Germany

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Squeeze-outs

Today, publicly-listed stock corporations in Germany are faced with a complex set of statutory reporting and transparency duties, the fulfillment of which is often a cumbersome and costly task. Therefore, owners of public corporations continue to consider take-private measures.

There are a variety of take-private transactions in Germany, such as de-listings, statutory mergers with and into a non-listed entity, or squeeze-outs. In summer 2011, the German legislator passed the Third Amendment Act to the German Transformation Act (*Drittes Gesetz zur Änderung des Umwandlungsgesetzes*). An important part of the amendment enacts a new form of squeeze-out in Germany, the so-called merger-specific squeeze-out, which provides for the third alternative in order to take a German publicly-listed company private:

General corporate squeeze-out

The main shareholder can use the general corporate squeeze-out procedure provided that he owns at least 95% of a stock corporation's registered share capital in order to acquire the remaining shares in the company. A corporate squeeze-out requires, among other things, a shareholders' resolution and a fair market valuation of the company in order to determine the cash compensation to be offered to the existing minority shareholders. In order to become effective, the squeeze-out needs to be registered with the commercial register, the main shareholder thereby acquiring the remaining shares. If a minority shareholder (who holds at least a nominal amount of €1,000 ($1200) in the target) challenges the squeeze-out resolution, the registration is blocked. However, the German Stock Corporation Act provides for a fast track proceeding (*Freigabeverfahren*) to overcome the adverse effect of the challenges, which after legislative streamlining now typically lasts between three and six months. The fair market valuation is subject to a judicial review in an appraisal proceeding following registration of the squeeze-out.

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Merger-specific squeeze-out

The required percentage of the shareholding necessary in order to effect a squeeze-out was lowered from 95% to 90% of the stated share capital, provided that the squeeze-out is carried out in the context of an upstream merger with another stock corporation, partnership limited by shares, or SE. The resolution by the majority shareholder on the squeeze-out must be adopted within three months after the conclusion of the merger agreement (which has to contain the prospect of a future merger specific squeeze-out). The squeeze-out enters into force only following registration of the merger with the commercial register. This requirement should prevent misuse of the now lowered percentage of shareholding of 90%. A further shareholders' resolution approving the merger is not necessary. Apart from these points, the merger-specific squeeze-out follows the rules of the general corporate squeeze-out.

Takeover-related squeeze-out

The takeover-related squeeze-out allows a bidder holding at least 95% of the target's voting shares to purchase the remaining shares within three months from the end of the acceptance period of a takeover-offer by filing an application to the Regional Court in Frankfurt. The squeeze-out becomes effective once the court decision becomes final (*rechtskräftig*).

If the public takeover bid was accepted by less than 90% of the registered share capital subject to the offer, the squeeze-out consideration is not specified by law and, due to lack of case law, its proper determination and adequacy is uncertain. If the acceptance quota is 90% or more, the offer price of the takeover is deemed to also be the adequate compensation in the squeeze-out. Based on decisions of the exclusively competent courts in Frankfurt, however, it is not entirely clear whether this presumption is rebuttable. Thus, the takeover-related squeeze-out is only a rarely used option in practice.

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