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LAW CONCERNING THE DISCLOSURE OF LARGE SHAREHOLDINGS IN COMPANIES LISTED ON THE STOCK EXCHANGE AND REGULATING PUBLIC TAKE-OVER BIDS

(Belgisch Staatsblad / Moniteur belge (Belgian Official Gazette), 24 May 1989)

(Unofficial consolidated text: 10/2001)

This unofficial consolidated text of the law is simply a formal consolidation. In consequence, no attempt has been made to rectify references to legislation that has meanwhile been abrogated.

CHAPTER II

Public take-over bids and changes in control over companies that solicit or have solicited savings from the public

Article 15

§ 1. With regard to public take-over bids and operations entailing a change in control over companies that solicit or have solicited savings from the public, the King may, by means of a decree enacted after deliberation in the Council of Ministers, on the advice of the Banking and Finance Commission, take any measures intended to:

- ensure the provision of information to and equal treatment of holders of securities and to safeguard their interests;
- promote the transparency and proper operation of the market and prevent that transparency and proper operation being put at risk by operations carried out on or outside the stock exchange;
- prevent operations conducted in accordance with the rules that He lays down pursuant to the present Article being impeded by operations that do not offer equivalent guarantees, particularly as regards the provision of information and as regards equal treatment.

§ 2. For the purposes of § 1, the King may, in particular:

1° define what shall be understood by "company that solicits or has solicited savings from the public";

2° determine the conditions governing the launch of a bid or counter-bid;

3° lay down the obligations and prohibitions applicable to both the promoter of a bid or counter-bid and the target company of a bid or counter-bid on the launch of, throughout the term of and following the closure of that bid or counter-bid;

4° lay down the obligations and prohibitions applicable to the persons acting in concert with the promoter of a bid or counter-bid, or with the target company, on the launch of, throughout the term of and following the closure of that bid or counter-bid, as well as define what shall be understood by "persons acting in concert";

5° determine when the obligations and the prohibitions referred to in 3° and 4° shall come into force;

6° regulate operations that may impede the proper course of a bid or counter-bid made in accordance with the rules that He lays down, or that may distort the operation of the market;

7° lay down that, when, by means of one or more transactions other than a bid or counter-bid made in accordance with the rules that He lays down, a natural or legal person wishes to purchase a quantity of shares giving control over a company, that person shall notify the Banking and Finance Commission thereof in advance;

8° lay down the cases in which, in the event of a change in control over a company that solicits or has solicited savings from the public, the other shareholders of that company are required to be offered a comparable opportunity to sell their securities on equivalent terms, and lay down the terms and conditions under which that result can be achieved;

9° regulate the buyout bid referred to in Article 190quinquies, § 1 of the Law on commercial companies as co-ordinated on 30 November 1935 and more particularly lay down the procedure to be followed and the method to be used in setting the price of the buyout bid.

§ 3. The Banking and Finance Commission is charged with the supervision of the application of the decrees enacted pursuant to §§ 1 and 2. It may request that it be provided with the information needed for the application of the said decrees. In special cases it may grant exemptions from the said decrees, stating the reasons for those exemptions.

§ 4. Liable to a term of imprisonment of between one month and one year, and to a fine ranging from 50 EUR to 10,000 EUR or to either one of these penalties shall be:

1° persons who fail to give the Banking and Finance Commission advance notice pursuant to § 2, 7° of the present Article;

2° persons who refuse to give the Banking and Finance Commission the information that they are required to provide pursuant to the present Article or who knowingly provide inaccurate or incomplete information.

The provisions of Book I of the Penal Code, including Chapter VII and Article 85, shall apply to the offences referred to in this section.

Article 16

Where the Banking and Finance Commission ascertains that an operation or practice contrary to the provisions prescribed by or pursuant to Article 15 harms the interests of the holders of securities, it may request the President of the Commercial Court to:

1° require the person responsible to comply with those provisions, to put an end to the irregularity ascertained or to nullify its effects;

2° prohibit the person responsible from making use of the rights or benefits that he may derive from the irregularity.

The proceedings shall be initiated by a summons. The President shall give his ruling as in summary proceedings.

The request shall be made to the President of the Commercial Court in whose jurisdiction the company that has issued the securities concerned has its registered office or, if there is no registered office in Belgium, to the President of the Brussels Commercial Court.

Article 17

In the case provided for in Article 16, the Banking and Finance Commission may, if the degree of urgency warrants it, require the person responsible to suspend continuation of the operation or practice in question.

This decision shall state the reasons on which it is based and shall be communicated to the person responsible in the most appropriate manner. It shall be enforceable upon its notification. The Commission may publish its decision.

The decision taken by the Banking and Finance Commission pursuant to the first subparagraph shall cease to have effect 72 hours after its notification, unless the Commission brings the matter before the President of the Commercial Court, in accordance with Article 16, before the expiry of that time limit.

Article 18

Persons who ignore an injunction addressed to them pursuant to Article 16 or Article 17 shall be liable to one of the penalties prescribed in Article 204 of the Law on commercial companies.

The provisions of Book I of the Penal Code, including Chapter VII and Article 85, shall apply to the offences referred to in the present Article.

Article 18bis

For the task of supervising the implementation of the provisions of the present Law, the Banking and Finance Commission may require the market authorities of the regulated markets, the intermediaries referred to in Article 2 of the Law of 6 April 1995 and their principals to provide it with all information, documents and items it considers necessary to fulfil its task. Persons acting successively in transmitting the orders or in carrying out the transactions concerned, as well as their principals, shall be subject to the same obligation. The documents and items required shall be provided on the spot.

Intermediaries shall give advance notice to the person at whose request or on whose behalf they are acting that their doing so is subject to their being authorized to disclose the identity of the transaction's final beneficiary to the Banking and Finance Commission.

If the provisions of the preceding subparagraph are not fulfilled, the intermediary is prohibited from carrying out the transactions.