

Law no. 10 236, date 18.2.2010 "Takeover of companies with public bids".

With the entry into force of the new Law, the legislator had as its **purpose** the definition of the rules with regard to the conditions and procedures for the takeover of **companies with public bids (offer)** (is the joint stock company with public offer which register its shares at the stock exchange quotations). **The application of law** covers the bids published with the taking possession of the securities issued by a public company with legal seat in the territory of Albania and by foreign companies with legal seat within and outside the territory of Albania. Joint stock companies, subject of this law has the obligation to disclose some particulars provided expressly by law. It is important to specify the definition of the term "Titles" which are financial instruments, issued and traded for profit insurance through management rights arising from their possession. In the term "titles" is included without limitation, shares, bonds and commercial companies and local government treasury bills and bonds issued by the Albanian state, titles issued by the Bank of Albania, trade certificates, shares or quotas of investment funds and other financial instruments, comparable to shares and bonds and evaluated and approved as such by the Financial Supervision Authority.

In the meaning of this law, **the takeover bid** is the bid published for the holding of the securities of a company, subject of the bid, by an offeror company, which aims to take the control of the company, subject of the bid. This bid is addressed to all the shareholders of the company. The notification of the decision to make an offer (bid) follows some steps and the procedure is provided in detail by law and must be respected by the subjects of this law.

Law provides the engagement of a **Financial Impartial Counsellor** to be advised, if the bid is unfaithful and unreasonable that is defined by a directive board of a company.

Moreover in case that one of the director of the directive board of the offeror company is in conflict of interest is created an **independent committee** to make the evaluation of the proposed bid. The independent committee of the board is composed by directors that do not have direct or indirect interest in the evaluated bid. Law provides also cases of bids that are prohibited by the authority, which has competence to advice and discuss with the offeror cases for the reparation of its acts or omissions, incompatible with the dispositions of this law. In case the

takeover bid is not allowed, the document of the bid is not published. The contract for the acquisition of the securities of the company subject of the bid based in an prohibited bid is invalid.

The responsibility for the verification of the document of the bid rests to the Offeror who takes moreover the responsibility for the damages caused to the shareholders who have accepted the bid, save some cases provided by law when the offeror proves that has been unaware of these defects.

The offeror ***has the right to revoke*** the takeover bid, save the case when the allowed period term for the acceptance of the bid has terminated. The allowed term for the acceptance of the takeover bid must not be less than 3 weeks and more than 10 weeks from the date of publication of the document of the bid.

The offeror must offer a ***fair price*** for the shares of the same kind or category of the company, subject of the bid. The relevant authority issue detailed rules for the manner of the definition of the fair price. The payment offered by the offeror must be in monetary tools or in commerciable shares in the organised market, if the shares are likuid and active.

The evaluation by the administrative organs for the takeover bid is done within 10 days from the date of publication and is communicated to the council of the employees of the company, that compiles a special opinion for the consequences of the takeover bid in the labour relations, attached to the opinion compiled by the administration.

The limit choice of the defensive measures is done by the general assembly, with qualified majority and the resolution of the assembly is published in the internet page of the commercial company, subject of the bid. Moreover the General Assembly with qualified majority decides the non application of the measures with regard to the transfer of the shares.

The change of the bid is another important point provided by law which can be realized until a day of work ahead the termination of the allowed term for the acceptance of the bid, such as it can raise the price, offer an alternative price, with equal value etc.

The competitive takeover bid are the offers made by third parties during the allowed period for the acceptance of the takeover bid. Law provides cases when the competetive offer is valued more favourable and if the offer in this case is approved, the previous offer is valued

as invalid. The offeror and the company subject of the bid notify the Authority and publish the particulars for any selling or holding of the securities of the company, subject of the bid. In case of unsuccessful close of a bid, the offeror can not make another bid for the securities of the company, subject of the bid, within 1 year from the publication of the result of the bid.

The offeree has the right to control all the company: if has acquired at least 90 % of the capital bearing rights of votes and 90 % of the right of vote of the company, subject of the bid, inquiring the holders of the shares outstanding which have the right of vote to sell him these shares against a counter with equal conditions, but only if such scope of the offeror is provided in the document of the bid. The offeror can moreover inquire the acquisition of the shares outstanding with priority and any other share without the right of vote, sold to him.

The right of the minority shareholders to leave is applied asking the offeror to buy the shares against an offered price.

The new law provides the case when ***the offeror takes the holding of the securities of the company***, subject of the bid, that if calculated with the securities holded before the bid, give it a percentage of rights of vote, that makes possible to it the control over the company in question, the offeror, within 7 days, notifies and publishes this fact, and, correctly the right of votes that holds. Within 10 days from the day of publication, the offeror present for approvement to the authority a document of bid and publishes it.

The bid is addressed to all the outstanding holders of the securities for all the securities that they hold.

When the control is undertaken based on a voluntary bid, published according to this law and addressed to all the holders of the Securities for all the Securities that they hold, the obligation for the publication of the bid is not applied. Exceptions from the obligation to make an offer are provided for that category of bidder which as a result of the acquisition of the shares of the company, subject of the bid, do not take the control of the company and the person who have the control of the company, subject of the bid, does not change.

The decisions of the authority are subject of appeal in the court. The appeal in court does not impede the execution of the decisions taken by the authority in application of this law.

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