Without prejudice to the notification, as relevant information, of the call of the general shareholders meeting that will vote on the proposed resolutions provided for in this article, of the directors report on that proposal, and of the resolution passed by the general shareholders meeting, if the general shareholders meeting approves suspension of any of the restrictions provided for in section 1 above, the company must give notice of that resolution and disclose it as material information in the terms provided for in article 82 of the Securities Market Act 24/1988, and must report it both to the CNMV for entry on its records as provided in article 92 of the Securities Market Act 24/1988, and to the supervisors of the Member States where the company's shares are admitted to trading or where application has been made for admission to trading.
- Approval of the pertinent resolution by the general shareholders meeting must be stated in the company's annual report on corporate governance mentioned in article 116 of the Securities Market Act 24/1988.
4. Where the company resolves to apply the measures set out in section 1, it must provide for suitable indemnity for the loss sustained by the holders of the rights mentioned there. This indemnity must be included in the company's bylaws, stating how it will be paid and the method used to determine its amount.
5. The company's general shareholders meeting, subject to the same requirements as provided in sections 1 to 3 above, may revoke the decision to apply any of the measures to break through anti-takeover defenses that it may have adopted, as provided in those sections.

Revocation of the decision to apply the neutralization measures provided for in section 1 will require the same quorum for attendance or majority vote as for the application of those neutralization measures.

6. A company may choose not to apply the breakthrough measures it has in place by virtue of the provisions of the preceding sections when it is the target of a takeover bid launched by an entity or group that has not adopted equivalent breakthrough measures.

Any measure taken in accordance with the provisions of the preceding paragraph will require approval by the general shareholders meeting, in accordance with article 103 of the Spanish Public Limited Companies Act as amended, approved under Royal Decree 1564/1989, granted no earlier than 18 months before the date the takeover bid was made public.

For those purposes:

- a) The company's directors must draft a detailed written report setting out the reasons for the resolution to be passed. That report must state how each director has voted regarding approval of the report.
- b) The directors' report must be made available to shareholders from the time the general meeting is called.
- c) The call for the general meeting must state clearly the resolution that will be proposed for approval.
- d) The call for the general meeting must state shareholders' entitlement to examine the full text of the proposed resolution and the report on that resolution at the company's registered office and to request free delivery or dispatch of those documents.

Chapter VII

Amendment, withdrawal and termination of the effects of the takeover bid

Article 30. Irrevocability and conditions of the takeover bid

1. A takeover bid will be irrevocable after its public announcement, as provided in article 16, and it may not be altered, withdrawn or its effects terminated except in the circumstances and manner provided for in this Royal Decree.
2. A mandatory takeover bid may not be made subject to any condition, except as provided in article 26 of this Royal Decree. However, a voluntary takeover bid may be made subject to conditions as provided in articles 13 and 26.



Article 31. Alteration of the characteristics of the takeover bid

1. The characteristics of a takeover bid may be amended at any time before the last five calendar days of the term for acceptance, providing the amendment involves a more favorable treatment for the persons to whom the bid is addressed, either because it extends the original bid to include a larger number of securities or because it increases the consideration offered, or eliminates or reduces any conditions to which the bid was made subject. This alteration must respect the principle of equal treatment for all those to whom the bid is addressed that are in the same circumstances.

Where the consideration is improved by an alteration of the nature of the consideration, that improvement must be substantiated by an independent expert's opinion, except where the consideration offered originally was an exchange of securities and the new consideration offered is cash for an amount that exceeds the amount stated in compliance with article 14.4 of this Royal Decree.

2. The offeror will be entitled to associate or act in concert with third parties to improve its takeover bid, providing:
 - a) the offeror and the third party or parties with whom it associates or acts in concert assume joint and several liability for the amended bid; and
 - b) the change in the identity or make-up of the offeror and all other changes are set out in a supplement to the prospectus.
3. The offeror must substantiate the decision or resolution to amend the characteristics of the takeover bid in the supplement, setting out in detail the alteration to the characteristics of the bid, expressly mentioning each of the points in the original prospectus affected by that alteration, and describing separately the reasons for the amendment. Amendments must be described with the same precision, extent and exactitude as the altered points.
4. Alteration of the conditions for the takeover bid must be subject to authorization by the CNMV, which will decide within three business days from the date of the application. During that time, the term for acceptance will be temporarily suspended.

Where the CNMV considers it necessary to better analyze the proposed alteration, it may extend the term for acceptance of the takeover bid, in which case it will post that extension on its website.

5. On approval by the CNMV, the offeror must publish the amendment on the business day following the date of that approval.
6. The provisions of article 24 will apply to the amendment, although the term for the target company's governing body to issue the report will be five calendar days from the date of publication provided for in section 5 above. Where necessary, the CNMV may extend the term for acceptance accordingly.

7. Unless stated otherwise, and subject to the same requirements as provided for acceptance of the original offer, it will be understood that the persons to whom the takeover bid was addressed and who accepted it before it was altered will also accept the revised bid.
8. In the case of competing bids, the provisions of Chapter IX of this Royal Decree will apply.

Article 32. Limitations on actions by the offeror

1. From the date the takeover bid is announced as provided in article 16, and until the offer is made as provided in article 17, the offeror, the members of its governing and management bodies, its controlling shareholders, its advisors, the persons it is acting in concert with, and all others taking part in the transaction, must not publish or disseminate any facts or information that are not in the prior announcement of the bid.
2. In the case of mandatory takeover bids, until the bid has been authorized by the CNMV, the offeror and anyone acting in concert with it will be prohibited from exercising the political rights pertaining to the portion of their stake that exceeds the threshold that triggers the obligation to launch a takeover bid and from appointing, whether directly or indirectly, any additional member to the target company's governing or management bodies.
3. Without prejudice to the provisions of the following sections, the offeror can acquire securities in the target company at any time. However, if the takeover bid is made subject to attaining a minimum number of acceptances, acquisition by the offeror of securities issued by the target company outside the scope of the takeover bid, from the date of the bid is announced as provided in article 16 until the date the outcome of the bid is published, will result in the elimination of that condition and any other condition that may have been imposed.
4. When the consideration for the takeover bid consists of securities of the target company or a combination of cash and securities of the target company, and the offeror or persons acting in concert with it acquire securities of the target company outside the scope of the takeover bid, from the date the bid is announced as provided in article 16 until the date the outcome of the bid is published, the offeror must offer all the persons to whom the bid is addressed, as an alternative to the consideration offered originally, a cash consideration that cannot be less than the highest price paid for the securities acquired in that manner. That obligation will also apply when the securities offered in consideration are not securities of the target company if the offeror or persons acting in concert with it acquire the securities offered in consideration outside the scope of the takeover bid, from the date the bid is announced as provided in article 16 until the date the outcome of the bid is published. In that event, any guarantees that have been presented must be increased appropriately. That increase must be made within three business days from the date of the acquisition.
5. When the consideration for the takeover bid only consists of cash, acquisition by the offeror or persons acting in concert with it of securities targeted by the bid at a price higher than the price stated in the prospectus or in any amendment of the prospectus, will result in the automatic



increase of the price offered to the highest price paid. In that event, any guarantees that have been presented must be increased appropriately. That increase must be made within three business days from the date of the acquisition.

6. When the offeror or persons acting in concert with it acquire securities targeted by the takeover bid, it must notify the CNMV to that effect on the same day, indicating the prices paid and agreed. That information will be considered material information. Where necessary, the CNMV may extend the terms for acceptance of the bid and take any other actions that may be necessary as a result of the *de facto* alteration of the conditions for the bid, including, as the case may be, the offeror's presentation of a supplement to the prospectus.
7. Under no circumstance will the offeror or persons acting in concert with it be entitled to transfer shares in the target company until the takeover bid has been settled. This rule will also apply to transfer of securities offered in takeover bids where the consideration consists in whole or in part of securities.

Article 33. Withdrawal and termination of the effects of the bid

1. After launching a voluntary takeover bid, the offeror can withdraw that bid only under the following circumstances:
 - a) When a competing takeover bid is authorized, as provided in Chapter IX.
 - b) In the circumstances provided for in points b), c) and d) of section 1 of article 26.
 - c) When, due to exceptional circumstances beyond the offeror's control, the takeover bid cannot be accomplished or becomes clearly unfeasible, providing prior consent of the CNMV is obtained.
 - d) Where, in accordance with article 28, the target company's general shareholders meeting passes a resolution that, in the offeror's opinion, makes it impossible to maintain its takeover bid, providing the offeror has not had any part, whether directly or indirectly, in passing that resolution and obtains the prior consent of the CNMV. This rule also applies if the governing body's actions are not subject to that limitation in accordance with the procedure provided for in article 28.5.
 - e) Nevertheless, in the case of resolutions of the sort provided for in point d) of article 28.1, the offeror can persist in its takeover bid and adjust the consideration offered, providing, given the circumstances of the case, the reduction of the new consideration does not exceed the amount required to maintain financial equivalence with the original consideration, and that the offeror obtains the prior consent of the CNMV.
2. In the case of a mandatory takeover bid, the offeror may withdraw its bid under the following circumstances:

- a) When, due to exceptional circumstances beyond the offeror's control, the takeover bid cannot be accomplished or becomes clearly unfeasible, providing the prior consent of the CNMV is obtained.
 - b) In the circumstances provided for in points b), c) and d) of section 1 of article 26.
 - c) When, on completion of the procedure applicable in the case of competing takeover bids, a competing bid is maintained that is not subject to conditions and offers better terms than the mandatory bid, as provided in Chapter IX.
3. A voluntary takeover bid will be without effect if it is not accepted owing to the minimum number of securities that has been stated as a condition, unless the offeror waives the condition and acquires all the securities tendered.

In the case of other conditions imposed, the takeover bid will be without effect if those conditions have not been met when the term for acceptance expires, unless the offeror has waived those conditions at least one day before the term for acceptance expires. In that last case, the provisions of article 31.7 will apply.

4. The offeror must give notice immediately to the CNMV of its decision to withdraw the takeover bid, stating the reason for the withdrawal in detail. Likewise, it must notify any other causes that render the tender offer without effect.

These notifications must be made public as provided in article 22, within a maximum of two business days from receipt by the CNMV.

5. Once the withdrawal of the takeover bid or the cause that has made it without effect has been made public, any acceptances that had been presented will be without effect and any costs incurred through such acceptances will be at the offeror's expense.

Chapter VIII

Acceptance of the takeover bid and settlement of transactions

Article 34. Declaration of acceptance of the takeover bid

1. Declarations of acceptance of the takeover bid must be as set out in the prospectus.
2. Members of the market taking part in the transaction or the entities acting on behalf of the offeror will report daily to the different Stock Exchange Councils and the offeror on the number of declarations of acceptance received.
3. Declarations of acceptance may be revoked at any time before the last day of the term for acceptance of the takeover bid.



4. When there are competing takeover bids, multiple declarations of acceptance may be made, as long as they state the order of preference and that such declarations are made to the different competing offerors.
5. Any declaration of acceptance made subject to any condition will be invalid.

Article 35. Information on acceptances received

1. During the term for acceptance, the offeror and the Council of the Stock Exchange where the securities affected by the takeover bid are admitted to trading must provide the CNMV, at the latter's request, with information on the number of acceptances submitted and not revoked which they are aware of.
2. During the term provided for in the preceding section, all interested parties will be entitled to obtain information on the number of acceptances submitted and not revoked, either at the offeror's registered office or the registered office of its representatives.

Article 36. Publication of the outcome of the takeover bid

1. Within five business days from the date the term for acceptance expires, the Stock Exchange Councils or, as the case may be, the entities acting on behalf of the offeror, must report to the CNMV on the total number of securities included in the declarations of acceptance submitted.
2. Once the CNMV has been informed of the total number of acceptances, it will notify within two business days the Council of the Stock Exchange where the securities are admitted to trading and, as the case may be, the Stock Exchange Company, the offeror and the target company, of the successful or negative result, depending on whether the minimum number of securities stated in the takeover bid has been attained and whether the conditions have been met for it to be effective. The Stock Exchange Councils will publish that result and its specific extent in the quotation bulletin for the stock market session when that notice is received.

Article 37. Settlement of the takeover bid

1. Successful takeover bids with cash consideration will be settled by the procedure established for that purpose by the *Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores, S.A.* (Iberclear), taking the date of the market session corresponding to the quotation bulletin in which the result of the takeover bid was published as the date of the corresponding stock market transaction.
2. Where the consideration consists of an exchange of securities, the takeover bid will be settled as specified in the prospectus.
3. Once the transaction has been settled, the CNMV will authorize the release of any guarantee that has been provided. A partial reduction of the amount of the guarantees may be granted if it does not interfere with the pending settlement process.

Article 38. Distribution and pro rata rules

1. When the total number of securities included in the declarations of acceptance exceeds the maximum limit established in the takeover bid, the transaction will be settled in accordance with the following rules:

- (i) Linear distribution: Distribution will start by allotting an equal number of securities to each acceptance equivalent to the result of dividing 25% of the total number of securities affected by the takeover bid by the total number of acceptances.

Any acceptance declared for a number of securities that is less than the number stipulated in the preceding paragraph will be settled in full.

- (ii) Distribution of the remainder: The remaining amount not allotted in accordance with the preceding rule will be distributed proportionally to the number of securities included in each acceptance.

2. In the takeover bids provided for in article 12, where declarations of acceptance have exceeded the maximum limit of the bid, the transaction will be settled by reducing the securities tendered by each shareholder in proportion to the number of shares included in their acceptance.

3. The Stock Exchange Councils will co-ordinate their actions to determine the number of securities to be allocated to each acceptance in cases where the distribution and pro rata rules provided for in the preceding sections are to be applied and the securities covered by the takeover bid are admitted to trading on several stock exchanges.

4. In any event, the different acceptances that may have been made directly or indirectly by the same natural or legal person will be considered a single acceptance.

Article 39. Negative outcome of voluntary takeover bids

1. When a takeover bid is rendered without effect because the minimum number of securities stated as a condition has not been attained or, in general, because the conditions imposed have not been met, the entities or persons that have received acceptances on behalf of the offeror must return to those who have accepted the bid the documents substantiating title to the securities that have been submitted to them.

All the costs incurred in that return will be at the offeror's expense.

2. The offeror, the companies belonging to its group, the members of its governing body, its senior management and anyone who has promoted the takeover bid in their own names but on behalf of the offeror or in concert with it will be prohibited from promoting another takeover bid of the same securities, except as provided in Chapter IX of this Royal Decree, until six months have passed from the date the result of the failed bid is published, and from acquiring securities or attaining any of the circumstances giving rise to the obligation to make a takeover bid as provided in this Royal Decree.



3. The provisions of this article will not apply where circumstances for withdrawal have arisen as provided in section 1 of article 33 of this Royal Decree.

Chapter IX

Competing takeover bids

Article 40. Definition

Any takeover bid affecting securities for all or part of which another takeover bid has already been submitted before the CNMV and whose term for acceptance has not yet expired will be considered a competing takeover bid, providing the requirements of article 42 are met.

Article 41. Authorization for a competing takeover bid

1. The CNMV will authorize competing takeover bids and the improvements provided for in article 45, providing they comply with the general provisions of this Royal Decree and the specific provisions of this chapter.

The CNMV will post its decision on its website.

2. Anyone acting in concert with the offeror or belonging to its group, and anyone acting directly or indirectly on its behalf will be prohibited from making a competing takeover bid.

Without prejudice to the above provisions, the offeror may associate or act in concert with third parties with the aim of improving its offer, providing:

- a) no person or entity participates directly or indirectly in more than one takeover bid, whether as offeror or acting in concert with the original offeror, or in any other way;
 - b) the offeror and other third person or persons associated or acting in concert with it assume joint and several liability for the amended takeover bid; and
 - c) the change in the identity or make-up of the offeror group and any other variations are stated in a supplement to the prospectus.
3. All takeover bids will be processed in the order they are presented, so that bids that have only been disclosed through an initial announcement will be processed in order, according to their date of presentation.
 4. When a competing takeover bid is presented before the announcements of a prior takeover bid as provided in article 22, the CNMV will inform the new offeror that its bid will be subject to the regime for competing takeover bids and will suspend processing of the bid until the prior bid has been authorized.

When the first takeover bid is published, the CNMV will give the offeror who has promoted the competing bid a 10-day term in which to ratify the conditions of its bid or, as necessary, improve its conditions as provided in the following article.

Article 42. Conditions of competing takeover bids

1. All competing takeover bids must meet the following requirements:
 - a) The competing takeover bid must be launched at any time after the original takeover bid has been presented, up until the fifth calendar day before the term for acceptance of that bid expires. The term for acceptance will be the term resulting from any alterations that may have occurred under the provisions of article 44.
 - b) The competing takeover bid must cover a number of securities not less than the number covered by the most recent previous bid.
 - c) The competing takeover bid must improve the most recent previous bid, either by offering a higher price or value for the consideration, or by making the bid cover a larger number of securities. When the consideration is improved by altering its nature, this improvement must be substantiated by an independent expert's opinion, except when the consideration offered initially was an exchange of securities and the new offer is a cash consideration for an amount that exceeds the amount stated in compliance with the provisions of article 14.4 of this Royal Decree.
 - d) When a competing takeover bid is made as a mandatory takeover bid in accordance with the provisions of Chapter II of this Royal Decree, that takeover bid must also comply with the provisions of that chapter. If the circumstance that makes the takeover bid mandatory arises after the term provided for in point a) above has expired, the CNMV will extend the terms provided for in this chapter to allow the competing mandatory takeover bid to take place. That bid must be launched immediately when the circumstance that makes it mandatory occurs and, in any event, within five business days from that date.
2. Provided the requirements established in the preceding section have been met, any competing takeover bid that is not mandatory may make its effect conditional on acceptance of a higher percentage of share capital than any previous bid. Its effect may be made subject to any further condition in the terms provided for in article 13.2 of this Royal Decree.
3. The consideration may take any of the forms provided for in article 14.
4. The first bidder may agree with the target company that if that its bid is unsuccessful due to the presentation of other competing bids, it will receive a fee to cover the costs of having prepared the takeover bid.

The amount of that fee may not exceed 1% of the total amount of the takeover bid, it must be approved by the board of directors with a favorable report by the company's financial advisors, and it must be set out in the prospectus for the bid.

Article 43. Declarations of acceptance of competing offers

Declarations of acceptance may be multiple, in accordance with the provisions of article 34.4.

The procedure for counting multiple acceptances will be subject to the following rules:

- a) Acceptances will be attributed initially to the takeover bids constituting the first preference of each acceptor.
- b) Acceptances of takeover bids that are withdrawn or left without effect due to the causes provided for in this Royal Decree will be attributed to the following takeover bids in order of preference.
- c) The CNMV may determine, through circulars, the procedure for counting and the manner in which the outcome will be made public.

Article 44. Term for acceptance of competing takeover bids

1. The term for acceptance of competing takeover bids will be 30 calendar days from the day after the publication of the first announcement provided for in article 22. Presentation of a competing bid will suspend the original term for acceptance of the bid or any preceding bids, and will automatically modify that term to the extent necessary, to ensure that all terms for acceptance of bids expire on the same date.

The CNMV will post the new, single term for acceptance of all competing takeover bids on its website.

2. The extensions of the acceptance term provided for in article 23 will apply to competing bids, except the extension in section 2 of that article.
3. The CNMV will make public the acceptance term and its extensions.

Article 45. Withdrawal and alteration of competing takeover bids

1. The authorization of a competing takeover bid will allow the offerors of preceding bids to withdraw them. In the case of mandatory bids, the provisions of article 33.2 will apply. Withdrawal must be made before the date of the alterations provided for in section 3, and immediate notice must be given to the CNMV and it must be announced as established in article 22.
2. Once the competing takeover bids that have been presented are authorized, and until the time provided for in section 3, any offeror who has not withdrawn its bid may alter the conditions offered, as long as no other new competing bid has been announced before that alteration.
3. On the fifth business day after the term for presenting competing takeover bids has expired, as provided in article 42.1a) above, all offerors that have not withdrawn their bids must submit notice to the CNMV, in a sealed envelope or in any other way accepted by the CNMV that ensures the secrecy of the information submitted, of their final improvement as provided in article 42, or of their decision not to present an improvement.

If on the date provided for in the preceding paragraph only one takeover bid remains in effect, the offeror will be released from the obligation to submit the notice mentioned in the previous paragraph and may either maintain or alter the bid under the terms provided for in article 31.

4. The CNMV will open the sealed notices on the date they are submitted or on the following stock market business day and will notify all the offerors and the market by posting the conditions stated in those notices on its website.
5. In the event of improvements as provided in sections 2 and 3 of this article, the offeror must substantiate the decision to the CNMV and submit to it a supplement to the prospectus stating the alterations made to the takeover bid with the same precision, extent and exactitude as the altered points, and a sample of the announcements to be published.

Within the following three business days, each offeror must substantiate to the CNMV the supplementary guarantee corresponding to the alteration submitted.

If the improvement does not comply with the provisions of this Royal Decree, or the offeror does not submit the documents specified in the preceding paragraphs, the CNMV will consider the improvement not made and will announce this publicly.

6. If the original offeror has not withdrawn its takeover bid, it may alter its conditions as provided in sections 2 and 3, provided they meet the following requirements:
 - a) The consideration offered in the sealed notice or submitted in an equivalent manner must not be more than 2% lower than the highest of the considerations offered in the sealed notices or submitted in an equivalent manner.
 - b) The offeror must improve the conditions of the competing takeover bid or bids either by raising the price or the value of the consideration offered in the best of those competing bids by at least 1%, or by extending the original bid to a number of securities that is at least 5% higher than the best of the competing bids. However, if the improvement does not consist exclusively of an increase in the price or extension of the bid to a greater number of securities, an independent expert's report must be submitted to substantiate that the bid improves the most recent previous bid, except when the consideration offered originally was an exchange of securities and the new consideration consists of an amount of cash that exceeds the amount stated in compliance with the provisions of article 14.4 of this Royal Decree.

This last improvement must be submitted within five business days from the date of the notice from the CNMV provided for in section 4.

7. When the offeror is notified of the authorization, it must then proceed, by the deadline specified by the CNMV, to publish the new conditions for the takeover bid under the terms provided for in article 22. If several offerors make alterations, both the authorization and the publication of the new conditions must take place on the same dates.

The term for acceptance of the competing offers must run until 15 calendar days have passed from publication of the announcements provided for in article 22 and will be extended automatically for that period if necessary. The CNMV will announce the extension on its website.



8. The obligation on the part of the target company's governing body to issue a report under the terms provided for in article 24 will apply to the takeover bids regulated under this article, although the term for publishing that report issued by the target company's governing body will be five calendar days from the date the alteration was made public.
9. Without prejudice to the provisions of article 43, unless stated otherwise and subject to the same requirements established initially for each takeover bid, it will be understood that the persons to whom those bids are addressed and that have accepted them before they are altered will also accept the respective altered bids.

Article 46. Equal information

1. The target company must ensure that all competing offerors of takeover bids have the same information available to them.
2. To that end, and when an offeror or potential offeror specifically requests this information in good faith, the target company must supply the information requested, provided the information has been provided to the other offerors or potential offerors.
3. The company will deliver the information conditional on the recipient's assurance that it will be kept secret, that it will be used exclusively for making a takeover bid and that it is needed to prepare such a bid.

Chapter X

Compulsory purchase and sale (squeeze-out / sell-out)

Article 47. Conditions for compulsory purchase and sale

1. Any person who has launched a takeover bid for all securities will be entitled, on liquidation of the bid, to oblige the remaining holders of shares or other securities covered by the bid to sell the offeror their shares or securities at an equitable price. Likewise, any of those holders of shares or other securities will be entitled to require the offeror to acquire all their securities at an equitable price.

Those rights will be conditional on the following two circumstances occurring on the date of settlement of the bid:

- a) The offeror must hold title to securities representing at least 90% of the target company's share capital with voting rights.
 - b) The previous takeover bid must have been accepted by the holders of securities representing at least 90% of the voting rights covered by the bid.
2. The amount of the consideration for the takeover bid will be considered an equitable price.

Article 48. Procedure for compulsory purchase and sale

1. The maximum term for exercising squeeze-out or sell-out rights will be three months from the date the term for acceptance expires.
2. The prospectus for the takeover bid must state whether the offeror intends to exercise its squeeze-out rights if the conditions provided for in article 47 are met.
3. Within three business days from the date the outcome of the takeover bid is published, the offeror must notify the CNMV of whether the conditions provided for in article 47 are met.
4. As soon as it makes the decision, and within the term provided for in section 1, the offeror must notify the CNMV of whether it will exercise its squeeze-out rights. If it decides to exercise such right, it must set the date for the transaction within 15 to 20 business days following the date of notice of that decision to the CNMV, which will announce the date publicly. The offeror's decision will be irrevocable.

Before the transaction date, the offeror must substantiate to the CNMV that it has instituted sufficient guarantees to ensure performance of the obligations arising from the exercise of the squeeze-out right.

The transaction must be settled within the term specified in the prospectus of the takeover bid from the date of the transaction.

5. The offeror must publish the characteristics of the squeeze-out, as provided in article 22, within five business days from the date of publication by the CNMV.

The holders of securities affected by the squeeze-out must notify the offeror, through the entities with which their securities are deposited and before the transaction date, of the nature of the consideration they choose to receive, as the case may be. In the absence of this notice, and as long as the alternative exists, it will be assumed they have chosen the cash consideration.

6. Any requests for squeeze-out received by the offeror must be settled within the same terms specified in the prospectus for settlement of the takeover bid, from the date of receipt of each such request.
7. The entities responsible for settlement will be obliged to make the transfers of securities and cash needed to complete the squeeze-out or sell-out within the terms provided in sections 4 and 6 above.
8. In the event of a squeeze-out, all the costs incurred in the purchase and sale or exchange and settlement of the securities will be at the offeror's expense.

In the event of a sell-out, the costs incurred in the purchase and sale or exchange and settlement of the securities will be at the seller's expense.

9. Once settlement of the transactions has been substantiated to the CNMV, the guarantee may be withdrawn.



10. Accomplishing the squeeze-out will determine the delisting of the securities concerned. The delisting will be effective from the transaction's date of settlement.

If, as a result of the sell-out transactions, the offeror becomes the owner of all the securities, it will also be delisted from the date of settlement of the last transaction, except when the CNMV, at the offeror's request, grants a one-month term to re-establish compliance with requirements for dissemination and liquidity of the securities in question. If that term expires without that re-establishment taking place, the securities will be delisted automatically.

11. The CNMV may determine, through circulars, any other circumstances it considers necessary to apply the procedure set out in this article.

Chapter XI

Regime for supervision, inspection and penalization

Article 49. Supervision, inspection and penalization

Any person or entity that promotes a takeover bid, the target companies, the securities dealers, the brokers or credit institutions acting on behalf of the offeror, the directors of any of the abovementioned entities and any other person involved directly or indirectly on behalf of or acting in concert with them in connection with the takeover bid, will be subject to the regime for supervision, inspection and penalization provided for in Act 24/1998, the Securities Market Act.

Article 50. Obligation to decline involvement

Any securities dealers and brokers or credit institutions, and notaries public that, in performing their activities or functions, become aware of any transaction that might violate the regulations governing takeover bids must decline to take any part in these transactions.

Additional provision one: Mandatory takeover bid with certain increases in stakes held in listed companies

Any person who, on the date of promulgation of Act 6/2007, reforming Act 24/1988, the Securities Market Act, to amend the regime for takeover bids and for transparency of issuers of securities, as provided in article 3.1 of the Royal Decree, directly or indirectly has at least 30% but less than 50% of voting rights in a listed company, must launch a mandatory takeover bid, subject to the terms, conditions and exceptions established in this Royal Decree for the mandatory public bids provided for in Chapter II, if any of the following circumstances arises after that act is enacted:

- a) They acquire shares in that company in one or several transactions, which increases their stake by at least 5% within 12 months.
- b) They attain at least 50% of voting rights.

- c) They acquire an additional stake and appoint, under article 6 of this Royal Decree, within 24 months from the date of that acquisition, a number of directors that, in addition to any directors previously appointed by them, represents over half the members of the company's governing body.

Additional provision two: Publication of the calendar of trading days

To calculate the number of stock market business days, the CNMV will post yearly on its website a calendar of the trading days applicable to official secondary markets.

Sole transitional provision: Transitional regime for certain takeover bids

1. This Royal Decree will apply to takeover bids for which application for authorization was submitted to the CNMV and was not approved before implementation of Act 6/2007, reforming Act 24/1988, the Securities Market Act, to amend the regime for takeover bids and for transparency of issuers of securities.
2. Without prejudice to the provision in the preceding section, when competing takeover bids are presented regarding bids authorized before the implementation of Act 6/2007, reforming Act 24/1988, the Securities Market Act, to amend the regime for takeover bids and for transparency of issuers of securities, the CNMV may, when the pertinent supplement to the prospectus is presented, alter the authorizations given to adapt the previous bids to the current applicable regime set out in that act and in this Royal Decree.

Sole derogation provision: Derogation of regulations

Royal Decree 1197/1991, on the regime for takeover bids for securities, and all other laws of equal or lower rank that contradict the provisions of this Royal Decree are derogated.

Final provision one: Transposition of European Union law

This Royal Decree completes the transposition into Spanish law of Directive 2004/25/EC of the European Parliament and of the Council on takeover bids.

Final provision two: Entitlements to competency

This Royal Decree is dictated under the entitlements to competency provided for in sections 6, 11 and 13 of article 149.1 of the Constitution.

Final provision three: Authority to regulate

The Minister for the Economy and Finance and, with its express authorization, the CNMV, have authority to enact any provisions necessary to elaborate on, enforce and comply with the provisions of this Royal Decree.



Final provision four: Effective date

This Royal Decree will come into effect on August 13, 2007.

APPENDIX. Content of the prospectus

Contents and list of supplementary documents

Introduction and caveats as required by the transaction

Chapter I

Persons responsible for the prospectus

- a) Names and offices of the persons responsible for the prospectus and, as the case may be, the specific sections they are responsible for.
- b) Statement by the responsible persons to the effect that the facts and information set out in the prospectus are true, that no potentially misleading facts or information are included and that nothing has been omitted that might alter its content.

Resolutions, scope and applicable law

- a) Offeror's resolutions and decisions to launch the takeover bid and empower the persons responsible for the prospectus.
- b) Scope of the takeover bid, applicable law and competent authority, stating in detail the applicable regulations under the provisions of article 1 of this Royal Decree.
- c) Markets where the takeover bid is made.
- d) Specification of the national law that will govern agreements between the offeror and holders of securities of the target company as a result of the takeover bid, and specification of the competent jurisdictional bodies.

Information on the target company

- a) Corporate name and trading name. Registered office and address.
- b) Make-up of share capital. Other securities that might confer entitlement to acquisition or subscription of shares. Voting rights conferred by securities. Markets on which the shares and other listed securities are admitted to trading.
- c) Structure of the governing, management and supervising bodies, stating their respective offices and the shares and other securities of the target company held by the members of those bodies.

- d) Target company's shareholding structure and shareholders agreements.
- e) Limitations on voting rights and restrictions on entry into the governing bodies provided for in the bylaws.
- f) Resolutions relating to application of neutralization measures and compensation provided for by the target company.

Information on the offeror and its group

- a) Legal personality, corporate name, trading name, registered office, address, date of incorporation, term of activity and corporate purpose. If a natural person, name and address.
- b) Make-up of share capital. Other securities that might confer entitlement to acquisition or subscription of shares. Voting rights conferred by securities. Markets on which the shares and other listed securities are admitted to trading, if any.
- c) Structure of the governing, management and supervising bodies, stating their respective offices and the shares and other securities of the offeror company held by the members of those bodies.
- d) Identities of the main shareholders or partners of the offeror company, stating the securities, voting rights and individuals who exercise control separately or jointly. If the offeror is not controlled by an individual, that circumstance must be stated.
- e) Identities of the natural or legal persons acting in concert with the offeror and description of the agreements or other relationships giving rise to that action in concert. If no other person acts in concert with the offeror, that circumstance must be stated.
- f) Limitations on voting rights and restrictions on entry into the governing bodies provided for in the bylaws.
- g) Resolutions relating to application of neutralization measures and compensation provided for by the target company.
- h) Entities belonging to the same group as the offeror, stating the structure of the group. If no group exists, that circumstance must be stated.

Agreements relating to the takeover bid and the target company

- a) Full description of all agreements between the offeror and the shareholders and members of the target company's governing, management and supervising bodies, and advantages the offeror reserved for those members. In their absence, that circumstance must be stated.

Where the statement of the preceding paragraph is not negative, securities and voting rights of the offeror company belonging to members of the target company's governing, management and supervising bodies and the shareholders who are parties to the agreement.



- b) Members of the target company's governing, management and supervising bodies and the offeror company simultaneously.
- c) Shares of the offeror company and other securities that may confer entitlement to acquisition or subscription of such shares held directly or indirectly by the target company, stating the corresponding voting rights, with a negative declaration in their absence.

Securities of the target company belonging to the offeror

- a) Shares of the target company and other securities that may confer entitlement to acquisition or subscription of these shares held directly or indirectly by the offeror, its directors, the directors of controlled companies belonging to its group, its shareholders or controlling partners, or to other persons acting on behalf of the offeror or in concert with it, stating the corresponding voting rights.
- b) Treasury stock held by the target company.

Transactions involving securities of the target company

- a) Type, date and price or consideration for the transactions, whether spot or deferred, carried out by the offeror or anyone acting in concert with it in the 12 months before the announcement of the takeover bid.

With the same degree of detail, all transactions carried out during the period running from the previous announcement of the takeover bid until it is presented, and those made after presentation and before authorization.

If there is any agreement regarding the takeover bid or the target company with its shareholders or directors, the information given in this section must include all the parties to those agreements.

If no transaction has been carried out, this must be stated.

- b) If there is any agreement with the target company, any transactions involving that company's treasury stock carried out during the term specified in point a) above must be stated.

Offeror's business activity and financial status

- a) Information regarding the offeror company's business activity and financial status during the most recent closed and audited year, stating its assets and liabilities, turnover, total assets, net financial debt and income, specifically mentioning any relevant observation or reservation found in the audit reports.

Where the offeror company is part of a group, that information must refer not only to the offeror company, but also to the financial statements for the consolidated group.

Where the offeror company is inactive or has been created specifically to make the bid, the information required under this paragraph must also refer to its controlling partners or shareholders.

- b) The abovementioned information must also be included for the period subsequent to the closing date of the most recent annual accounts to the extent that it has been made public.

Chapter II

Securities covered by the takeover bid

- a) Number and description of the securities or classes of securities covered by the takeover bid and the corresponding voting rights.
- b) Number and description of the securities or classes of securities that have been immobilized to prevent their transfer in any way during the term of the takeover bid, the corresponding voting rights and the identity of their holders.
- c) Number and description of the securities or classes of securities effectively covered by the takeover bid after deduction of those that have been immobilized and the corresponding voting rights, stating, as the case may be, the maximum or minimum number or percentage of securities that the offeror agrees to acquire.
- d) Distribution of the securities and the respective voting rights among the different offerors, as the case may be.

Consideration offered

- a) Consideration offered for each security or class of securities and how it will be paid.

Where the target company has announced a dividend to be paid during the term for acceptance of the takeover bid, it must be stated whether the gross amount of that dividend will be deducted from the consideration offered.

- b) Justification of the consideration and method of assessment applied to determine the equitable price, where applicable.
- c) Where the consideration consists in whole or in part of exchange for other securities, the following must also be included:

Information regarding the ratios for the exchange

Equivalent cash price obtained by applying the weighted average quotation of the securities offered for the quarter preceding the announcement of the takeover bid to exchange equation.

Independent expert's report establishing the cash price of the securities offered in exchange where they are securities to be issued by the offeror company and its share capital has not been admitted in whole or in part to trading on a Spanish official secondary market or on a regulated market of a EU Member State, or where securities are offered that are not admitted to trading on those markets.

- d) Compensation offered in return for the neutralization measures that may be ineffective due to the provisions of article 29 of this Royal Decree, stating how this compensation will be paid and the method used to determine the amount.



Conditions imposed on the takeover bid

- a) Description of the conditions to which the takeover bid is made subject or statement to the effect that no such conditions are imposed.
- b) Limitations or restrictions—whether regulatory, the offeror's own or imposed by third parties—that may govern a possible waiver by the offeror of those conditions if they are not met.
- c) Offeror's forecasts regarding possible waiver of the conditions and the impact of such a waiver on the takeover bid, its aims and the other forecasts set out in the prospectus.

Guarantees and financing of the takeover bid

- a) Type of guarantees instituted by the offeror for settlement of the takeover bid and identity of the financial institutions with which those guarantees have been entered into and their amount.
- b) Sources of financing of the takeover bid, and main characteristics of and conditions for that financing, including, in the event of outside financing, the identity of the financial creditors and the offeror's forecast for how they will service that debt.
- c) Effects of the financing on the target company. Where the offeror foresees that the payment of interest on the financing of the takeover bid, its refinancing or its guarantees will depend on the target company's business activity, that circumstance must be stated and a detailed description of the financing agreements must be included. Otherwise, the contrary must be stated.

Chapter III

Procedure for acceptance and settlement

- a) Term for acceptance of the takeover bid.
- b) Formalities to be completed by the persons to whom the takeover bid is addressed to state their acceptance, and the manner and term in which they will receive the consideration.
- c) Costs of acceptance and settlement of the takeover bid at the expense of those accepting it, or distribution of those costs among the offeror and those accepting the bid.
- d) Terms for waiving any conditions to which the effectiveness of the takeover bid is made subject.
- e) Designation of the finance companies or intermediaries acting on behalf of the offeror in the procedure for acceptance and settlement.
- f) Formalities to be completed by holders of securities to request compulsory purchase of the securities covered by the takeover bid and choose, as the case may be, the nature of the consideration where the conditions provided for in article 47 of this Royal Decree are met.

Chapter IV

Aim of the transaction

- a) The aim pursued by the transaction.
- b) Strategic plans and intentions regarding future activities and location of the workplaces of the target company and its group for at least 12 months.
- c) Strategic plans and intentions regarding continuity of jobs for staff and executives of the target company and its group, including any material change in working conditions for at least 12 months.
- d) Plans relating to use or disposal of the target company's assets; planned variations in its net financial debt.
- e) Plans relating to issue of any class of securities by the target company and its group.
- f) Planned corporate restructuring of any kind.
- g) Dividend policy.
- h) Plans relating to the structure, make-up and functioning of the governing, management and supervising bodies of the target company and its group. Offeror's plans to appoint members to those bodies.
- i) Plans relating to preserving or amending the bylaws of the target company or the entities in its group.
- j) Intentions regarding continuity of the listing of the target company's securities or, as the case may be, delisting, and commitments to carry out, within six months from settlement of the takeover bid, the measures required for continued listing on or delisting from the stock market, depending on the stated intentions.
- k) Intention to apply or not apply the right to compulsory sale provided for in article 47 of this Royal Decree.
- l) Intentions relating to transfer of the target company's securities, stating whether there is any agreement in that respect with other persons and the target company's securities held by those other persons, if any.
- m) If that the offeror company is affected by the takeover bid, the information provided for in the preceding paragraphs of this chapter must be supplied regarding the offeror company itself and its group.
- n) Where the offeror is a listed company, it must state the impact of the takeover bid and the financing of the bid on its own financial factors.



Chapter V

Authorizations and other information and documents

- a) Possibility or impossibility that the takeover bid may be affected by Act 16/1989 on the defense of competition, EC Regulation 139/2004 of the Council and of the European Parliament or any other antitrust measures, and any actions that the offeror plans to or must take, stating the possible consequences under articles 26 and 33 of this Royal Decree.
- b) List of official verifications or authorizations, other than those of the CNMV, obtained before making the takeover bid.

Where, as a result of acquisition or transfer of title to or control of the securities resulting from the takeover bid, the offeror requires any official authorization or verification that is pending grant or application, that circumstance must be stated, along with the actions that the offeror intends to or must take and the foreseen effect in the event of non-compliance or failure to obtain this authorization or verification.

- c) In the case of a takeover bid involving exchange of securities, the prospectus must set out the additional information equivalent to that of the prospectus provided for in Royal Decree 1310/2005, unless a registration document or prospectus on the issuer of the securities is offered in exchange, which is valid according to articles 27, 30 and 31 of that Royal Decree.
- d) Places where the prospectus and its accompanying documents may be consulted.

CNMV Circular 8/2008, of December 10, approving the formats to which takeover bid notices and applications must conform

Act 6/2007, of April 12, reforming the Securities Market Act 24/1988, to amend the regime for takeover bids and for transparency of issuers of securities, incorporated Directive 2004/25/EC of the European Parliament and of the Council, of April 21, 2004, on takeover bids into the Spanish legal system and amended the system by which takeover bids are made. Act 6/2007 has been completed by Royal Decree 1066/2007, of July 27, on the system by which takeover bids are made, which enables the CNMV to establish certain formats (by means of an administrative order) to apply the provisions of the above Royal Decree 1066/2007, of July 27.

In accordance with these provisions, this circular aims to establish a format to provide notice of bids (prior to an authorization request) in accordance with Royal Decree 1066/2007, of July 27, as well as a format to apply for authorization for a bid.

Under articles 16 and 17 of Royal Decree 1066/2007, of July 27, following a report from the advisory committee, the CNMV Committee Board approved the following circular at its meeting of December 10, 2008:

Regulation one: Giving notice of a bid

Notices of takeover bids issued before authorization applications must conform to the format included under Appendix I of this circular.

The content of a notice must be accurate, clear, comprehensive and, when necessary due to the nature of the information, quantified, so it is neither misleading nor confusing, and the wording must be easy to analyze and understand. For this purpose, notices must include any other information the offeror considers necessary in addition to that provided for in this circular.

Regulation two: Authorization application

Takeover bid authorization applications must conform to the format specified under Appendix II of this circular.

The offeror must, in the application, include any other information it considers necessary in addition to that provided for in this circular.

The authorization application must be accompanied by an explanatory prospectus and other documents, as required under article 17 of Royal Decree 1066/2007, of July 27.

If the bid notice referred to in regulation one above and the authorization application are submitted at the same time, for all relevant purposes, the bid notice will be considered the authorization application, which must contain the information specified in Appendix I of this circular, except the information provided for in paragraphs 1 and 2.3.



If the authorization application is submitted after the bid notice, as provided for in Appendix I, it must specify the date of that notice and provide information about and characteristics of the bid, indicating any amendments that may have been made.

Final regulation

This circular will enter into effect the day after it is published in the Official Gazette of the Spanish State.

Madrid, December 10, 2008. The President of the CNMV, Julio Segura Sánchez.

APPENDIX I

Format for giving notice of takeover bids before authorization application

1. The first page of the public notice must include the following disclaimer:

“This notice is disclosed to the public by virtue of Royal Decree 1066/2007, of July 27, on the regime governing takeovers, and includes the main characteristics of the bid, which is subject to authorization by the CNMV.

The terms and characteristics of the bid will be included in an explanatory prospectus that will be published once authorization has been granted.”

2. The following information must be included:

- 2.1 Details of the offeror: Name and surnames, national identification number or equivalent and, for legal entities, corporate name, registered office, tax identification number or equivalent and, where applicable, markets in which it has listed securities. It must also include the identity of the individual or entity that controls the offeror, under article 4 of Act 24/1998, of July 28, on the Securities Market, or a statement that the offeror is not controlled by an individual or entity.

If the notice is issued by more than one offeror, the information required under this section and any other information included in the notice must be pertinent to all offerors. Moreover, it must also include a brief description of the relationships and agreements between the offerors with respect to the target company and the bid itself.

- 2.2 Decision to submit a bid: Statement from the offeror about the decision or agreement reached to submit a takeover bid for a listed company, indicating the individual or authority that adopted the corresponding resolution and the date it was adopted.
- 2.3 Submitting the bid: Under Royal Decree 1066/2007, of July 27, it must indicate when (approximately) the authorization application, explanatory prospectus and other takeover bid documents will be submitted to the CNMV, in accordance with article 17 of the above Royal Decree.

- 2.4 Type of bid: It must specify whether the bid is a mandatory bid, as provided under articles 3, 7, 10, 12 and additional provision one of Royal Decree 1066/2007, of July 27; or a voluntary bid, as provided under article 13 of the same Royal Decree. In accordance with Chapter IX of the above regulation, it must also indicate whether the bid is a competing bid and, if so, which other bid it is competing with.

When notice of a mandatory takeover is published due to either the acquisition of a controlling stake, in accordance with the provisions of Chapter II of Royal Decree 1066/2007, of July 27, or an increased interest, in accordance with the provisions of additional provision one of the same regulation, the event or circumstance under which the offeror obtained a controlling interest must be made known.

- 2.5 Offeror's interest in the target company: Number of shares and other securities in the target company held directly or indirectly by the offeror at the notice date, and the percentage of corresponding voting rights, calculated according to the rules established in article 5 of Royal Decree 1066/2007, of July 27.

It must specify whether the offeror and the individuals acting in concert with the offeror acquired, or agreed to acquire, securities in the target company during the 12 months preceding the bid. If so, reference must be made to the number of shares, percentage of share capital, corresponding voting rights and the highest price paid or agreed for those securities.

It must provide the number and identity of members of the governing and management bodies of the target company that have been appointed by the offeror and who act in concert with the offeror, under article 6 of Royal Decree 1066/2007, of July 27.

- 2.6 Details the target company: Corporate name, registered office, total number of shares or other securities issued by the target company that enable owners to acquire or subscribe shares, and markets where they are listed.
- 2.7 Securities and markets where the bid will be launched: Number of securities and percentage of securities effectively covered by the bid, excluding any securities that will be immobilized and the markets where the bid will be launched.
- 2.8 Consideration: Nature of the consideration offered and the following information:

If the bid is launched under purchase and sale conditions, the cash price in euros per unit must be indicated.

If the bid is launched, in whole or in part, as a swap or exchange of securities, there must be a clear explanation of the nature, value and characteristics of the securities exchanged, as well as their amount, including the price or the equivalent amount in cash, calculated in accordance with article 14 of Royal Decree 1066/2007, of July 27, and indicating the markets in which those securities are listed. When the consideration involves exchanging securities that have been newly issued by the offeror, it must be specified whether the



offeror was authorized to issue those securities by a general shareholders meeting or whether a general shareholders meeting has been called for that purpose.

The takeover notice must state any amendments to the consideration effected under the bid owing to the payment of dividends, or other actions the offeror intends to carry out under Royal Decree 1066/2007, of July 27.

Finally, it must be made known whether the offeror considers the consideration an equitable price in accordance with article 9 of Royal Decree 1066/2007, of July 27. If so, the offeror must specify how the price was established.

- 2.9 Conditions rendering the bid effective: Information relating to the voluntary bidding conditions provided in article 13 of Royal Decree 1066/2007, of July 27, or a statement that the bid is not subject to these conditions.
 - 2.10 Antitrust law and authorizations of other supervisory agencies: It must be specified whether the takeover bid could involve a merger, of European, Spanish or other dimension, and whether the acquisition or transfer of ownership or control of the securities concerned in the takeover bid requires the offerors to issue notice, obtain authorization, not be subject to any objection or seek administrative verification before the bid is made. If the offeror is required to give notice, it must state whether it has already done so, or specify a deadline to do so, and explain the effects of that action on the bid as provided in article 26 of Royal Decree 1066/2007, of July 27.
 - 2.11 Agreements pertaining to the bid: Date, parties involved and a brief description of the basic terms of the agreements reached by the shareholders of the target company with the board of directors or any of its members. If no such agreement has been reached, this must be stated.
 - 2.12 Stock market initiatives: The offeror's intentions with regard to keeping or removing the target company's securities from the stock market and whether it intends to execute its right to a compulsory sale.
 - 2.13 Other information: The offeror must include any other information it considers necessary for the offer to be fully understood.
 - 2.14 Place, date and signature.
3. When the notice refers to a competing bid, all relevant sections of the notice form must be filled in, as provided for the regime governing competing takeover bids in Chapter IX of Royal Decree 1066/2007, of July 27.

Notices issued as a result of delisting bid or a capital reduction owing to the acquisition of treasury stock must include information considered necessary under articles 10 and 12, respectively, of Royal Decree 1066/2007, of July 27.

4. Finally, notices must also include the following information, relating to the obligations to notify of material investments and transactions involving shares applicable to the shareholders of the target company and the target company itself:

“Under article 30.6 of Royal Decree 1362/2007, of October 19, from the date of this notice, any shareholders of [corporate name of the target company] that acquire securities with voting rights must inform the CNMV of that acquisition when the amount of voting rights they hold reaches or exceeds 1%. Moreover, shareholders that already hold 3% of voting rights must inform that Commission if this figure changes after the above date.

Under Circular 3/2007, of December 19, regulation five, section 2.b) of the CNMV, from the date of this notice, any liquidity agreement held by the target company must be discontinued.”

APPENDIX II

Format for applying for authorization to launch a takeover bid

1. Authorization applications must include the following disclaimer:

“This authorization application is made public by virtue of article 17 of Royal Decree 1066/2007, of July 27, and it refers to a bid that is subject to the mandatory authorization of the CNMV.

The terms and characteristics of the bid will be included in a prospectus that will be published once authorization has been granted.”

2. Applications must conform to the following format:

Details of the applicant (name and surnames, national identity number or equivalent and, for legal entities, corporate name, registered office and tax identification number or equivalent) and confirmation of the preferred means to be used to send notices or the address notices should be sent to.

STATES

In the event of mandatory bids, a statement must be issued confirming that one of the circumstances provided for in current regulations has occurred and that, therefore, a takeover bid must be made. The statement must also include a description of that circumstance.

Statement about the decision to make a takeover bid of [corporate name of the target company] under the terms and conditions provided in this application and the attached prospectus, indicating the competent individual or agency and the relevant date.

Statement about the bid guarantee: It must be specified whether the guarantee is submitted with the authorization application or within the maximum term provided in article 17 of Royal Decree 1066/2007, of July 27.



Description of the main characteristics of the bid, including the information specified in Appendix I of this circular, excluding the information provided in sections 1 and 2.3 above.

When notice of the bid has been published in advance under the terms of Appendix I, the date that notice was published must be stated. The information and bid characteristics included in that notice must also be indicated, as well as any changes to it.

REQUESTS

The CNMV is hereby requested to consider this application as having been served in conjunction with the bid prospectus and other accompanying documents, and to consider that the statements contained in it have been properly made, and to allow the matter to proceed and authorize the submission of the bid.

Place, date and signature of the applicant or legal representative of the applicant. Identity of the legal representative, including name and surnames, tax identification number or equivalent, description of the representative's powers of representation and documents substantiating those powers.

If notice of the bid as provided in regulation one of this circular and the authorization application are submitted at the same time, it must be stated that this application is to be considered notice of the bid for all relevant purposes.

Other relevant Regulation

Market Abuse: Articles 9(4) and 11(2) of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014

Whereas

- (27) This Regulation should be interpreted in a manner consistent with the measures adopted by the Member States to protect the interests of holders of transferable securities carrying voting rights in a company (or which may carry such rights as a consequence of the exercise of rights or conversion) where the company is subject to a public take-over bid or any other proposed change of control. In particular this Regulation should be interpreted in a manner consistent with the laws, regulations and administrative provisions adopted in relation to takeover bids, merger transactions and other transactions affecting ownership or control of companies regulated by the supervisory authorities appointed by Member States pursuant to Article 4 of Directive 2004/25/EC of the European Parliament and of the Council.
- (30) The mere fact that market makers or persons authorised to act as counterparties confine themselves to pursuing their legitimate business of buying or selling financial instruments or that persons authorised to execute orders on behalf of third parties with inside information confine themselves to carrying out, cancelling or amending an order dutifully, should not be deemed to constitute use of such inside information. However, the protection, laid down in this Regulation, of market makers, bodies authorised to act as counterparties or persons authorised to execute orders on behalf of third parties with inside information, does not extend to activities clearly prohibited under this Regulation including, for example, the practice commonly known as 'front-running'. Where legal persons have taken all reasonable measures to prevent market abuse from occurring but nevertheless natural persons within their employment commit market abuse on behalf of the legal person, this should not be deemed to constitute market abuse by the legal person. Another example that should not be deemed to constitute use of inside information is transactions conducted in the discharge of a prior obligation that has become due. The mere fact of having access to inside information relating to another company and using it in the context of a public takeover bid for the purpose of gaining control of that company or proposing a merger with that company should not be deemed to constitute insider dealing.



Chapter 2. Inside information, insider dealing, unlawful disclosure of inside information and market manipulation

Article 9. Legitimate behavior

4. For the purposes of Article 8 and 14, it shall not be deemed from the mere fact that a person is in possession of inside information that that person has used that information and has thus engaged in insider dealing, where such person has obtained that inside information in the conduct of a public takeover or merger with a company and uses that inside information solely for the purpose of proceeding with that merger or public takeover, provided that at the point of approval of the merger or acceptance of the offer by the shareholders of that company, any inside information has been made public or has otherwise ceased to constitute inside information.

This paragraph shall not apply to stake-building.

Article 11. Market soundings

2. Without prejudice to Article 23(3), disclosure of inside information by a person intending to make a takeover bid for the securities of a company or a merger with a company to parties entitled to the securities, shall also constitute a market sounding, provided that:
 - a) the information is necessary to enable the parties entitled to the securities to form an opinion on their willingness to offer their securities: and
 - b) the willingness of parties entitled to the securities to offer their securities is reasonably required for the decision to make the takeover bid or merger.

Article 23. Powers of competent authorities

3. Member States shall ensure that appropriate measures are in place so that competent authorities have all the supervisory and investigatory powers that are necessary to fulfil their duties.

This Regulation is without prejudice to laws, regulations and administrative provisions adopted in relation to takeover bids, merger transactions and other transactions affecting the ownership or control of companies regulated by the supervisory authorities appointed by Member States pursuant to Article 4 of Directive 2004/25/EC that impose requirements in addition to the requirements of this Regulation.

Acquisition of “key assets”: Article 160 (f) of Royal Decree-Law 1/2010, of July 2, 2010, approving the consolidated text of the Spanish Companies Act

Article 160. Competence of the general meeting

The general meeting is competent to discuss and agree the following items:

[...] f) Acquisition, disposal or transfer of key assets to another company. Assets are presumed key when the cost of the transaction would exceed 25% of the value of assets shown on the most recently approved balance sheet.



Anti-takeover defenses: Royal Decree-Law 1/2010, of April 16, 2010, and Code of Good Governance for Listed Companies, of February 18, 2015

Spanish Companies Act

Article 527: Provisions limiting voting rights

In listed public limited companies, any bylaw provisions that directly or indirectly establish a general maximum number of votes that can be cast by a single shareholder, the companies belonging to a single corporate group or anyone acting in concert with them will be void where, following a takeover bid, the offeror has acquired a stake of at least 70% of the share capital conferring voting rights, except where that offeror is subject to equivalent breakthrough measures or has adopted those measures.

Good Governance Code

III.1.1 Bylaw restrictions

Principle 1: In general, companies should avoid bylaw clauses whose underlying purpose is to hinder possible takeover bids.

Spanish company legislation stipulates that bylaw clauses of public limited companies which directly or indirectly impose a ceiling on the number of votes issued by the same shareholder, companies belonging to the same group or parties acting in concert with them will be rendered null and void once the offeror in a takeover bid has secured a percentage equal to or higher than 70% of voting capital, unless the offeror was not subject to or had not adopted equivalent breakthrough measures.

Having said that, the existence of an active, transparent control market provides an unparalleled spur to the good governance of corporate entities. Listed companies should accordingly renounce the option of establishing bylaw restrictions or “safeguard” conditions designed to hinder or prevent a possible takeover bid and subsequent change in ownership control.

Recommendation 1: The bylaws of listed companies should not place an upper limit on the votes that can be cast by a single shareholder, or impose other obstacles to the takeover of the company by means of share purchases on the market

Collection of fees in the exercise of squeeze-out: CNMV notice of June 18, 2008, on the collection of fees associated with squeeze-out transactions

In recent months, a number of squeeze-out transactions have been commenced under the provisions of articles 47 and 48 of Royal Decree 1066/2007 on the regime for takeover bids.

In these circumstances, section 8 of article 48 of Royal Decree 1066/2007 on the regime for takeover bids "Procedure for squeeze-out" provides that, "in the event of squeeze-out, the offeror will be responsible for all the costs incurred in the sale or exchange and settlement of the securities."

Consequently, in line with the provisions of the applicable law and prospectus, the fees incurred in the transaction and its settlement must be borne by the offeror, and not the seller shareholders.

The offeror will be responsible for all brokerage fees incurred relating to the participation of market members and all stock market trading fees and Iberclear settlement fees. The offeror will also be responsible for all other costs incurred relating to the processing, accomplishment and settlement of the transaction that may be charged by financial intermediaries for the services rendered to their clients. The offeror will not under any circumstance be responsible for any fees charged by custodian or management entities to their clients for deposit or management of securities, as those expenses do not result from the sale or exchange and settlement of the securities.

Nevertheless, as a result of accomplishing its supervisory tasks, the CNMV has detected certain instances of misconduct on the part of some custodian entities, which have charged fees for some of these services to clients affected by squeeze-out transactions.

Consequently, and in response to queries directed to the CNMV by both the industry and investors, and given the potential implications for the different entities involved, it is advisable, in addition to the other actions taken, to reiterate the applicable regulations.



Antitrust: Article 7 of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings and article 9 of Act 15/2007, of July 3, 2007, on the protection of competition

Council Regulation (EC) No 139/2004 of 20 January on the control of concentrations between undertaking (the EC Merger Regulation)

Article 7. Suspension of concentrations

1. A concentration with a Community dimension as defined in Article 1, or which is to be examined by the Commission pursuant to Article 4(5), shall not be implemented either before its notification or until it has been declared compatible with the common market pursuant to a decision under Articles 6(1)(b), 8(1) or 8(2), or on the basis of a presumption according to Article 10(6).
2. Paragraph 1 shall not prevent the implementation of a public bid or of a series of transactions in securities including those convertible into other securities admitted to trading on a market such as a stock exchange, by which control within the meaning of Article 3 is acquired from various sellers, provided that:
 - a) the concentration is notified to the Commission pursuant to Article 4 without delay; and
 - b) the acquirer does not exercise the voting rights attached to the securities in question or does so only to maintain the full value of its investments based on a derogation granted by the Commission under paragraph 3.
3. The Commission may, on request, grant a derogation from the obligations imposed in paragraphs 1 or 2. The request to grant a derogation must be reasoned. In deciding on the request, the Commission shall take into account inter alia the effects of the suspension on one or more undertakings concerned by the concentration or on a third party and the threat to competition posed by the concentration. Such a derogation may be made subject to conditions and obligations in order to ensure conditions of effective competition. A derogation may be applied for and granted at any time, be it before notification or after the transaction.
4. The validity of any transaction carried out in contravention of paragraph 1 shall be dependent on a decision pursuant to Article 6(1)(b) or Article 8(1), (2) or (3) or on a presumption pursuant to Article 10(6).

This Article shall, however, have no effect on the validity of transactions in securities including those convertible into other securities admitted to trading on a market such as a stock exchange, unless the buyer and seller knew or ought to have known that the transaction was carried out in contravention of paragraph 1.

Act 15/2007, of July 3, 2007, on the protection of competition

Article 9. Notification requirements and suspension of execution

1. The economic concentrations that fall within the scope of the previous article must be notified to the National Markets and Competition Commission before execution.
2. The economic concentration cannot be executed until the CNMV's express or tacit authorization becomes effective and is enforced in the terms established in article 38, except in the case of lifting the suspension.
3. The previous sections will not prevent a takeover bid for shares admitted for trading on a security market authorized by the CNMV that is an economic concentration subject to control in accordance with the provisions of this act, provided that:
 - a) the concentration is notified to the National Markets and Competition Commission within five days from submitting the application for authorization of the bid to the CNMV, if it has not been previously notified; and
 - b) the buyer does not exercise the voting rights inherent to the securities in question, or exercises them only to safeguard the full value of its investment based on the waiver granted by the National Markets and Competition Commission.
4. Those responsible for reporting:
 - a) Jointly, the parties involved in a merger, in the creation of a joint venture or in the acquisition of joint control of all or part of one or more companies.
 - b) Individually, the party that acquires exclusive control of all or part of one or more companies.
5. If a concentration subject to control under this act has not been reported to the National Markets and Competition Commission, it will require, *ex officio*, the responsible parties to issue the corresponding notification within twenty days from receipt of the requirement.

Concentrations notified on the National Markets and Competition Commission's request will not benefit from the positive administrative silence established in article 38.

If the notification period elapses without the notification being made, the Directorate of Investigation may initiate, *ex officio*, concentration control proceedings, without prejudice to the application of the penalties and fines established in articles 61 to 70.

6. The Council of the National Markets and Competition Commission may decide to lift the suspension of the concentration referred to in section 2 of this article, on the proposal of the Directorate of Investigation and on reasoned request.

The resolution will be issued after appraising, among other factors, the damage that suspension of the execution would cause the companies participating in the concentration, and that executing the transaction would cause to free competition.

Lifting the suspension of the execution may be subject to the fulfilment of conditions and obligations that guarantee the efficacy of the decision finally adopted



Disclosure of major holdings: Article 30 (6) of Royal Decree 1362/2007, of October 19, 2007

Title II: Information on significant stakes and treasury stock

Article 30.6. In the event of a takeover bid, any shareholders of the affected company acquiring securities that confer voting rights must report this acquisition to CNMV when their percentage of voting rights reaches or exceeds 1%.

Likewise, shareholders that already have 3% of voting rights must report any transaction involving a subsequent change in that percentage. The content of the notice provided for in this section must be in line with the provisions of article 34. The CNMV will disseminate this information immediately.

The obligations provided for in the preceding paragraph will apply from the date the takeover bid is announced, until its settlement or withdrawal.

Shareholders cooperation: ESMA Public Statement (ESMA/2014/677) on shareholder cooperation and acting in concert under Directive 2004/25/EC

Information on shareholder cooperation and acting in concert under the Takeover Bids Directive – 1st update. Date: June 20, 2014

1. Introduction

- 1.1 In its report (the “Report”) to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the application of Directive 2004/25/EC on Takeover Bids (the “TBD”), the European Commission (the “Commission”) suggested that clarification of the concept of “acting in concert” at EU level would help to lessen uncertainty for international investors who wish to cooperate with each other on corporate governance issues but who feel inhibited from doing so for fear that they might risk having to make a mandatory bid.
- 1.2 The Commission emphasised in the Report, however, that the suggested clarification should not limit the ability of national competent authorities to oblige control-seeking concert parties to accept the legal consequences of their concerted action.
- 1.3 The Commission commented further on this matter in its Action Plan on European company law and corporate governance, where it stated that “Effective, sustainable shareholder engagement is one of the cornerstones of listed companies’ corporate governance model”. It continued by saying that if the suggested clarification were not provided, “shareholders may avoid cooperation, which in turn could undermine the potential for long-term engaged share ownership under which shareholders effectively hold the board accountable for its actions”.
- 1.4 This public statement has been prepared for investors in response to the Commission’s suggestion on the basis of information collected by the members of the Takeover Bids Network (the “TBN”) about national practices and application of the TBD. The public statement represents the collective view of the members of the TBN, who stand behind it. The TBN operates under the auspices of ESMA and its members are the national competent authorities appointed under the TBD.
- 1.5 Following consideration of the information collected, a “White List” of activities, in which shareholders may wish to engage in order to exercise good corporate governance over the companies in which they have invested, has been identified. If shareholders cooperate to engage in any activity on the White List, insofar as that activity is available to them under national company law, that cooperation, in and of itself, will not lead to those shareholders being regarded as persons acting in concert and thus being at risk of having to make a mandatory bid.



- 1.6 However, individual cases of cooperation between shareholders and the consequences of such cooperation must be determined on their own particular facts. National competent authorities will have regard to the White List when determining whether shareholders are persons acting in concert under national takeover rules but will also take into account all other relevant factors in making their decisions.
 - 1.7 The public statement emphasises the importance of early consultation with national competent authorities by parties concerned, in accordance with national procedures, where there is any uncertainty. [See Appendix A for contact details.](#)
 - 1.8 This public statement does not address disclosure obligations.
 - 1.9 ESMA will keep the public statement under review in order, as far as possible, to ensure that it continues to reflect accurately the practices and application of the TBD in the Member States.
2. Relevant provisions of the TBD

- 2.1 Article 2.1(d) of the TBD defines “persons acting in concert” as follows:

“persons acting in concert’ shall mean natural or legal persons who cooperate with the offeror or the target company on the basis of an agreement, either express or tacit, either oral or written, aimed either at acquiring control of the target company or of frustrating the successful outcome of a bid”.

Article 5.1, the “mandatory bid rule,” provides as follows:

“Where a natural or legal person, as a result of his/her own acquisition or the acquisition by persons acting in concert with him/her, holds securities of a company as referred to in Article 1(1) which, added to any existing holdings of those securities of his/hers and the holdings of those securities of persons acting in concert with him/her, directly or indirectly give him/her a specified percentage of voting rights in that company, giving him/her control of that company, Member States shall ensure that such a person is required to make a bid as a means of protecting the minority shareholders of that company. Such a bid shall be addressed at the earliest opportunity to all the holders of those securities for all their holdings at the equitable price as defined in paragraph 4.”

- 2.2 The information collected about the application of these two provisions has shown that in some Member States, when shareholders come together to act in concert in relation to a particular company in circumstances where, independently, they have already acquired securities in that company which, in total, carry the specified percentage of voting rights that confers “control” under national takeover rules, they will be required to make a bid to all other shareholders (a “mandatory bid”). In other Member States, no mandatory bid obligation will arise initially when shareholders come together to act in concert in such circumstances but such an obligation may be triggered by acquisitions of securities carrying voting rights in the company by any of the shareholders regarded as persons acting in concert. Some Member States, owing to a lack of relevant experience have not yet settled the consequences for shareholders who come together to act in concert in the circumstances described above. Further information is provided in Appendix B2.

- 2.3 Where the securities held by a group of shareholders carry voting rights, which in total are below the national threshold for “control”, there are no immediate bid consequences for those shareholders, even if they are regarded as persons acting in concert. A mandatory bid may be required subsequently if one or more of those shareholders acquires more securities carrying voting rights so that in total the securities held by the group carry the specified percentage of voting rights that confers “control” under national takeover rules.

3. Shareholder cooperation and acting in concert

- 3.1 ESMA recognises that shareholders may wish to cooperate in a variety of ways and in relation to a variety of issues for the purpose of exercising good corporate governance but without seeking to acquire or exercise control over the companies in which they have invested.

Cooperation might consist of discussing together issues that could be raised with the board, making representations to the board on those issues, or tabling or voting together on a particular resolution. The issues on which shareholders might cooperate could include: commercial matters (such as particular acquisitions or disposals, dividend policy, or financial structuring); matters relating to the management of the company (such as board composition or directors’ remuneration); or matters relating to corporate social responsibility (such as environmental policy or compliance with recognised standards or codes of conduct).

- 3.2 National competent authorities agree that national takeover rules should not be applied in such a way as to inhibit such cooperation. Therefore, a “White List” of certain activities in which shareholders might wish to engage for the purposes of exercising good corporate governance (but without seeking to acquire or exercise control over the company) has been identified, based on existing laws, regulations and practices in the Member States. When shareholders cooperate to engage in any activity included on the White List, insofar as that activity is available to them under national company law, that cooperation, in and of itself, will not lead to a conclusion that the shareholders are acting in concert, and thus to a risk of those shareholders having to make a mandatory bid.
- 3.3 However, national competent authorities, when determining whether cooperating shareholders are acting in concert, decide each case on the basis of its own particular facts. If there are facts, in addition to the fact of the shareholders’ engagement in any activity on the White List on a particular occasion, which indicate that the shareholders should be regarded as persons acting in concert, then the national competent authority will take those facts into account in making its determination. There might, for example, be facts about the relationship between the shareholders, their objectives, their actions or the results of their actions, which suggest that their cooperation in relation to an activity on the White List is not merely an expression of a common approach on the particular matter concerned but one element of a broader agreement or understanding to acquire or exercise control over the company.



3.4 On such a basis, where shareholders engaging in an activity on the White List are in fact cooperating with the aim of acquiring or exercising control over the company, or, in fact, have acquired or are exercising control, those shareholders will be regarded as persons acting in concert and may have to make a mandatory bid.

4. The “White List” of activities

Whenever there is any uncertainty about proposed shareholder cooperation, including, in particular, when the proposed cooperation relates to voting on a resolution which is not included in the list in paragraph 4.1(d), parties concerned are encouraged to consult the relevant national competent authority for guidance as early as possible. Guidance will be provided within the framework of national laws, regulations and practices. Relevant contact details are provided in Appendix A.

4.1 When shareholders cooperate to engage in any of the activities listed below, that cooperation will not, *in and of itself*, lead to a conclusion that the shareholders are acting in concert:

- a) entering into discussions with each other about possible matters to be raised with the company’s board;
- b) making representations to the company’s board about company policies, practices or particular actions that the company might consider taking;
- c) other than in relation to the appointment of board members, exercising shareholders’ statutory rights to:
 - (i) add items to the agenda of a general meeting;
 - (ii) table draft resolutions for items included or to be included on the agenda of a general meeting; or
 - (iii) call a general meeting other than the annual general meeting;
- d) other than in relation to a resolution for the appointment of board members and insofar as such a resolution is provided for under national company law, agreeing to vote the same way on a particular resolution put to a general meeting, in order, for example:
 - (A) to approve or reject:
 - (i) a proposal relating to directors’ remuneration;
 - (ii) an acquisition or disposal of assets;
 - (iii) a reduction of capital and/or share buy-back;
 - (iv) a capital increase;
 - (v) a dividend distribution;

- (vi) the appointment, removal or remuneration of auditors;
 - (vii) the appointment of a special investigator;
 - (viii) the company's accounts; or
 - (ix) the company's policy in relation to the environment or any other matter relating to social responsibility or compliance with recognised standards or codes of conduct; or
- (B) to reject a related party transaction.

4.2 If shareholders cooperate to engage in an activity which is not included on the White List, that fact will not, in and of itself, mean that those shareholders will be regarded as persons acting in concert. Each case will be determined on its own particular facts.

5. Cooperation in relation to the appointment of members of the board of a company

5.1 Cooperation by shareholders in relation to the appointment of board members can be particularly sensitive in the context of the application of the mandatory bid rule. This is because, if shareholders cooperate in the appointment of board members, they may be in a position to control the operational management of the company. Different approaches are adopted in different Member States towards determining whether shareholders who cooperate in relation to board appointments are persons acting in concert. To some extent these differences depend on national company law and the prevailing shareholding structures. As a result of these differences, the White List does not include any activity relating to cooperation in relation to board appointments.

5.2 However, national competent authorities recognise that shareholders may wish to cooperate in order to secure the appointment of members to the board of a company in which they have invested. Such cooperation might take the form of:

- a) entering into an agreement or arrangement (informal or formal) to exercise their votes in the same way in order to support the appointment of one or more board members;
- b) tabling a resolution to remove one or more board members and replace them with one or more new board members; or
- c) tabling a resolution to appoint one or more additional board members.

5.3 When considering cases of such cooperation in relation to board appointments, with a view to determining whether the shareholders are persons acting in concert, national competent authorities may, in addition to examining facts described in paragraph 3.3 (including the relationship between the shareholders and their actions), also consider other facts such as:

- a) the nature of the relationship between the shareholders and the proposed board member(s);



- b) the number of proposed board members being voted for pursuant to a shareholders' voting agreement;
 - c) whether the shareholders have cooperated in relation to the appointment of board members on more than one occasion;
 - d) whether the shareholders are not simply voting together but are also jointly proposing a resolution for the appointment of certain board members; and
 - e) whether the appointment of the proposed board member(s) will lead to a shift in the balance of power on the board.
- 5.4 Further details about the different national approaches towards determining whether or not shareholder cooperation in relation to board appointments will lead to the shareholders being regarded as persons acting in concert or not are provided in Appendix D.

Exceptions to the obligation to launch a takeover bid during bank restructuring: Royal Decree-Law 2/2011 and Royal Decree-Law 24/2012

Royal Decree-Law 2/2011, of February 18, on measures to strengthen the financial system

Additional provision one: Exception to the obligation to launch a takeover bid in restructuring or integration processes

Any person who attains control of a listed company as a result of restructuring or integration processes within the framework of Royal Decree-Law 9/2009, on the restructuring of the banking industry and strengthening of the equity of credit institutions, or due to the direct intervention of a deposit guarantee fund for credit institutions will not be obliged to launch a takeover bid as provided in article 60 of Act 24/1988, of July 28, the Securities Market Act, and its implementing regulations, where those actions are accomplished with financial assistance from the Fund for Orderly Bank Restructuring or the Deposit Guarantee Fund.

This provision will apply to acquisition of control of listed companies resulting from restructuring or integration agreements entered into after the effective date of Royal Decree-Law 9/2009, of June 26, on the restructuring of the banking industry and strengthening of the equity of credit institutions.

Royal Decree-Law 24/2012, of August 31, on the restructuring and resolution of credit institutions

Chapter V. Financial assistance instruments

Article 33. Special regime for subscription or acquisition by the Fund for Orderly Bank Restructuring of recapitalization instruments

1. Where the Fund for Orderly Bank Restructuring subscribes or acquires any of the recapitalization instruments specified in the preceding articles, the following will not apply: [...] (d) The obligation to launch a takeover bid under the regulations governing the securities market.

Chapter VI. Asset management companies

Article 36. Regime for transfers of assets

[...] 4. The transfer of assets will be subject to the following special conditions: [...] c) The acquiring company will not be obliged to launch a takeover bid under the regulations governing the securities market.



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