

Newsflash

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Corporate law, Mergers and Acquisitions

Transparency legislation: new thresholds and other notable changes

The Law of 2 May 2007 on the notification of important shareholdings¹, implementing the European Transparency Directive² in Belgium introduces changes in the existing periodic and ongoing notification requirements³ and modifies the supervisory role of the CBFA.

Essentially, the law introduces new transparency requirements in case of acquisition or disposal of important shareholdings in undertakings whose shares are admitted to trading on a regulated market.

Notable changes and similarities with the previous regulation can be summarized as follows:

- Contrary to the previous regulation aimed solely at issuers governed by Belgian law, notification requirements are now also extended to companies with a registered office located in another country.
The Law distinguishes notification requirements applying to holdings in issuers with Belgium as "home Member State"⁴ and those applying to holdings in issuers whose securities are traded on a Belgian regulated market but for whom Belgium is not the home Member State. Consequently, companies incorporated in Japan or in the United States can equally be affected by the new regulation if their securities are admitted to trading on a regulated market located in Belgium or the European Economic Area.
- As in the past, notification is required in the case of acquisition or disposal of voting securities (such as shares and profit-sharing securities with voting rights) or of financial instruments considered to be similar to voting securities by Royal Decree. Financial instruments carrying the right to acquire non-issued securities with voting rights (such as subscription rights, convertible bonds and bonds with subscription rights) can no longer be qualified as voting securities.

¹ MB/BS, 12 June 2007, modifying Chapter 1 of the Law of 2 March 1989 and other provisions such as articles 514 to 516, 545, 606 and 632 of the Company Code.

² Directive 2004/109/EC of the European Parliament and of the Council, 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market.

³ Amending the Law of 2 August 2002 relating to the financial sector supervision and financial services.

⁴ Belgium is considered the "home Member State" of 1) issuers incorporated in Belgium and 2) issuers incorporated outside of the European Economic Area (EEA), subject to a yearly reporting obligation to the CBFA according to the Prospectus Law (16 June 2006).

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- The notification thresholds remain unchanged: disclosure must be made as soon as one acquires 5% or a multiple of 5% (10%, 15% ...) or more of the total voting rights. As in the past, lower thresholds can be specified in the articles of association. The new regulation allows statutory thresholds under 3%. Such thresholds must however correspond to those provided for in the Law (1%, 2%, 3%, 4%, 7,5%).
- Both current and potential voting rights are taken into account when calculating the total amount of voting rights. Potential voting rights can only relate to issued securities. In principle, financial instruments carrying the right to acquire non-issued securities with voting rights can no longer be taken into account. However, in order to maintain transparency in relation to potential voting rights, the Law imposes additional notification requirements on the issuer who must also disclose information about convertible bonds and rights to acquire non-issued securities with voting rights in addition to information relating to voting securities.
- Under the new regulation, the notification delay is extended from 2 to 4 trading days. In addition, the issuer is granted more time (3 trading days following receipt) to disclose notifications.

The recent Royal Decree of 14 February 2008⁵ on the notification of important shareholdings, stipulates that the transparency legislation will come into effect on 1 September 2008.

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⁵ MB/BS 4 March 2008

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