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Bulgaria

YORDAN NAYDENOV, DAMIAN SIMEONOV, ANGEL ANGELOV
Borislav Boyanov & Co.

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Introduction

- 19.1 The first rules on takeover bids were adopted in Bulgarian law in 1995 with the Securities, Stock Exchanges and Investment Companies Act of 1995 (repealed in 1999 by the Public Offering of Securities Act ('POSA').
 The Takeover Directive is currently fully implemented in Bulgarian law by relevant provisions in POSA (State Gazette, Issue 114 of 1999, as amended thereafter from time to time).
- 19.2 Rules similar to those contained in the Takeover Directive have existed in POSA since 1999 and have been amended and/or supplemented three times (in 2002, in 2005 and, lastly, in July 2007).
- 19.3 The basic rules relative to takeover bids contained in POSA are further detailed in relevant secondary legislation, i.e. ordinances adopted in implementation of specific POSA provisions.

Scope

- 19.4 The rules of POSA on takeover bids apply to takeovers of public companies only. Public companies are joint-stock companies which have issued stock in the context of an initial public offering, or have an issue of shares entered into the registries of the Financial Supervisory Commission ('FSC') for the purposes of trade on regulated markets of securities, or had more than 10,000 shareholders on the last day of two consecutive calendar years. Public companies are to be entered into the FSC's registry of public companies and other issuers of securities.
 The acquisition of private joint-stock companies is not subject to the takeover bid rules of POSA. It is disputable (to the extent not made clear in POSA) whether the takeover rules (especially the obligation to launch a mandatory takeover bid) apply in the case of the acquisition of an indirect control over a public company through the acquisition of shares of a private company, which in turn holds voting shares in the public company above the relevant thresholds. We are of the view that since both the Takeover Directive and POSA refer to acquisition of voting rights the obligation to launch a mandatory bid should also apply in the case of acquisition of indirect control over a public company.

- 19.5 POSA applies to (i) a voluntary takeover bid for voting rights of public companies, (ii) mandatory takeover bids for voting shares issued by a public company, (iii) squeeze-outs and (iv) sell-outs.
- 19.6 The FSC is empowered by POSA to determine other types of securities, in addition to shares, which must be subject to the takeover bid rules of POSA, as well as exceptions to the obligations to register and/or publish a takeover bid.
- 19.7 In compliance with Article 1 of the Takeover Directive, the rules of POSA on takeover bids do not apply to securities – the object of which is the collective investment of capital provided by the public – issued by companies which operate on the principle of risk-spreading and the units of which are, at the holders' request, repurchased or redeemed, directly or indirectly, at a price based on the net assets value of the assets of those companies (i.e. UCITS), or to shares issued by the central banks of the EU Member States.
- 19.8 In terms of national versus international competence, the rules of POSA on takeover bids apply when:
- (i) the target company has its seat in Bulgaria and the shares issued by the target are admitted to trade on a regulated securities market in Bulgaria or in another country; or
 - (ii) the target company has its seat outside Bulgaria, but the shares of the target are admitted to trade on a regulated securities market in Bulgaria and are not admitted to trade on a regulated securities market in the country where the target's seat is. However, if the shares of the target are admitted to trade on a regulated securities market in Bulgaria and in another Member State the FSC has jurisdiction over the takeover bid only if the shares of the target have been admitted to trade on a regulated securities market in Bulgaria first. If the shares of the target have been admitted to trade on a regulated securities market in Bulgaria and in another Member State simultaneously the FSC will have jurisdiction over the takeover bid only if the target itself appoints the FSC as the competent authority to supervise the bid. In these scenarios matters relative to the price and/or the exchange value of the bid, the decision of the bidder to make the bid, the content of the bid and its publication are governed by POSA, whereas matters relative to the information to be made available to the employees of the target and corporate law matters, including the circumstances when an obligation to make a takeover bid arises and any exceptions thereto, as well as the circumstances in which the target may take measures to impede the bid, are governed by the laws of the Member State where the seat of the target is.
- 19.9 The rules of POSA on takeover bids do not apply to takeover bids for shares of companies which have their seat in another EU Member State whose shares are admitted to trade on a regulated securities market in Bulgaria, if such

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takeover bid was subject to approval and was approved by the relevant regulator of the other Member State. In such case the FSC may however require the bidder to prepare a translation in the Bulgarian language of the takeover bid and/or to include in such bid any additional information which is specific to the market in Bulgaria and relates to the terms for accepting the offer, receiving the price for the shares or their exchange value or any taxes related thereto.

19.10 Finally, as per a special exemption in POSA, the takeover rules do not apply in case of privatisation transactions (unless they are executed through the stock exchange).

Conditions of a takeover bid

- 19.11 POSA regulates both mandatory and voluntary takeover bids.
- 19.12 The table below provides a summary of the thresholds which trigger a mandatory takeover bid obligation or permit a voluntary takeover bid.

Table 19.1 Takeover bid thresholds	
<i>Mandatory takeover bids</i>	
50%	A person who acquires, directly or indirectly (including together with affiliates), more than 50% of the voting rights in a public company is obliged to launch a takeover bid or, alternatively, transfer as many shares in the company as are necessary to ensure that he will hold, directly and indirectly, less than 50% of the voting rights in the company. A person already holding over 50% of the voting stock of a public company is required to launch a tender offer if he desires to acquire more than 3% of the voting stock in any one-year period.
66.67%	The above rule applies also to a person who acquires, directly or indirectly (including via affiliates), more than two-thirds of the voting rights in a public company.
95%	A person who has acquired 95% or more of the voting rights in a public company as a result of a takeover bid may, within three months following the end of the takeover bid, force the rest of the shareholders in the public company to sell to him their shares in such company ('squeeze-out').
<i>Voluntary takeover bid</i>	
5%	A person already holding at least 5% of the voting rights in a public company may launch a takeover bid if he desires to acquire, directly or indirectly, more than one-third (but below 50%) of the voting rights of the public company.
90%	A person who acquires, directly or indirectly (including together with affiliates), more than 90% of the voting rights in a public company has the right to launch a takeover bid with the aim to delist the company as a public one. ¹

1 This is without prejudice to the mandatory takeover bid rules above.

19.13 A takeover bid must comply with the following main principles:

- (i) non-discrimination among shareholders of the target who are in equal position and protection of the other shareholders when someone acquires control over the company;
- (ii) ensuring sufficient time and information is available to the shareholders of the target to enable them to assess the bid correctly and take an informed decision whether to accept it or not. The management body of the target must, when giving its opinion on the bid, opine on the consequences of accepting the bid to the employees of the target, the employment contracts and the place of the activity;
- (iii) the behaviour of the management body of the target must be in the best interest of the target as a whole and must not impede the ability of the shareholders to take a view on the merits of the bid;
- (iv) no market manipulations with securities issued by the target or by any other companies affected by the takeover bid should be allowed;
- (v) the takeover bid must be made only after the bidder has procured the required resources to pay or, as the case may be, exchange the shares of the shareholders that have accepted the bid; and
- (vi) the target should not be put in a situation which impedes the carrying out of its business activity for an unreasonably long period.

Supervisory authority

- 19.14 The authority which supervises takeover bids in Bulgaria is the FSC, a special body established by virtue of the Financial Supervisory Commission Act and, in particular, the Deputy Chairman of the FSC, who is in charge of the supervision of investment companies, investment intermediaries, public companies and investment activity in general. The FSC is by law independent from the government and reports its activities directly to the National Assembly (the Parliament).
- 19.15 Three directorates have been established within the FSC: Supervision of Investment Activities, Insurance Supervision and Social Insurance Supervision. Each of the said divisions is managed by a Deputy-Chairman of the FSC.
- 19.16 In particular, the FSC has the authority to approve the draft takeover bids before they can be published. It may also terminate a takeover bid before the expiration of its term if, at or after its publication, there are breaches of the relevant legal provisions. In case of such termination any acceptance by shareholders of the bid is ineffective.

Investment intermediaries

- 19.17 A mandatory takeover bid must be made through an investment intermediary with a registered share capital of not less than BGN 250,000 (€127,822)² and

2 As per the fixed exchange rate of BNB of 1.95583.

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must ensure the possibility for a distant acceptance of the offer through the Central Depository for Securities.

- 19.18 An investment intermediary is a legal entity which provides one or more investment services and/or performs one or more investment activities as a regular occupation or a business on a professional basis and is licensed to do so by the FSC. Banks may also act as investment intermediaries if licensed to do so by the central bank.

Voluntary takeover bid

Voluntary takeover bid in case of 5 per cent or more

- 19.19 A person who already holds, directly or indirectly through affiliated persons, 5 per cent or more of the voting rights in a public company is entitled to make a takeover bid if he wants to acquire more than one-third of the voting capital of the company.
- 19.20 The bidder may fix the minimum number of shares which are to be offered to him for acquisition as a condition for the validity of the bid.
- 19.21 The bidder is obliged to purchase all voting shares held by a shareholder who has accepted the offer. However, if the total number of shares offered to the bidder exceeds the total number of shares subject to the takeover bid, the bidder must purchase shares from each of the accepting shareholders pro rata to the shares deposited thereby.
- 19.22 A voluntary tender offer can be withdrawn during the term of its validity.

Voluntary takeover bid in case of 90 per cent or more

- 19.23 Another form of voluntary takeover bid (usually aimed at taking full control over the company and its delisting) can be launched by a person who owns more than 90 per cent of the voting capital of a listed company. Such person may address a tender offer to the remaining minority shareholders. As a result thereof the target could be delisted from the register of public companies and thus become a private company (for that reason the offer is often qualified as a 'closing tender offer').
- 19.24 A closing tender offer must be launched within fourteen days after the acquisition of 90 per cent of the shares (otherwise the tender offeror shall be obligated to notify the shareholders, the regulated securities market and the FSC of his intentions to launch a tender offer at least three months in advance). The offeree shareholders are not obliged to accept the closing tender offer. The tender offer can be withdrawn only as an exception if its completion has become impossible due to reasons that are beyond the control of the tender offeror and provided that the period for acceptance of the tender offer has not yet expired.

- 19.25 The procedures and requirements for the conduct of a voluntary offer are similar to the requirements for the conduct of a mandatory tender offer (see below), with the exception that the inability to publish a tender offer does not block the voting rights of the shares held directly or indirectly by the tender offeror and that a closing tender offer cannot provide for the exchange of shares of the target for shares of the tender offeror instead of payment.

Mandatory takeover bid

- 19.26 A takeover bid must be launched if (i) a person acquires more than 50 per cent or, as the case may be, more than two-thirds of the voting rights in a public company or (ii) a person who already possesses 50 per cent of the voting rights in a public company wants to acquire more than 3 per cent of the voting rights of the same company within a one-year period. Until the launch of the mandatory takeover bid offer the bidder may not exercise the voting rights attached to shares of the target acquired by him.
- 19.27 This requirement applies also when a person has acquired the voting rights together with affiliates or if the person has entered into an agreement with other persons holding voting rights in the target to follow a common policy in respect of the management of the target by exercising jointly their voting rights.
- 19.28 The takeover bid to the rest of the voting shareholders could be either for the purchase of their shares or for the exchange of their shares for shares which will be issued by the bidder for this purpose or for a combination of the two. As an alternative to a takeover bid the person may transfer the requisite number of shares so as to hold, whether directly or through affiliated persons, less than 50 per cent of the votes in the shareholders' meeting.
- 19.29 During the takeover bid the management of the target may not take any steps aimed at the prevention of the acceptance of the bid, apart from seeking a competitive bid. Moreover, any and all limitations with respect to the transfer of voting shares imposed by the statutes of the target and/or agreements between the target and/or shareholders shall not apply with respect to the takeover bid.
- 19.30 The takeover bid should contain, inter alia, evidence that the bidder is in possession of the funds needed to pay for the acquired shares or of the securities that shall be transferred in exchange for the acquired shares. The bidder can finance the acquisition through his own funds or through a loan.
- 19.31 The bid has to be filed with the FSC for approval. If the bid does not meet all the requirements set by the law, the FSC can prohibit the launch of the takeover bid temporarily and give to the bidder instructions to remedy the problems. If such deficiencies are not remedied within the given time-frame, the FSC may issue a final prohibition of the takeover bid.

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Procedure

Notification of the intention to launch a takeover bid

- 19.32 The bidder should be the person who has acquired for his own account and holds the shares in the target exceeding the relevant thresholds. In a case where affiliated parties hold shares of the target and a mandatory or a voluntary threshold is crossed, the bidder should be the person who holds the largest number of shares.
- 19.33 The takeover bid must be registered with the FSC or, alternatively, the person must dispose of a sufficient number of shares to go below the threshold, not later than fourteen days after the acquisition of the voting rights which triggers the takeover bid obligation. The date of acquisition is the date of settlement of the transaction with the Central Depository.
- 19.34 The bidder must appoint an investment intermediary through which the bid will be effected and will conclude with it an agreement for its services.
- 19.35 The offer document should be signed by both the bidder and the investment intermediary and they are jointly and severally liable for any damages caused by any untrue, misleading or incomplete statements.

Price determination. Approval and publication of the bid

- 19.36 Perhaps the most important element of the preparation of a takeover bid is the determination of the share price. The price offered by the bidder in a mandatory takeover bid triggered by exceeding the 50 per cent or the two-thirds threshold, or a closing (delisting) takeover bid, has to be justified by generally accepted valuation methods. It cannot be lower than the highest of:
- (i) the fair price per share indicated in the justification attached to the bid. The fair price equals the amount resulting from dividing the valuation of the target based on generally accepted valuation methods by the number of shares of the target;
 - (ii) the average weighted price of the shares of the target on the stock exchange during the last three months; and
 - (iii) the highest price paid by the bidder, a related party to the bidder or other shareholders who have entered into agreement with the bidder for common policy in exercising their voting rights, during the six months before the registration of the bid. In case this price cannot be determined, then the price hereunder shall be the higher of the last issue value for the shares and the last price paid by the bidder.
- 19.37 A special ordinance elaborates, inter alia, on the applicable valuation methods in the case of takeover bids.
- 19.38 The price offered should be the same for all residual shareholders. If during the bid the bidder directly or indirectly acquires shares of the target at a price

higher than the offer price, it will be obliged to purchase all of the tendered shares at such higher price.

19.39 Prior to its publication the takeover bid should be submitted simultaneously to:

- (i) the FSC;
- (ii) the management body of the target;
- (iii) the employees of the bidder or representatives thereof; and
- (iv) the regulated securities market where the shares of the target are traded.

19.40 Following the submission, the FSC will review the takeover bid for compliance with the requirements of the law.

19.41 The management of the target has to submit the bid to the employees of the target.

19.42 The bid may be published provided the FSC does not issue a temporary or permanent ban on publication within fourteen business days after the bid was registered with it.

19.43 In practice the FSC quite often issues a temporary ban, as it normally has some additional requirements to the bid or the accompanying documents. If a temporary ban is issued the bidder should remedy the deficiencies to which the FSC has objected. This should be done within an additional fourteen business days after notice of the temporary ban is received. Following receipt of the additional documents, if the FSC does not issue a permanent ban on the publication of the offer within an additional seven business days, the offer is presumed to be approved.

19.44 The approved offer should be published by the bidder along with the opinion of the management body of the target in at least two national daily newspapers. The publication should occur not later than three days after the expiration of the period after which approval by the FSC is presumed.

19.45 In case the shares of the target are admitted to trade on a regulated market in another Member State the bidder is obliged to provide the takeover bid to the shareholders from the country/ies where the shares of the target are admitted for trade. In case of such a demand the bidder is furthermore obliged to provide the competent authorities of the said Member State/s with a translation of the bid as well as with additional information depending on the local legislation.

19.46 If a permanent ban is issued, a new takeover bid should be prepared and the process should be started from the beginning. In the case of a mandatory bid, the suspension of voting rights continues until a new bid is published.

19.47 The FSC may also stop a takeover bid which has been published in case of irregularities and breaches of the law in respect of its conduct or in

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respect of its publication. In this case the suspension of the voting rights is resumed.

Opinion of the board of the target and employee
 information and consultation

- 19.48 Within seven days following the submission of the bid to the management body of the target it should submit to the bidder, the FSC and the employees an opinion on the bid, including, but not limited to, the consequences of acceptance of the bid for the target and the employees, the strategic plans of the bidder and their impact on the employees, etc. Furthermore, the opinion has to include information on the known agreements for exercising of the voting rights in the target company, on the number of shares of the target owned by the members of the management body and whether they are going to accept the bid or not. In case the employees of the target have prepared their own opinion this shall be attached too.

Acceptance period

- 19.49 The acceptance period cannot be shorter than twenty-eight days or longer than seventy days as of the date of publication of the takeover bid, except in the case of a competitive takeover bid. In such case the term shall be prolonged till the expiry of the acceptance period of the competitive bid.
- 19.50 Acceptance of the takeover bid is done by an express written statement and by depositing the documents certifying ownership of the shares with the investment intermediary or with the Central Depository. The bidder cannot refuse to purchase and pay for shares for which the bid has been validly accepted during the term for acceptance.
- 19.51 Until the term of the bid expires any shareholder who has accepted it is free to withdraw the acceptance.
- 19.52 The date of acquisition of the shares is deemed to be on the expiry of the last day of the bid. Payment of the consideration for the acquired shares should be made within seven days after that.
- 19.53 Upon completion of the purchase the acquisition of the shares should be registered with the Central Depository (the authority which keeps the registers of the non-physical shares). Only following completion of this registration will the transfer of the shares to the bidder be deemed effective.

Publication of results

- 19.54 Immediately following the expiry of the term of the takeover bid the bidder should publish the results thereof in two national daily newspapers and inform the FSC and the Bulgarian Stock Exchange of the results.