

Squeeze-out procedure from a custodian perspective

24 June 2014¹**Summary**

An investor holding 95% or more of the shares in a Dutch company can ask the court (Rechtbank Amsterdam) for a verdict for a squeeze-out. When granted such a verdict creates an obligation for the remaining shareholders to transfer their shares to the Acquirer at a price determined by the court.

A custodian should structure such a verdict:

- a. as one mandatory Corporate Action (if the acquirer has not made a final offer through a Public Notice), or
- b. as a combination of a voluntary and a mandatory Corporate Action (if a final offer has been made).

Situation

An investor ("Acquirer") holding at least 95% of the shares in a B.V. or an N.V. established in The Netherlands (e.g. following a successful public offer) can request the court (specifically the Ondernemingskamer of the Rechtbank Amsterdam) to oblige the remaining shareholders to transfer their shares. If the request is honoured this provides the Acquirer with a verdict that is almost always final². This verdict obliges the remaining shareholders to transfer their shares to the Acquirer at a price determined by the court.

Two situations occur in practice:

- a. the Acquirer simply refers to the verdict and requires transfer of the shares accordingly. In practice the Acquirer will make use of the legal facility of Consignation: he pays the price for the remaining shares as determined by the court, with accumulated interest, to the Consignation Account ("Consignatiekas"); on the Consignation Date (the ultimate transfer date in the verdict) the remaining shares are transferred against payment of the price in the verdict.
- b. the Acquirer makes a final offer: referring to the verdict he offers a last opportunity to deliver the remaining shares voluntarily preceding the Consignation Date. Usually, this final offer is made in a Public Notice.

Recommended practice

Situation a. be structured as a mandatory Corporate Action: any shares remaining at the Consignation Date are transferred to the Consignation Account ("Consignatiekas") against payment according to the verdict³.

Situation b. be structured as two Corporate Actions: a voluntary conversion (the investor decides whether to transfer under the final offer or not), followed by a mandatory conversion of those shares not transferred by the Consignation Date.

In this situation b. the custodian refers to the Public Notice and informs his client that the latter has two options within the voluntary conversion:

1. transferring his shares, or
2. doing nothing.

Under option 1 the shareholder has to indicate the date of transfer, which is ultimately on the last business day preceding the Consignation Date; the shareholder will be paid according to the Public Notice.

¹ replaces the previous version of 12 May 2014 (DACSI 14-1079, in Dutch only)

² an appeal with the Supreme Court ("cassatie") is possible, but would not suspend the effective judgement

³ in general: € [price] per share per verdict date, plus (legal) interest accrued from the verdict date until the Consignation Date, according to article 2:359c of the Civil Law (Burgerlijk Wetboek)

Under option 2 the Consignation procedure will apply: the custodian will transfer the shares to the Acquirer (through the Consignation Account) and the shareholder will be paid according to the court's verdict – when applicable with (statutory) interest accumulated to the Consignation Date.

It is recommended that custodians mark option 1 as default option, with transfer on the last business day preceding the Consignation Date.

Reference

Reference is made to the analysis of 29 October 2013 (memo DACSI 13-1163, in Dutch).