行政院及所屬各機關出國報告

（九十年度出國考察）

歐洲主要國家企業併購現況及其相關規範

服務機關：財政部證券暨期貨管理委員會

出國人 職稱：科長

姓名：張振山

出國地區:英國倫敦、法國巴黎

出國期間：九十年九月十七日至九月二十六日

報告日期:九十年十二月

系統識別號:C09100452

公 務 出 國 報 告 提 要

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報告名稱:

歐洲主要國家企業併購現況及其相關規範

主辦機關:

財政部證券暨期貨管理委員會

聯絡人／電話:

李筱惠／27747204

出國人員:

張振山　　第一組　科長

出國類別: 考察

出國地區: 法國　英國

出國期間: 民國 90 年 09 月 17 日 -民國 90 年 09 月 26 日

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分類號/目: D0／綜合（財政類）　D1／金融

關鍵詞:　企業併購

內容摘要: 隨著市場全球化的發展，世界各國之企業併購行爲正快速成長中，尤其是跨國併購行爲更是盛行，而我國近年來許多企業也已邁入成熟期，再加上我國加入WTO後，在可預見的將來伴隨著經濟成長及企業爲提昇國際的競爭力，採行併購方式進行橫向或縱向整合而發展出併購之風潮，勢必將爲我國經濟發展必然之趨勢。

本文電子檔已上傳至出國報告資訊網

行政院及所屬各機關出國報告提要

出國報告名稱：歐洲主要國家企業併購現況及相關規範

頁數計三十三頁　含附件：　□是　√否

出國計畫主辦機關：財政部證券暨期貨管理委員會／聯絡人：李筱惠／電話：27747204

出國人員姓名：張振山／服務機關：財政部證券暨期貨管理委員會／單位:第一組／職稱:科長／電話:27747117

出國類別: √1 考察 □2 進修 □3 研究 □4 實習 □5 其他

報告日期：九十年十二月

分類號／目

關鍵詞：企業併購

內容摘要：

隨著市場全球化的發展，世界各國之企業併購行為正快速成長中，尤其是跨國併購行為更是盛行，而我國近年來許多企業也已邁入成熟期，再加上我國加入WTO後，在可預見的將來伴隨著經濟成長及企業為提昇國際的競爭力，採行併購方式進行橫向或縱向整合而發展出併購之風潮，勢必將為我國經濟發展必然之趨勢。

他山之石，可以攻錯，故借鏡歐美國家對於企業併購監理規範，可以提昇我國企業競爭力及產業昇級，本次英法兩國企業併購制度考察，所獲結論與建議如下：

一、政府提供企業組織再造的環境為世界潮流。

二、設置企業併購專法及專責機構。

三、併購型態的多樣。

四、資訊充分公開。

五、強化自律及專家功能。

六、責成企業管理當局之忠誠義務。

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第一章 考察背景

第一節 前言

為提昇企業競爭力及產業昇級，全球興起一波波企業併購熱潮，無論係同業、異業或國內、跨國進行併購，均已尉為風尚。國內近兩年內企業購併之行為，亦甚為顯現，伴隨金融機構合併法之通過，及國內企業為提昇整體競爭力，採行合併方式進行橫向或縱向整合。是以，未來企業併購之家數預計將有顯著之成長。本會前於八十九年二月十六日訂定「上市上櫃公司合併應注意事項」係參酌美國、日本及香港之相關規範，惟對於歐洲國家，如英國、法國證券市場之管理規範，較不熟稔。因此，本次爰計劃前往該等國家拜會證券相關機構，瞭解其企業併購相關規範，以俾因應證券市場國際化、自由化的趨勢和競爭。

拜會機構：

(一)英國部分：

1、英國收購及合併委員會（Panel on Takeover and Mergers, PTM）

2、倫敦證券交易所（London Stock Exchange, LSE）

3、英國那斯達克（The NASDAQ Stock Market, NASDAQ）

4、當地證券商（NSC Securities Ltd. 等）

(二)法國部分：

1、法國經濟財務部（Ministry of Economy Finance and Industry）

2、法國證券交易委員會（Commission des Operations de Bourse, COB）

3、法國金融管理局（Conseil des Marches Financier,CMF）

4、當地證券商（BNP Paribas Ltd 等）

考察內容提要：

(一)該等國家對併購之法規規範及監理制度。

(二)該等國家內之企業進行併購之市場實務運作及現況。

第二節 企業併購背景

企業併購為證券市場上饒富興味之課題，這不只因為併購具有多種的型態，更因為併購涉及企業間複雜的權利義務關係，使得多種面向的法律及經濟構面都與之產生牽連。我國過去五十年來的產業發展，主要是以製造業為主，製造業的發展，又以直線、單元方式進行，從低層次、低價位的單一產品代工或加工開始。不過，從一九八〇年代中期開始，臺灣總體經濟情況開始轉變，企業也開始轉型。譬如，國內宏碁企業為配合自創品牌，收購美商 Altos 公司；又如和信企業團、台聚企業、神通集團與行政院開發基金等公民營事業共同收購美商慧智科技（Wyse Technology）。此外，近年國巨電子也收購菲利普國外廠房、設備，

聯電公司關係企業五合一之合併，近年金融界喧騰一時的中華開發工業銀行對大華證券的「敵意」收購等等。

從這些趨勢看來，我國產業已進入大幅調整的階段，企業也必須面臨轉型的挑戰，而轉型無法仰賴以往內部組織結構式調整，而必須借助合併收購這種快速重組、整合原事業的方式。這種趨勢的最大原動力在於企業全球化，加強競爭壓力。因此，同業間可能進行水平兼併，以增加規模經濟、降低成本；產業界上下游亦可能進行垂直結合，以取得技術、市場行銷管道或品牌。此外，由於國內產業（如早期的紡織、食品業，到中期的石化、消費電子業，乃至於近期的資訊、電信、金融等產業）的開放具有遞延性，又具家族性，因此，又透過併購、轉投資而形成多角化經營的關係企業集團。國內外企業併購以及敵意併購也是未來企業轉型的趨勢。

在這種大環境之下，法律、會計、稅務、資本市場等機制必須能配合這種產業調整與企業轉型的趨勢，才能維持國家競爭力，由於臺灣早期偏重製造業發展的政策，以及大陸法系較穩健但僵化的財經法制，在在都不利於併購活動，例如無分割之法制規定，使得企業組織變革僵硬化，甚至包括機構投資人無法藉支持併購者，減低因股權集中造成的代理成本(agency cost)及剝削效應，對提昇我國「公司治理」(corporate governance）水準，有相當負面的效果。

反觀國外，因為併購包括企業分割、法制健全，企業可以快速轉型以促進產業調整及創造股東價值。譬如美商 MCI 被 Worldcom 這家十年前名不見經傳的公司收購而形成通訊業巨人；花旗銀行與旅行者保險公司間的合併，更是一種超越法制的跨業合併，美

國國會因此下定決心，而於一九九九年通過金融服務現代化法案，以加強美式金融控股公司的國際競爭力；又如 AT&T 電信公司於一九九〇年代，為因應電信業的急遽變化，自行採取企業分割方式，以便分業發展，因應競爭。

國外併購活動活絡，可能是因為併購法制健全，其中常見的具體特徵如下：

(一)公司法與證交法相當靈活，企業可合併、分割、收購老股、發行新股（以進行股份交換）、三角合併（以形成立體控股公司）、簡易合併等。

(二)併購案可以用非現金（如換股）及免稅的方式進行，最有名的就是依照美國所得稅法第 368 條的規定，進行「免稅企業改組」(tax-free reorganization)。根據 Thomson Financial Service Data 2000 年全球併購報告顯示，若以交易數而言，全球 2000 年併購交易約有 25%係以換股方式進行，約有 63%係以現金進行，約有 12%以換股與現金混合進行。若以併購對價為計算基礎，全球 2000 年併購交易約有 47%係以換股方式為之，約有 33% 交易係以現金進行，約有 20%以換股與現金混合進行。若以區域市占率為基礎，全球 2000 年併購金額美國佔 60%；英國佔 15%；歐陸佔 9%；亞洲及中南美洲佔 6%；澳國佔 4%。

(三)行政程序十分便捷，一方面沒有變更公司登記或設廠登記的

繁文褥節，他方面也沒有因併購、分割形成控股公司即要求下市的硬性規定或政策。此外，國外先進國家對管制企業結合，多採申報異議制，而非我國公平交易法的實質核准制。

(四)併購而形成高度持股的集團公司，可以透過連結稅制，由母公司申報集團所得稅（其政策旨趣與容許夫妻合併報稅或企業兩稅合一相同），以減低稅負並節撙徵納雙方行政成本。OECD 二十六個會員國之中，已有十九個國家採取此一制度。

(五)上市公司的收購制訂嚴謹但不苛刻的法規，以容許收購者、被收購者、以及投資大眾在資訊充分揭露的情況下，公平、公開地進行競價收購行為，而且因為董事（尤其是外部董事）的忠誠義務（fiduciary duty）之落實，董事必須替股東爭取最大利益方克盡責。

以上幾項重大機制皆為我國目前法制修正可參考之處。併購對產業升級的貢獻，以及對國家競爭力的提昇，有其一定重要性，故健全企業併購相關法律之制度實為刻不容緩的課題。

第三節 小結

我國近年來因受經濟不景氣之衝擊，企業進行組織重整再編及加速併購行為之需求殷切，為配合民間企業進行併購行為之需求，公司法、證券交易法及稅法等相關制度均進行大幅度之修正。

從近年來公司法修正引入股份交換、股份移轉及公司分割等制度、證券交易法草案有關公開收購規定之修正及私募制度之創設及配合相關修正觀之，大體上均以美國制度為師，處處可見美國相關法制之影響。惟由於我國今年加入 WTO，現行公司法、證券交易法修正動態似乎應全盤反映於我國全球觀之法制之修正上，故對世界各國相關法律修正方向及制度調整之影響及成效，亦值得我國加以注意及參考。

第二章　英國企業併購規範

第一節 前言

在英國，企業間之併購行為乃是由收購及合併委員會(Panel on Takeovers and mergers) 所職司，惟該委員會非國家所設置之獨立公法人組織體，亦即其為一「不具有單獨法定地位」(non-statutory) 之組織。在合乎一九九八年人權法案之精神下，收購及合併委員會制定收購及合併準則 (The City Code on Takeovers and Mergers) 及主要股份取得規則(The Rules Governing Substantial Acquisitions of Shares)做為確保每一位公開發行公司之股東在收購及合併過程中受到公平及合理對待，使他們能在掌握充分資料的情況下，就要約的利弊做出有根據的決定，以及確保收購及合併交易，可以在公平及資料獲得充分揭露的市場上進行交易。至於收購公司 (the offer company) 及標的公司之財務狀況或商業利益則非該準則所關切之課題。

第二節 收購及合併委員會（以下簡稱委員會）之組織架構

一、委員會成員之產生

收購及合併委員會之成員（包括主席、副主席）乃由下列組織提名，並經英格蘭銀行 (Bank of England) 總裁任命而產生，其組織如下：

英國發行人協會（The Association of British Insurers）；投資信託公司協會（The Association of Investment Trust Companies）；投資經理人及經紀商協會（The Association of Private Client Investment Managers and Stockbrokers）；單一信託及投資基金協會（The Association of Unit Trusts and Investment Funds）；英國銀行協會（The British Bankers' Association）；英國產業邦聯（The Confederation of British Industry）；基金經理人協會（Fund Managers' Association）；倫敦投資銀行協會（The London Investment Banking Association）；英國退休基金協會（The National Association of Pension Funds）

二、委員會之運作

委員會下設有理事會，由收購及合併委員會之主席及其他成員所組成，除執行與解釋收購及合併準則外，亦為企業於併購過程中詢問其行為是否有牴觸前開準則疑議之諮詢單位，換言之，任何其他人就收購及合併向股東發出通告或發佈時，必須極度謹慎地行事，並在發出通告或發佈前諮詢該會意見。當理事會發現任何違反收購及合併準則之行為，將依規定書面通知該特定人或團體出席委員會所召集之聽證會。對於一違反收購及合併準則之特定人或團體，委員會得為下列懲處：

(一) 申誡；

(二) 公開譴責；

(三) 將違規者之行為轉知相關機關查辦（如貿易及產業部、

倫敦證券交易所或金融服務局等)。

如相關當事人對委員會所為之懲處決定不服，得對上訴委員會（The Appeal Committee）提起申訴。而該上訴委員會應於接獲申訴之日起兩日內做出維持、撤銷原處分或自行決定之處分。

第三節 收購及合併準則之介紹

收購及合併準則全文共分為十七個章節、三十八個條文，為一經英國政府承認(acknowledge)卻不具有「法律效力」之規範，然而所有希冀從英國資本市場獲利之組織皆有以該準則做為企業間收購及合併行為最高指導原則之共識，即該準則代表著英國金融市場的參與者及金融服務局雙方意見的共識，為進行收購及合併交易時，可以接受的商業操守及行為標準的共同看法，因如其收購及合併程序違反該準則之規定，英國金融服務局（Financial Service Authority)、相關自治組織及為金融服務局所承認之專業機構會對其為適當之處置，如禁止使用這些市場的設施，從事收購或其他交易等行為。茲將該準則之主要規範內容陳述如下：

一、規範客體

適用於當標的公司為在英國設立登記之公開發行公司之情形，至於收購公司是否為在英國設立登記之公司則非所問。

二、全部收購及合併：

收購公司及標的公司在併購過程中所應履行之義務

(三)選定專業獨立人士

不論收購公司或標的公司於收購及合併契約簽訂前皆需聘請專業人士就其收購及合併之效益暨展望提出評估報告，作為是否收購及合併之依據。而該專業人士本身與收購公司或標的公司應無任何利益衝突，否則將被委員會視為不適任。當專業人士所出具之評估報告與收購公司或標的公司董事會之意見不一致時，應於作出最後決定前先行聽取委員會就本收購及合併案所為之表示。

(四)收購或合併程序中之應行注意事項

1、對外公開聲明書件內容之正確性及完整性

任何於收購或合併過程中所對外公開之聲明、陳述、書件或公開說明書，務必求其文字精準與內容完備，並應詳實說明其資料來源，以免誤導投資人。

2、宣佈合併及收購之時機

收購公司及標的公司於磋商收購及合併之過程中不可走漏或提供消息於特定股東或其他第三人，以防止股價異常波動。而在董事會決議收購及合併並對市場宣佈收購或合併之消息時，應提供完整及正確之財務報告於所有股東並予其一定之充足時間反應。再者，收購公司應公平對待標的公司之所有股東。

(五)收購公司及標的公司之董事會所應出具之書件及其應行記載事項

收購公司及標的公司應及早提供其股東充分之資訊，使其有充裕時間評估是否贊同該收購及合併案。而依書件提供對象之不同，其應行記載事項亦異。茲分述如下：

1、收購公司對標的公司之員工所提出之書件

(1)對標的公司所營事業之未來規劃；

(2)對標的公司之重大變革提出說明（尤其是固定資產之處分）；

(3)評估收購或合併之前瞻性及利基；

(4)對標的公司及其子公司之員工之任用計畫。

2、收購公司應揭露之相關資訊

(1)如收購公司係依英國公司法設立、在英國交易所或其他交易所上市並以「股份收購」為其收購方式者，應揭露之資訊如下：

a 最近三個會計年度稅前及稅後淨值；

b 最近一個會計年度之資產負債表及現金流量表；

c 當編制財報所適用之會計原則變更時應將重編之財務予以揭露；

d 負責人之名稱；

e 有關財務及業務狀況之公開說明書。

(2)如收購公司係依英國公司法設立、在英國交易所或其他交易所上市並以「現金收購」方式為其收購方式者，應揭露之資訊如下：

a 最近二個會計年度稅前及稅後淨值；

b 最近期公佈之公司淨值；

c 負責人之名稱；

d 有關財務及業務狀況之公開說明書。

3、收購或合併契約

(1)立約公司名稱及其負責人之姓名；

(2)契約生效日；

(3)因契約之簽訂致生之固定或變動之給付。

如標的公司於進行合併之過程中，曾經專業獨立人士就其合併案為反對之意思表示，則該標的公司應將此一事實向其股東公開並闡明。

三、部分收購(Partial offers)

為使企業得自由調整其組織規模，該準則提供部分收購之機制。惟任一部份收購案須事先取得收購及合併委員會之同意，

而因部分收購所取得股份占標的公司已發行有表決權股份總數比例之不同，將影響委員會為準駁同意之決定；

(一)如收購後所持股份未逾該標的公司已發行有表決權股份總數百分之三十者，委員會將無條件出具同意函。

(二)如收購後所持股份逾該標的公司已發行有表決權股份總數百分之三十但未逾百分之百者，委員會將駁回其申請。

四、主要股份取得規則

主要股份取得規則乃收購及合併委員會於收購及合併規則之外所另行制定之單行規章，旨在限制與控制任一人(包括自然人及法人)過速取得他公司有表決權股份。其規範對象、執行機構、申訴機制皆與前開準則同。全文共五個條文，茲將規範重點陳述如下：

(一)股份取得之限制

任何人除有下列情形之一者外，不得於七日內連續取得某特定公司之有表決權股份（不包括新股及可轉換公司債）逾該公司已發行有表決權股份總數百分之十以上；

1、從同一人或同一關係人處取得者；

2、依該規則第四條所定之「公開收購」方式取得者；

(二)股份申報

任何人有下列情形之一者，應將其本次所取得之股份暨其已所持股份占該特定公司已發行有表決權股份總數之比例向該

公司、收購及合併委員會及倫敦證券交易所申報；

1、因本次股份之取得致其所持股份占該特定公司已發行有表決權股份總數之比例逾百分之十五以上者；

2、其所持股份已逾該特定公司已發行有表決權股份總數百分之十五以上者，其後每次所取得之股份數。

(三)公開收購（tender offer）

任何欲從事公開收購者，應將下列資訊於預計收購日前七日公告於至少兩份國家報紙之上；

1、收購者之名稱；

2、經紀商或代理商之名稱；

3、標的股票之公司名稱；

4、擬公開收購股份總數或占資本總額之比例；

5、如公開收購之成效未達該公司已發行有表決權股份總數百分之一者，此公開收購行為將無效之聲明；

6、依規定所設算之收購價；

7、收購期間之始日及末日；

8、擬交割及結算之方式（應先行取得倫敦證券交易所及合併及收購委員會之同意）

綜上所述，英國企業併購之規範重點在於保障標的公司股東

之權益，至於企業併購之態樣及方法原則上採取自由開放之態度，由企業自行考量其商業利益後決定之。而與我國已經行政院院會通過之企業併購法草案最大不同之處，在於前揭之規範就分割之規定付之闕如。另此次考察行程除收購及合併委員會之外，尚包括英國倫敦證券交易所、英國那斯達克及當地證券業者。惟倫敦證券交易所並未制定相關規章以規範其上市公司所為收購或合併等法律行為，並此敘明。

第三章 法國企業併購規範

第一節 前言

法國所有金融市場均由經濟財務部（Ministry of Economy，Finance and Industry）監督。而上市公司之監管則由證券交易委員會（COB）負責，該委員會係依1967年9月28日第671833號命令成立。而為因應歐洲單一市場及國際化趨勢，法國為因應未來歐洲單一市場之形成及國際化趨勢，更於1996年制定金融更新法（Modernization of Financial Act），將原本分別管理證券及期貨之主管機關CBV及CMT合併為金融管理局（Conseil des Marches Financier 簡稱CMF），管理金融市場，金融管理局（CMF）為一獨立公法人組織體。在金融更新法下並要求金融管理局（CMF）制定規章，使其國內資本市場適用歐洲單一市場。金融管理局爰於1998年制定金融管理局規章（General Regulation of CMF），該規章中之公開收購亦為法國一般企業併購行為之主要規範。

法國金融更新法案下係以「經營業務」區分適用之管理法規，取代以往以「經營機構」為導向之管理政策，各項業務行為分別受到各分業主管機關管理，而主管機關及自律機構藉著彼此間充分之溝通及合作，對證券交易行為加以妥適管理，故法國一般企業併購行為除應遵守金融管理局規章規定外，尚須遵守證券交易委員會（COB）有關資訊公開規定。

此外，法國為加強對法國資本市場之管理，法國資本市場最

高管理當局-證券交易委員會（COB）及負責監督特定市場活動及參與者的金融管理局（CMF）目前正研議進行合併，後續發展值得注意。

第二節 企業併購相關機構組織及職掌

一、組織架構

(一)證券交易委員會（COB）

法國證券暨期貨管理委員會係仿效美國證券管理委員會（SEC），依第 671833 號命令於 1967 年設立之行政機關。COB 由十位委員組成，主席由總統所指定，任期為六年，其他九名委員中分別由最高行政法院法官、財政法院法官、最高民事法院法官、CBV 所指定之委員、法蘭西銀行代表各一名代表擔任、另外三名則由專精之市場人士擔任，各委員任期均為四年。

(二)金融管理局（CMF）

金融管理局（CMF）係依 1996 年 7 月 2 日通過之金融更新法（Modernization of Financial Act）而設立之專業機關。該局於 1998 年制定之金融管理局規程（General Regulation of CMF）中，對其組織架構及權責有詳細規範。目前該局由 16 位委員組成，成員包括專家、中介人、投資人、發行公司等之代表。

二、職掌工作

(一)證券交易委員會（COB）

按美國證管會之架構所成立之獨立機構(independent public agency)，由10位委員組成委員會，主要任務為投資人保護、市場資訊管理、確保金融市場正常運作及資產管理公司之管理，並具備調查權及罰款等公權力，主要工作項目為：

-市場相關法規之制定。

-金融市場監視。

-上市公司發布資訊之確認。

-核准共同基金之募集及基金公司之設立。

-違反證券法規之調查及投資人檢舉事件之調查。

-得基於其保護投資人之考慮，反對某公司之上市或要求交易所將某上市公司下市。

(二)金融管理局（CMF）

為股票、債券及衍生性商品之主管機關，由16位委員組成，成員包括發行公司、投資人、中介機構（intermediaries）及其雇員，主席由委員中選出，該局之主要工作職掌包括：

-界定自律市場及所有中介機構之營業規範。

-規範證券商、銀行提供投資服務的營業守則，如客戶委託處

理、交易執行、發行新股、保管服務及理財服務等。

-證券商及銀行投資服務執照之核發。

-股票、債券及衍生性商品交易規則之核准。

-公開收購之核准。

第三節 金融管理局規章之介紹

金融管理局規章主要包括：(1) 金融管理局之組織及職權；(2) 提供投資服務者之定義、設立條件、核發執照要件、監督及交易契約之核准；(3) 經核准提供服務者之行為規範，如其對員工之道德規範、其與客戶及市場間之規範、以及其從事發行新股等應遵守之行為規範；(4) 自律市場及結算機制；(5) 公開收購之程序；(6) 金融商品之帳務處理及保管；(7) 司法監督及懲戒之程序。

有關金融管理局規章第五、公開收購部分，共分七個章節，六十二個條文，主要規定係提供在法國進行公開收購一個共同通行程序，以確保投資人和市場最佳利益之引導標準，同時促進公開收購行為在一個具透明度、公平交易、公平競爭之目標下進行。其主要規範敘述如下：

一、規範課體

適用於當標的公司在法國設立登記之公開發行公司之情形，至於收購公司是否為在法國設立登記之公司則非所問。

二、收購方式及對價：

法國有關收購上市公司之主要方式有自由收購，適用於敵意收購或無股東享有控制權之情形。另一種為取得控制權

（達三分之一以上）後進行強制收購，原則上目標公司得賦予收購公司要約人獨家交易權。至於收購之對價包括購買式收購及交換式收購二種，其可能型態如下：

(一)以現金作對價收購標的公司。

(二)以新股或老股作對價收購標的公司。

(三)以他公司有價證券作對價收購標的公司。

(四)其他替代性方案及選擇權作對價收購標的公司。

三、收購申請書件：

提出收購書者必須製作一些書件及不能撤銷的承諾書文件，然而這些文件尚須至少經一保證銀行機構單位簽署，相關書件主要內容如下：

(一)收購者的意向及目標。

(二)收購者現行已持有標的公司股份。

(三)收購者提議取得標的公司的出價或換股比例。

(四)收購者依規定預期取得資本或表決權之比例，且在何等比例以下將認定收購案為宣告失敗。

(五)其他法規規定之必要文件。

四、收購案審查準則：

CMF 於受理收購後須在五個營業日內作成決定，否則視同許可同意辦理。惟前述五個營業日期間須符合 CMF 的要求提供必要說明、保證機構解釋或其他額外資訊以供鑑定。同 CMF

將審核下列事項，以決定是否同意收購者所提出的收購案：

(一)收購者之目的及目標之合理性。

(二)提議收購價格或換股比例在一般評價標準及標的公司的特性上是否可接受。

(三)考量標的證券在市場上的流通性、性質及特性。

(四)其他相關事項。

五、法國公司法之規定，目標公司不得對收購人融資或將其資產設質以貸款予收購人。故收購人通常僅能要約以目標公司之股票而非資產設質。

六、目標公司之董事會無義務允許收購要約人對公司進行審查。

七、要約人單獨或與他人共同持有超過上市公司 1/20 、 1/10 、 1/5 、 1/3 、1/2 或 2/3 股份或表決權者，應自持股達前述比例之日起十五個交易日內通知目標公司。

八、有關目標公司股票之全部交易皆應於場內為之。

九、任何人預備任何交易而對上市公司股票之交易價格可能產生重大影響者，應儘速對公眾公告該交易。

十、有控制權之股東得強制收購少數股東股份。

第四章 其他歐陸企業併購規範

第一節 歐洲聯盟企業併購規範

一、歐洲聯盟相關法源

歐洲聯盟（European Union，以下稱「歐盟」）法規中與企業購併相關之法令，主要見於規範公司之公開收購要約事宜之歐洲共同體公司法第十三號指令建議草案修正草案（Amended Proposal for a Thirteen Council Directive on Company Law Concerning Takeover and other General Bids，以下稱「第十三號指令草案」）中。歐洲執行委員會(La Commission européenne; The European Commission)於一九八九年十一月十九日向歐洲部長理事會（Le Conseil des ministres / The Council of Ministers)提出第十三號公司法指令有關公開收購要約（Takeover and other General Bids）之草案後，復參酌經濟暨社會委員會（Economic and Social Committee）及歐州議會（Le Parlement européen / The European Parliament)之意見，於一九九0年九月十日提出再修正草案，惟因會員國對草案中保護少數股東之機制等議題仍有意見，歐洲執委會又於一九九六年二月七日對再修正草案提出修正。

此類關於歐洲共同體公司法所頒佈之指令，在歐盟法制之位階上，為歐洲執行委員會為協調歐盟各會員國內國法所

草擬並交付歐盟部長理事會通過之指令，此等指令須經過會員國機關自行選擇實行的形式或方法轉換為內國法方可生效。但即使指令不被會員國在一定日期內實行，此等指令對個人權利的授與及義務的課徵在內國法院仍具有強制性。因此，雖第十三號指令草案尚未經歐盟部長理事會所接受，且縱使經理事會接受後，尚需各會員國以自行選擇實行的形式或方法轉換為內國法後方可生效，不過，該草案所揭櫫之各項原則，仍深具參考價值。

二、公開收購（takeover bid）之定義

公司間相互合併（merger）及收購（acquisition），為除增資及設立新公司外，用來擴展公司經營規模、提高公司競爭力的主要方法，公司收購又區分為資產收購（asset acquisition）及股權收購（stock acquisition）前者指購買公司資產以取得該公司經營權，後者則指購買公司股權而取得經營權，而股權收購之方式，一為不經由股票交易市場，而直接向特定股東收買股權，以取得公司經營權，一為透過股票交易市場公開收購上市公司股票以取得公司經營權，此種公開方式的股權收購，在美國稱之為 tender offer，在英國稱之為 takeover bid（以下稱「公開收購」），第十三號修正草案，即是為規範此種公開收購股權，以取得公司經營權之行為所做之規定。

公開收購可透過股市公開收購上市公司股票，所以收購人不一定取得被收購公司之同意，經被收購公司經營者同意者，稱之為友好性公開收購，若未待其同意即進行公開收購者，則為敵意性公開收購，因公開收購皆意在取得被收購公

司之經營權，故敵意性收購經常發生。

三、收購（takeover）與合併（merger）

合併（merger）為二以上之公司於法律上合而為一，成為單一之法人，而收購（takeover）後，收購公司與被收購公司仍各自存在；合併（merger）須參與合併之各公司之股東會同意，手續繁雜，且合併公司須承擔合併前各公司之權利義務。至於收購（takeover），特別是收購對象為上市公司時，則可直接透過股票交易市場，由收購者以敵意收購方式取得被收購公司之經營權，手續十分簡便。惟收購（takeover）亦易成為炒作股票之手段，並可能發生利害關係人或大股東間之私相授受，而損害一般大眾之利益。

一九八0年代末期，歐洲跨國性之合併與公開收購活動大幅成長，歐洲執行委員會有鑑於此，遂研議提出規範公開收購之第十三號指令草案，及規範公司合併之第十號指令草案，惟第十號指令草案因各會員國意見分歧，歐洲執行委員迄今未能提出草案。近年來，各會員國之公開收購活動又見活躍，歐洲執行委員會遂再度修正指令草案，將指令草案內容更趨於原則性之規範，至於具體實踐之規定，則授權各會員國依其內國實務訂定之，以修正前次草案規範過於細節之缺失。

四、第十三號指令草案之規範重點：

(一) 少數股東之保障

進行公開收購之自然人或公司，倘其公開收購之結果，持有被收購公司有表決權股份達一定百分比，並取得被收購

公司經營權時，會員國必須以內國法令或其他機制，規範進行公開收購者必須依據本指令第十三條規定，執行強制公開收購要約，或提供其他適當之與強制公開收購要約相當之方式，以保障少數股東之權益。認定取得公司經營權之一定百分比有表決權股份，應依各會員國於其內國負責監督公開收購機關之所在地法令訂定之。

(二) 建立公開收購之監督機關

會員國應設置監督公開收購各階段行為之主管機關，此主管機關不限於公立機構或私人團體。

(三) 一般性原則

1、被收購公司之同等地位股東，於收購時應有同等待遇。

2、公開收購之要約對象，應有足夠之時間與資訊，使其得以基於適當之資訊，做出關於本件公開收購要約之最適決定。

3、被收購公司之董事會，應基於被收購公司全體之利益而行為。

4、被收購公司、被收購公司及與本公開收購相關公司之股份，均不得發生詐欺市場之結果。

5、逾公開收購期間者，被收購公司之行為即不受公開收購之拘束。

6、會員國並應確保符合本指令最低標準要件之規則，能確實執行。

(四) 資訊公開揭露

1、會員國應確保實施相關法令，以公告擬進行公開收購者之決定，並使監督機關及被收購公司之董事會，能先於前述決定之公告知悉之。

2、會員國應確保實施相關法令，使進行收購者於適當時機提供相關資訊文件，確保公開收購要約之對象，能基於適當之資訊，對此收購作成適當決定。

3、會員國應確保實施相關法令，公告公開收購之要約，以避免收購或被收購公司之股份發生詐欺市場之結果。

4、會員國應確保實施相關法令，使進行公開收購要約者應將全部資訊、文件予以揭露，並將此等文件隨時備妥，以迅速提供予被要約者參考。

(五) 被收購公司董事會之責任

會員國應確保實施相關法令，使被收購公司之董事會在接收公開收購通知後，至收購結果公告前，不得為任何阻礙收購進行，或以發新股阻礙取得公司經營權等之行為。

會員國應確保實施相關法令，使被收購公司之董事會在接收公開收購通知後，應提出董事會對此收購行為之意見，並附

說明及理由。

(六) 強制公開收購要約

會員國倘採用強制公開收購要約作為保護少數股東權益之方式時，此要約應向全體被收購公司之股東為之。或提供其他適當之與強制公開收購要約相當之方式，以保障少數股東之權益。

所稱強制購要約者，係指任何人取得一公司有表決權股權數合計已超過該公司總表決權數三分之一以上時，該人必對其他所有有價證券之持有人，為公開收購其證券之要約。而強制收購要約之目的，係因一旦持有此高比例之表決權數，已可控制公司之經營，為避免其操縱該公司之股票，或與他人私下交易而影響其他小股東之權益。

另據報載，歐洲執行委員會業於二００一年六月六日通過第十三號指令草案，並可望於七月間獲得歐洲議會之最後認可後施行，歐盟各會員國應於二００五年前，以第十三號指令為據，修正或制訂各國內國法，以符合第十三號指令規範之要求。本次通過之第十三號指令，係以限制或排除各會員國對跨國收購所設之障礙、資訊公開揭露、少數股東保障：強制進行收購之公司應對被收購公司之少數股東所持有之全部股份提出收購

要約等為規範之重點。

第二節 德國企業併購規範

德國的企業併購市場，其規模在歐盟內屬第二大。尤其在東西德統一及東歐國家相繼改採自由經濟以來，德國成為企業前進東歐之跳板，更吸引企業至德國進行併購。在外人投資方面，德國亦屬歐盟會員國中最自由之一。

德國大企業通常多透過集團間之交叉持股，防範敵意併購。一般印象以為，敵意併購在德國法制下頗難進行，且德國大部分公司之財務及控制權多由銀行掌控，甚少受市場影響。惟晚近實證研究顯示，事實上德國存有透過市場逐漸累積鉅額持股以進行敵意併購之情形。此類累積持股通常係由數個大型投資人聯合進行，且銀行亦常扮演協助累積持股之角色。

由於德國次級市場之流動性有限，敵意併購通常必須透過公開市場收購，並配合向現有鉅額持股人購買股權或與其聯合行動以取得控制權之方式達成。由於銀行通常亦為大公司之鉅額持股人，有時亦會與併購者聯合行動或協助併購者累積鉅額持股。

德國有關公開收購之規定可扼要敘述如下：

一、目標公司之經營者（management）若認為現有收購要約係對公司最有利者，原則上得同意不徵求其他收購要約。但經營者不得拘束股東。

二、目標公司之股東於收購要約公告前，得承諾同意接受該要約，且該承諾不得撤銷。

三、目標公司不得提供如貸款或保證等融資協助（financial assistance）以支援收購。

四、目標公司之董事會原則上無義務允許收購要約人對公司進行審查（due diligence）。

五、持有上市公司 5%、10%、25%、50% 或 75% 表決權之股份者，應予揭露。

六、任何人單獨或與他人共同購買目標公司之控制權者，應對全部股東為收購要約。

七、上市公司對於任何有可能實質影響其股票價格之情形，皆應立即對外公告。

八、同種類股份之全部股東應予平等對待。要約不得附帶收購人所能控制之事項作為條件。

九、有關收購要約之文件，應以最高標準之注意義務及精確性備置之，法律無強制收購少數股東股份之規定，要約期間為 28 天以上至 60 天以下。

德國法採董事會及監事會雙元制度，以致收購人於控制經營權後無法立即更換經營者，乃敵意收購之最大障礙。至於德國正進行與併購有關之稅法改革中。目前德國稅法已允許持有股份超

過一年以上之個人股東享有因股份交換產生之資本利得緩課之優惠。

第五章 結論與建議

隨著市場全球化的發展，世界各國之企業併購行為正快速成長中，尤其是跨國併購行為更是盛行，而我國近年來許多企業也已邁入成熟期，再加上我國加入WTO後，在可預見的將來伴隨著經濟成長及企業為提昇國際的競爭力，採行併購方式進行橫向或縱向整合而發展出併購之風潮，勢必將為我國經濟發展必然之趨勢。

他山之石，可以攻錯，故借鏡歐美國家對於企業併購監理規範，可以提昇我國企業競爭力及產業昇級，本次英法兩國企業併購制度考察，綜前章節心得所獲結論與建議如下：

一、政府提供企業組織再造的環境為世界潮流

企業集合不同機構的資源加以整合，可擴大企業經營規模，藉由事業結合以共同行銷方式，創造更多利潤，以達成經濟規模及提昇競爭力，即併購下壹加壹可能大於貳，故歐美各國政府皆訂有完整法令規章，提供企業組織再造的環境。

二、設置企業併購專法及專責機構

由英法等國的市場管理規範，我們不難發現其對企業併購行為之重視，皆有專法或完整法制規章，以供企業進行併購行為之依循，同時有專責機構職掌併購審查及許可事宜。

三、併購型態的多樣

企業組織再造常須因應時空環境快速變遷及企業本身條件背景，故企業併購樣式或方法應提供企業多樣的選擇空間，

例如合併、收購、股權交換及分割等，對於支付對價亦有現金、發行新股、已發行股份、其他有價證券、選擇權及其他代替支付工具等。

四、資訊充分公開

企業併購係屬股東權益或證券價格將有重大影響之事項，併購訊息不當公開方式極易衍生內線消息或股票炒作的行為，因英法兩國對於併購行為之資訊公開事宜，皆訂有嚴格資訊公開程序，以維持併購及證券市場在一個公平、公開及透明化環境進行。

五、強化自律及專家功能

企業併購管理不能單靠政府的監理力量，發揮市場自律及借助專家的專業能力，才能創造出一有效率的併購交易市場。

六、責成企業管理當局之忠誠義務

由於併購決策多數出於董事會所作成決議，故為維護小股東權益，應要求董事會作成併購決議時，均應以全體股東之最大利益為考量，並應盡善良管理人注意之忠誠義務。

參考資料

英文部分：

一、 CONSEIL DES MARCHES FINANCIERS "GENERAL REGULATIONS OF CMF". 17 JULY 2001, FRANCE

二、 RELATING TO PUBLIC OFFERS AND ACQUISITION OF CONTROLLING INTERESTS. 17 JULY 2001, FRANCE

三、 THE CITY CODE ON TAKEOVER AND MERGERS. 12 JULY 2000, UK

四、 THE RULES GOVERNING SUBSTANTIAL ACQUISITIONS OF SHARES. 12 JULY 2000, UK

中文部分：

一、 王文宇著「世界主要國家併購相關法律規定之比較」。

二、 王志誠著「公司分割之立法取向與課題」。

三、 財團法人台灣綜合研究院與財團法人中華開發工業銀行文教基金會主辦「強化台灣金融業競爭優勢」研討會。

四、 理律法律事務所著「公司法制有關併購、換股機制調整與修正」。

Title V

PUBLIC TENDER OFFERS

Chapter I

GENERAL RULES AND COMMON PROVISIONS

Article 5.1.1

Chapters 1 to 7 of this Title define the rules governing public tender offers made by a person acting alone or in concert within the meaning of Article 356-1-3 of Act 66-537 of 24 July 1966, for equity or debt securities traded on a regulated market. The provisions of Articles 5.6.1 to 5.6.4 also apply to companies whose equity securities are no longer traded on a regulated market.

The CMF may apply these rules, except those in Chapters 4, 5 and 7, to public tender offers for the securities of foreign companies traded on a regulated market in France.

These rules establish the general procedure for public tender offers, with a view to ensuring an orderly conduct of events in the best interests of investors and the market. The aim is to ensure that all parties to a public tender offer respect the principles of shareholder equality, market transparency and integrity, fair trading and fair competition.

Article 5.1.2

Aside from the exceptions stipulated in Article 5.3.2, a public tender offer must be for all the equity securities and any securities giving access to the equity or voting rights in the target company.

Article 5.1.3

A public tender offer may consist of:
- a single bid proposing the purchase of the target securities, their exchange for existing or new securities, or a payment in securities and cash;
- an alternative bid;
- a main bid with a subordinate and non-severable option.

Where the tender offer consists of an alternative bid or a single bid proposing payment in cash and securities, the CMF appreciates the designation given by the offeror: purchase offer (offre publique d'achat, OPA) or exchange offer (offre publique d'échange, OPE).

The offeror may give securities holders the option of selling their securities at a later date, provided that the option is exercisable within a reasonable time, that it is subordinate to the main bid, and that its exercise is unconditionally guaranteed by the institution sponsoring the offer as referred to in Article 5.1.4. Any arrangement that consists in offering the payment at a later date of the difference between a future market price and the future bid price must contain guarantees and advantages equivalent to those of a deferred sale.

Article 5.1.3.1
Inserted by Order of 18 December 2000 (Official Journal, 17 July 2001)

The offeror may stipulate in its bid a condition relating to the acquisition of a certain number of securities, expressed as a percentage of capital or of voting rights, below which the offer will not be declared successful.

Article 5.1.3.2
Inserted by Order of 18 December 2000 (Official Journal, 17 July 2001)

An offeror making tender offer proposals on two or more different companies can stipulate that it will declare one of them successful, provided the relevant threshold is reached, only if the threshold is also reached in the other offer or offers. During the open period of the offers, the offeror can withdraw this condition, notably in the case of a counterbid or a higher offer on one of the target companies.

Article 5.1.4
Order of 18 December 2000 (Official Journal, 17 July 2001)

The tender offer proposal is filed by one or more investment service providers, acting on behalf of the offeror(s) and authorized to act as underwriters.

The tender offer proposal is filed by means of a letter addressed to the CMF and guaranteeing the tenor and irrevocable nature of the commitments made by the offeror. Such letter must be signed by at least one of the sponsoring institutions.

The letter stipulates:

- the aims and intentions of the offeror;

- the number and type of securities of the target company that the offeror currently holds alone or in concert or may hold on its own initiative, as well as the date and terms on which such holdings were or may be acquired;

- the price or exchange ratio at which the offeror proposes to acquire the target securities, the basis on which such price or ratio was determined, and the proposed conditions of payment or exchange;

- the conditions, if any, stipulated pursuant to Articles 5.1.3.1 and 5.1.3.2.

Copies of the draft offer document submitted to the Commission des Opérations de Bourse (COB) as well as any prior declarations made to bodies empowered to authorize the transaction must be appended to the letter.

Article 5.1.5

Where the proposal provides for the delivery of unissued securities, the irrevocability of the offeror's commitments entails an obligation by its management to propose a resolution to the general meeting of shareholders authorizing the issuance of securities under the conditions and clauses of the proposal, as consideration to persons tendering their securities to the offer. This obligation is deemed fulfilled if the management body has an express delegation of authority for this purpose.

Depending on the applicable statutory, regulatory or by-law provisions governing the offeror, the CMF may authorize the offeror to make the opening of the offer conditional upon its being authorized by a general meeting of shareholders, provided that such meeting has been convened before the proposal is filed.

Article 5.1.6
Order of 18 December 2000 (Official Journal, 17 July 2001)

Once the proposal has been filed, the Chairman of the CMF can request the market undertaking responsible for the regulated market on which the target company's securities are listed to halt trading in those securities.

This request may also apply to other securities concerned by the proposed tender offer.

Where appropriate, the request is addressed to more than one market undertaking.

Article 5.1.7

The CMF publishes the main terms of the proposed tender offer. This signals the beginning of the offer period, which terminates when the results of the offer are published.

Article 5.1.8

The CMF has a period of five trading days following the publication of the proposal's filing to determine whether the offer proposal is acceptable.

The CMF may require the sponsoring institution to supply any further explanations and guarantees and can demand any additional information needed for its appraisal. The aforementioned five-day period shall commence once these submissions have been received.

Article 5.1.9
Order of 18 December 2000 (Official Journal, 17 July 2001)

To determine whether the proposed tender offer is acceptable, the CMF examines:

- the aims and intentions of the offeror;
- the proposed price or exchange ratio, on the basis of generally accepted objective valuation criteria and the characteristics of the target company;
- the nature, characteristics, or the market for any securities proposed in exchange;
- the conditions, if any, stipulated by the offeror pursuant to Articles 5.1.3.1 and 5.1.3.2.

The CMF may ask the offeror to modify the proposal should it conflict with the principles referred to in Article 5.1.1.

Article 5.1.10

The CMF publishes its decision concerning the acceptability of the offer and, where appropriate, sets the date for resumption of trading in the securities concerned if trading is still halted. It informs the market undertaking accordingly.

Article 5.1.11
Order of 18 December 2000 (Official Journal, 17 July 2001)

From the beginning of the offer period to the close of the offer, all orders for the target securities are executed on the regulated market(s) on which such securities are listed.

The rules of the regulated markets concerned specify how the above paragraph is applied.

Article 5.1.12
Order of 18 December 2000 (Official Journal, 17 July 2001)

The expression "open period" shall mean the interval between the offer's opening and closing dates.

The offer's opening date is determined by reference to the publication of the offer document approved by the COB. The opening date is the day following such publication.

Orders by persons wishing to tender their securities to the offer must be received by an authorized provider during the open period.

Article 5.1.13

At any time during the open period, the CMF may extend the closing date of the offer.

Article 5.1.14

The CMF publishes the results of the tender offer, which it receives from the market undertaking concerned or from the sponsoring institution, as the case may be.

Article 5.1.15

The CMF receives and publishes declarations, made in accordance with COB rules, of purchases and sales of securities concerned by a tender offer.

Chapter II

PUBLIC TENDER OFFERS FOR EQUITY SECURITIES: STANDARD PROCEDURE

Section 1

General provisions

Article 5.2.1
Order of 18 December 2000 (Official Journal, 17 July 2001)

The standard procedure for public tender offers applies where the offeror, acting alone or in concert, holds less than one-half of the capital or voting rights in the target company.

The orders of persons wishing to tender their securities to the offer can be cancelled at any time up to and including the offer's closing date.

Article 5.2.2

A public tender offer opens following the publication of the offer document, prepared by the offeror and approved by the COB, and, where required, following receipt by the CMF of any prior authorizations provided for by legislation. The CMF publishes the opening date of the offer.

The timetable for the offer is determined on the basis of the date of publication of either the offer document prepared jointly by the offeror and the target company or the document in response drawn up by the target company. The period between this publication date and the closing date is 25 trading days; the open period cannot exceed 35 trading days.

In agreement with the CMF, the market undertaking concerned announces the conditions and timetable for account-keeping institutions to deposit securities tendered to the offer and for the delivery of securities and payment of funds. It also announces the date at which the results of the offer will be available.

The CMF publishes the closing date for the offer and the publication date for the results.

Article 5.2.3
Order of 18 December 2000 (Official Journal, 17 July 2001)

The results of the offer shall in principle be published no later than nine trading days after the closing date.

If the CMF determines that the offer has succeeded, the market undertaking announces the conditions for settlement and delivery of the securities acquired by the offeror. If the CMF determines that the offer has not succeeded, the market undertaking announces the date on which the target securities will be returned to the account-keeping institutions.

If the offer was subject to a withdrawal threshold, the CMF publishes a provisional result as soon as it is notified by the market undertaking of the total number of securities tendered for centralisation by authorized intermediaries.

Article 5.2.3.1
Inserted by Order of 18 December 2000 (Official Journal, 17 July 2001)

If the offer has succeeded and gives the offeror two-thirds or more of the capital and voting rights in the target company, it can be re-opened, upon the offeror's decision made public within ten trading days of the publication of the final results.

The threshold required for such re-opening is the majority of the capital and voting rights if several offers were in competition.

The CMF publishes the timetable for the re-opened offer which lasts at least ten trading days.

Section 2

Competing bids and improved bids

Article 5.2.4
Order of 18 December 2000 (Official Journal, 17 July 2001)

At any time from the opening of the offer, and no later than five trading days before it closes, a competing bid proposal on the securities of the target company or on one of the target companies may be filed with the CMF.

Article 5.2.5
Order of 18 December 2000 (Official Journal, 17 July 2001)

At any time during the open period and no later than five trading days before the closing date, an offeror may improve upon the terms of its original offer or outbid the most recent open competing bid.

Article 5.2.6
Order of 18 December 2000 (Official Journal, 17 July 2001)

To be declared acceptable, a competing bid or an improved cash bid must be at least 2% higher than the price stated in the initial tender offer or the previous competing cash bid.

In all other cases, the CMF declares acceptable any competing bid or improved bid which, assessed in the light of Article 5.1.9, significantly improves upon the terms offered to holders of the target securities.

However, a competing bid or improved bid may be declared acceptable if, without modifying the terms of the previous offer, the offeror removes the acceptance threshold below which the offer would not be declared successful.

Article 5.2.7

A competing bid is opened in accordance with the provisions of Article 5.2.2. When the CMF determines the timetable for a competing bid, it ensures that the closing dates of all competing offers coincide with the furthermost date, without prejudice to the provisions of Article 5.1.13.

The opening of a competing bid renders void all tenders of securities to the earlier offer.

Article 5.2.8

When the CMF declares an improved bid to be acceptable, it determines whether or not to extend the closing date of the offer(s) and/or to void tenders of securities to the earlier offer(s).

Article 5.2.9
Order of 18 December 2000 (Official Journal, 17 July 2001)

The offeror may withdraw its offer within five trading days of the publication of the timetable for a competing bid or improved competing bid. It informs the CMF of its decision, which is made public.

The offeror may also withdraw its offer if, during the offer period, the target company adopts measures with unconditional effect that modify its substance or if the offer becomes irrelevant. The offeror cannot exercise this right without the prior authorization of the CMF, which rules on the basis of the principles established by Article 5.1.1.

Article 5.2.10

Where more than ten weeks have elapsed following the publication of the opening of a public tender offer, the CMF, with a view to expediting the comparison of competing offers and with due observance of the order of their filing, may set a deadline for filing each successive improved bid.

The CMF announces its decision, specifying how it is to be implemented. The deadline cannot be less than three trading days, starting from the publication of the CMF's decision on each improved bid.

Article 5.2.10.1
inserted by Order of 18 December 2000 (Official Journal, 17 July 2001)

When more than ten weeks have elapsed since the opening of a tender offer, the CMF can, with a view to accelerating the outcome of the outstanding offers, decide to use a last-bid mechanism.

The CMF sets the date on which each of the offerors must inform it of the continuance of its offer under the same terms or the filing of a final improved bid

Where applicable, the CMF rules on the acceptability or non-acceptability of the improved bid(s) , and sets the final offer closing date.

By exception to the provisions of Article 5.2.5, no improved bid can then be filed unless a counterbid has been filed, declared acceptable and opened.

Section 3

Trading on the market

Article 5.2.11
Order of 18 December 2000 (Official Journal, 17 July 2001)

When trading resumes in the target securities, and until the results of the offer are published, the offeror who has not stipulated a withdrawal clause, as well as persons acting in concert with such offeror, are permitted to purchase the target company's securities on the market.

Where such trading takes place on the market at a price higher than the offer price at any time prior to the cut-off date stated in article 5.2.5 for the filing of an improved bid, the offer price is automatically raised to the higher of 102% of the current offer price or the price actually paid on the market, regardless of the quantity of securities purchased and the price at which they were acquired; the offeror is not allowed to modify any other terms of its offer. The same rule applies to the market in subscription rights to any new issue of equity securities by the target company.

After this date, and until the offer results are published, the offeror and any persons acting in concert with it cannot buy the target company's securities at a price higher than the offer price.

Article 5.2.12
Order of 18 December 2000 (Official Journal, 17 July 2001)

Where an offer involves, either wholly or partly, the delivery of securities, the offeror and any persons acting in concert with it as well as the target company and any persons acting in concert with it are not permitted during the offer period to trade on the market in the target company's equity securities or in securities giving access to the equity of the target company.

Moreover, between the filing of the proposal and the closing of the offer, the offeror, the target company and any persons acting in concert with either of them cannot trade on the market in the equity securities issued by the company whose securities are offered in exchange or in securities giving access to the equity of this company.

Article 5.2.13

Between the closing of the offer and either the date of the CMF's announcement that the offer is successful, pursuant to Article 5.2.3, or the date at which the target securities are returned to the account-keeping institutions, the offeror and any persons acting in concert with it cannot sell the securities of the target company on the market.

Article 5.2.14
Order of 18 December 2000 (Official Journal, 17 July 2001)

The rules provided for in Articles 5.2.11 to 5.2.13 are applicable to own-account trades made by institutions advising the offeror or the target company or sponsoring the offer, as well as by any company in the same corporate group as these institutions.

However, such an institution is permitted to:

- trade in the securities concerned by the offer as part of its arbitrage, market-making or position-hedging activities, to the extent that such trades are made in the regular course of its business and that the staff, resources, objectives and responsibilities pertaining to them are separate from those involved in the tender offer;
- trade on the market if the offeror has given the institution a mandate to hedge a risk it has taken in connection with the offer.

Chapter III

PURCHASE OFFERS AND EXCHANGE OFFERS FOR EQUITY SECURITIES: SIMPLIFIED PROCEDURE

Article 5.3.1

The CMF may authorize a simplified purchase or exchange procedure for the acquisition of a company's equity securities or securities giving access to the equity or voting rights in a company.

Article 5.3.2
Order of 18 December 2000 (Official Journal, 17 July 2001)

The simplified offer procedure may be authorized in the following cases:

a) an offer by a person holding directly or indirectly, alone or in concert within the meaning of Article 356-1-3 of Act 66-537 of 24 July 1966, one-half or more of the target company's capital or voting rights;

b) an offer for no more than 10% of the voting equity securities or voting rights of the target company, taking into account the voting equity securities and voting rights that the offeror already holds, either directly or indirectly;

c) an offer by a person, acting alone or in concert within the meaning of Article 356-1-3 of Act 66-537 of 24 July 1966, for non-voting preference shares, other preference shares, investment certificates or voting rights certificates;

d) an offer by a company to buy back its own shares, pursuant to Article 217-1 A of Act 66-537 of 24 July 1966;

e) an offer by a company to buy back its own shares, pursuant to Article 217-2 of Act 66-537 of 24 July 1966;

f) an offer by the issuer for securities giving access to its equity;

g) an offer by the issuer to exchange debt securities that do not give access to its equity for equity securities or securities giving access to its equity.

Article 5.3.3

The simplified purchase offer is implemented by purchases on the market according to the terms stipulated at the opening of the offer, except in the case of the limited offers referred to in paragraphs b), d) and e) of Article 5.3.2 and in Articles 5.3.5 and 5.3.6.

The simplified exchange offer is centralized by the market undertaking concerned or by the sponsoring institution under the market undertaking's supervision.

With the approval of the CMF, the open period of a simplified offer may be limited to ten trading days in the case of a purchase offer and to fifteen trading days in other cases, with the exception of a buyback offer pursuant to Article 217-1 A of Act 66-537 of 24 July 1966.

Article 5.3.4

In the case of a purchase offer under paragraph a) of Article 5.3.2, and subject to the provisions of Article 5.1.9, the price stipulated by the offeror cannot, except with CMF approval, be less than the volume-weighted average share price over the sixty trading days preceding publication of the filing of the offer proposal.

Article 5.3.5

In the case of a tender offer for investment certificates or voting rights certificates, the offeror may limit itself to acquiring a quantity of voting rights certificates or investment certificates equivalent to the number of such investment certificates or voting rights certificates, respectively, it already holds.

Article 5.3.6

If the person making a simplified tender offer has been authorized to reserve the right to scale down the sale or exchange orders made in response to its offer, the scaling-down is done on a proportional basis, subject to any necessary adjustments.

Orders made in response to a buyback offer under paragraph d) of Article 5.3.2 are scaled down as provided in the Decree referred to in Article 217-1 A of Act 66-537 of 24 July 1966.

In such cases, the offeror cannot trade in the securities concerned.

Article 5.3.7
Order of 18 December 2000 (Official Journal, 17 July 2001)

The provisions of the third paragraph of Article 5.2.11 and Articles 5.2.12 to 5.2.14 apply to simplified tender offers. However, the issuer of equity securities proposed as consideration in a simplified public exchange offer can continue to trade in its own securities in accordance with the share repurchase programme provided for in Article L. 225-209 of the Commercial Code.

Chapter IV

THE STANDING MARKET OFFER PROCEDURE

Article 5.4.1
Any natural or legal person, acting alone or in concert within the meaning of Article 356-1-3 of Act 66-537 of 24 July 1966, who acquires or agrees to acquire a block of securities giving such person the majority of a company's capital or voting rights, taking into consideration any securities or voting rights already held, must file a proposed standing market offer.

Such proposal specifies the identity of the seller(s) and acquirer(s) of the block, the quantity of securities sold, the date, method and price of the sale, as well as any additional information needed for a proper appraisal of the transaction.

Article 5.4.2
Order of 18 December 2000 (Official Journal, 17 July 2001)

The acquirer of the block of securities undertakes to acquire, on the market for a period of at least ten trading days, all the securities offered for sale at the price at which the securities have been or will be sold, and only at that price.

The CMF may authorize a lower offer price if the sale includes a guarantee clause covering an identified risk or a deferred payment clause affecting any or all of the relevant payments. The discount rate used in the case of a deferred payment cannot exceed the market rate at the time of sale.

The provisions of the third paragraph of Article 5.2.11 apply to standing market offers.

Article 5.4.3

The CMF may invoke Article 5.5.2 and apply the ordinary rules governing public tender offers to a proposed or actual acquisition of one or more blocks of securities giving the majority of a company's capital or voting rights, in the following cases:

a) the transaction or its context reveals characteristics that could compromise the equality of the price paid for the majority block and the price offered to other shareholders, as required by the first paragraph of Article 5.4.2;

b) the block or blocks are acquired from persons that did not previously hold, in concert with each other or with the seller, the majority of the company's voting rights.

In either case, the public tender offer is implemented in accordance with the simplified procedure described in Article 5.3.3 if the offeror, after acquiring one or more blocks of securities, holds the majority of the company's capital or voting rights.

Chapter V

MANDATORY FILING OF A PROPOSED TENDER OFFER

Article 5.5.1

For the purposes of this chapter, equity securities shall mean voting securities where a company's capital includes non-voting securities.

Article 5.5.2
Order of 18 December 2000 (Official Journal, 17 July 2001)

When a natural or legal person, acting alone or in concert within the meaning of Article 356-1-3 of Act 66-537 of 24 July 1966, comes to hold more than one-third of a company's equity securities or voting rights, such person is required, on its own initiative, to inform the CMF immediately thereof and to file a proposed tender offer for all the company's equity securities and any securities giving access to its equity or voting rights. The proposed tender offer must be drawn up in terms that the CMF can declare acceptable.

The proposed tender offer cannot contain a clause providing for the tender of a minimum number of securities for the offer to be declared successful. Subject to this reserve, the provisions of chapter 1 and, as appropriate, chapters 2 or 3 of this Title are applicable to mandatory tender offers.

Article 5.5.3
Order of 18 December 2000 (Official Journal, 17 July 2001)

Where more than one-third of the capital or voting rights of a company whose equity securities are traded on a regulated market is held by another company and constitutes an essential part of the holder's assets, the obligation defined in Article 5.5.2 applies when:
- a person acquires the control of the holder, within the meaning of the legislation applicable to such holder;
- a group of persons acting in concert acquires more than 50% of the capital or voting rights of the holder, with no single person remaining in control, within the meaning of Article 355-1 of the above-mentioned Act.

Natural or legal persons acting alone or in concert are subject to the requirement defined in Article 5.5.2 when, as a result of a merger or asset contribution, they come to hold more than one-third of a company's equity securities or voting rights and when such securities represent an essential part of the assets of the entity absorbed or contributed.

Article 5.5.3.1
Inserted by Order of 18 December 2000 (Official Journal, 17 July 2001)

The CMF can authorize, under terms made public, the temporary breach of the one-third threshold mentioned in Articles 5.5.2 and 5.5.3 if the breach concerns less than 3% of the capital and voting rights and lasts no longer than six months. The person(s) concerned undertake not to exercise the corresponding voting rights during the period of resale.

Article 5.5.4

The provisions of Article 5.5.2 apply to natural or legal persons, acting alone or in concert, who hold directly or indirectly between one-third and one-half of the total number of equity securities or voting rights of a company and who, within a period of less than twelve consecutive months, increase such holdings by 2% or more of the company's total equity securities or voting rights.

Persons who, alone or in concert, hold directly or indirectly between one-third and one-half of a company's capital or voting rights must keep the CMF informed of any change in such holdings. The CMF publishes this information.

Article 5.5.5

The CMF may determine that there is no requirement to file a proposed offer if the thresholds referred to in Articles 5.5.2 and 5.5.4 are exceeded by one or more persons as a result of their having declared themselves to be acting in concert with:

a) one or more shareholders who already held, alone or in concert, the majority of a company's capital or voting rights, provided such shareholders remain predominant;

b) one or more shareholders who already held, alone or in concert, between one-third and one-half of a company's capital or voting rights, provided that such shareholders maintain a larger holding and that, upon the formation of this concert party, they do not exceed one of the thresholds referred to in Articles 5.5.2 and 5.5.4.

As long as the balance of shareholdings within a concert party is not altered significantly relative to the situation at the time of the initial declaration, there is no requirement for a tender offer.

Article 5.5.6

The CMF may waive the mandatory filing of a tender offer if the person(s) concerned demonstrate to the Council that one of the conditions listed in Article 5.5.7 is met.

The CMF rules after examining the circumstances surrounding the breach of the threshold(s), the ownership structure of the capital and voting rights and, where applicable, the conditions in which the transaction was or will be approved by a general meeting of the target company's shareholders.

Article 5.5.7

The cases in which the CMF may grant a waiver are as follows:

a) transmission by way of gift between natural persons, or distribution of assets by a legal person in proportion to its members' rights;

b) subscription to a capital increase by a company in recognized financial difficulty, subject to the approval of a general meeting of its shareholders;

c) merger or asset contribution subject to the approval of a general meeting of shareholders;

d) merger or asset contribution subject to the approval of the general meeting of shareholders combined with an agreement between shareholders of the companies concerned establishing a concert party;

e) reduction in the total number of equity securities or voting rights in the target company;

f) prior holding of the majority of the company's voting rights by the applicant or by a third party, acting alone or in concert;

g) a resale or other such disposal of equity securities or voting rights between companies or persons in the same group.

Article 5.5.8

In the case of transactions subject to the approval of the target company's shareholders, the CMF can rule on a waiver application before a general meeting is held, provided that it has precise information about the envisaged transaction.

In the other cases mentioned in Article 5.5.7, and in the situations referred to in Article 5.5.5, the CMF can make its ruling before the relevant transaction is effected, in view of the nature, circumstances and timetable of the transaction as well as the supporting documents provided by the person(s) concerned.

The CMF is informed of the conduct of events and, if the transaction is not carried out according to the initial terms, may declare the earlier decision to be null and void.

When it grants a waiver or determines that there is no requirement to file an offer, the CMF makes its decision public and discloses any commitments made by the applicant(s).

Chapter VI

PUBLIC BUYOUT OFFERS

Article 5.6.1

Where the majority shareholder(s) hold in concert within the meaning of Article 356-1-3 of Act 66-537 of 24 July 1966, 95% or more of the voting rights of a company whose shares are or were traded on a regulated market, any holder of voting equity securities who does not belong to the majority group can apply to the CMF to require the majority shareholder(s) to file a buyout offer.

Once it has made the necessary verifications, the CMF rules on such application in light of, inter alia, the state of the market for the securities concerned and the information provided by the applicant. If the CMF declares the application to be justified, it notifies the majority shareholder(s), who must then file a buyout offer, within a time limit set by, and drawn up in terms that can be declared acceptable by, the Council.

Article 5.6.2

Where the majority shareholder(s) hold in concert within the meaning of Article 356-1-3 of Act 66-537 of 24 July 1966, 95% or more of the voting rights of a company whose investment certificates and, if applicable, voting rights certificates are or were traded on a regulated market, any holder of such certificates can apply to the CMF to require the majority shareholder(s) to file a buyout offer for these securities.

Once it has made the necessary verifications, the CMF rules on such application in light of, inter alia, the state of the market for the securities concerned and the information provided by the applicant. If the CMF declares the application to be justified, it notifies the majority shareholder(s), who must then file a buyout offer, within a time limit set by, and drawn up in terms that can be declared acceptable by, the Council.

Article 5.6.3

The majority shareholder(s) holding in concert within the meaning of Article 356-1-3 of Act 66-537 of 24 July 1966, 95% or more of the voting rights of a company whose shares are or were traded on a regulated market can file with the CMF a proposed buyout offer for the equity securities and any other securities giving access to the equity or voting rights in the company that they do not hold.

Article 5.6.4

The majority shareholder(s) holding in concert within the meaning of Article 356-1-3 of Act 66-537 of 24 July 1966, 95% or more of the voting rights of a company whose investment certificates and, if applicable, voting rights certificates are or were traded on a regulated market can file a proposed buyout offer for these securities with the CMF.

Article 5.6.5

When a *société anonyme* (public limited company) whose equity securities are traded on a regulated market is converted to a *société en commandite par actions* (limited partnership with share capital), the person(s) who controlled it prior to conversion, or the active partners in the *société en commandite par actions*, are required to file a proposed buyout offer once the general meeting of shareholders has adopted the resolution regarding the conversion. Such offer cannot include a minimum acceptance condition and must be drawn up in terms that can be declared acceptable by the CMF.

The offeror informs the CMF whether it reserves the right, depending on the result of the offer, to request that all equity securities and securities giving access to the equity and voting rights of the company should be delisted from the regulated market on which they are traded.

Article 5.6.6

The natural or legal persons who control a company must inform the CMF:

- when they intend to ask an extraordinary general meeting of shareholders to approve one or more significant amendments to the company's articles, in particular the provisions concerning the company's legal form, the disposal and transfer of equity securities or the rights pertaining thereto;

- when they decide in principle to (i) proceed with the merger of that company into the company that controls it, (ii) sell or contribute all or most of the company's assets to another company, (iii) redirect the company's business, or (iv) suspend dividends for a period of several financial years.

The CMF evaluates the consequences of the envisaged changes in the light of the rights and interests of the holders of the company's equity securities or voting rights and decides whether a buyout offer should be made.

The proposed offer cannot include a minimum acceptance condition and must be drawn up in terms that can be declared acceptable by the CMF.

Article 5.6.7
Order of 18 December 2000 (Official Journal, 17 July 2001)

A public buyout offer is effected either by purchases on the market at the offer price during a period of at least ten trading days or, if the circumstances and characteristics of the transaction so warrant, by centralizing sale and exchange orders with the market undertaking or, under its supervision, with the sponsoring institution.

The provisions of the third paragraph of Article 5.2.11 and Articles 5.2.12 to 5.2.14 apply to buyout offers. However, the issuer of equity securities proposed as consideration in a public buyout offer can continue to trade in its own securities in accordance with the share repurchase programme provided for in Article L. 225-209 of the Commercial Code.

Chapter VII

COMPULSORY BUYOUTS

Article 5.7.1

At the close of a public buyout offer effected in accordance with Articles 5.6.1, 5.6.2, 5.6.3, or 5.6.4, securities not tendered by minority shareholders or holders of investment certificates or voting rights certificates can be transferred to the majority shareholder or group provided that they represent not more than 5% of the capital or voting rights, in return for an indemnity.

When a buyout offer is filed, the offeror informs the CMF whether it reserves the right to apply for a compulsory buyout in view of the result of the offer, or whether it requests that a compulsory buyout be implemented once the buyout offer closes.

In support of its proposed buyout offer, the offeror provides the CMF with a valuation of the securities of the target company, carried out using the objective methods applied in cases of asset disposals, taking into account the value of the company's assets, its earnings, its subsidiaries if any, its business prospects and the market price of its securities, according to a weighting appropriate to each case.

Such valuation is accompanied by the appraisal of an independent expert, whose approval has been submitted to the CMF beforehand and notified by the CMF to the COB, which has the right to oppose the choice of appraiser.

The CMF examines the buyout offer in accordance with the provisions of Article 5.1.9.

Article 5.7.2

If, when filing the public buyout offer, the offeror reserved the right to proceed with a compulsory buyout after the offer, it informs the CMF within ten trading days of the close of the offer whether it intends to so proceed or waive that right. The CMF publishes the offeror's decision.

If the offeror decides to proceed with a compulsory buyout, it informs the CMF of the price it proposes to pay as indemnity. This price cannot be lower than that of the buyout offer, and is higher where events liable to affect the value of the securities concerned have occurred after the offer was declared acceptable.

The CMF publishes its decision on the compulsory buyout procedure, setting forth the conditions for implementation and, in particular, the date on which the decision takes effect. The period between the decision and the date on which it takes effect cannot be shorter than the period referred to in Article 3 of Decree 96-869 of 3 October 1996. The decision results in the delisting of the relevant securities from the regulated market on which they are traded.

Custodian and account-keeping institutions transfer any securities not tendered to the buyout offer into the name of the majority shareholder or group, which pays the corresponding indemnity into a reserved account opened for this purpose in accordance with the provisions of a CMF decision.

Article 5.7.3

If, when filing the public buyout offer, the offeror applies to the CMF for a compulsory buyout to be implemented as soon as the offer closes, regardless of the result, the notice published by the market undertaking to announce the opening of the buyout offer stipulates the conditions applying to the compulsory buyout procedure, and in particular the date on which it takes effect.

As soon as the buyout offer closes, the relevant securities are delisted from the regulated market on which they are traded. On the same date, custodian and account-keeping institutions transfer any securities not tendered to the buyout offer into the name of the majority shareholder or group, which pays the corresponding indemnity into a reserved account opened for this purpose in accordance with the provisions of a CMF decision.

REGULATION NO. 89-03
RELATING TO PUBLIC OFFERS AND ACQUISITION OF CONTROLLING INTERESTS
Approved by the Decision of September 28, 1989 published in the *Journal officiel* (the French Official Gazette of September 30, 1989

CHAPTER I - General Provisions

Article 1

A public offer is a procedure that makes it possible for any individual or legal entity to announce publicly that it proposes to buy or sell some or all of the shares of a company on the Official List, on the *Second marché* or traded over the counter on a stock exchange.

The potential acquirer and the target company are required to obey the rules defined by this regulation. These rules are applicable upon publication by the *Conseil des bourses de valeurs* (Stock Exchanges Council) of the notice of filing of a public offer.

Article 2

The "potential acquirer" means the individual or legal entity that files the planned public offer, as well as all persons acting in concert with the target company within the meaning of Article 356-1-3 of Law No 66-537 dated July 24, 1966.

The "target company" company means the company whose shares are the subject of the public offer as well as all persons or legal entities acting in concert with said company.

Article 3

During the public offer period, the potential acquirer and the target company must ensure that their actions, decisions and statements do not compromise the interests of the company or the equality of treatment and access to information of the shareholders of the companies in question.

If the managements of the companies in question decide to carry out actions other than current operations, they must so inform the Commission to allow the latter to monitor the information disclosed to the public and to indicate its opinion of said information as appropriate.

The competition inherent in a public offer takes place in the form of the free play of offers and counteroffers. Once the disclosure document for the offer has been filed, the management of the target company may not increase the number of its own shares it itself holds as of that date.

Unless required by law, no clause in the bylaws of a target company that is on the Official List or is traded on the *Second marché* requiring approval of a potential acquirer may be applied to the initiator of a tender offer for the shares that may be transferred to it in the context of its offering.

Article 4

Once the offer has been filed, and for the entire duration of the operation following the conclusion of such an offer, notice of all agreements that may have an effect on the valuation of the public offer or on its outcome entered into by the shareholders of the target company or by persons acting in concert with them, subject to an evaluation of their validity by the courts, must be sent by their signatories to the Boards of Directors or to the Management Boards of the companies in question, as well as to the *Conseil des bourses de valeurs* and to the *Commission des opérations de bourse.*

These agreements must simultaneously be published by the parties that have entered into them in at least one daily financial journal having national circulation.

CHAPTER II - Disclosure to shareholders and to the public

Article 5

The potential acquirers and the target companies of a public tender offer for cash or shares must prepare a disclosure document which must be submitted for prior approval by the Commission. This document, the contents of which shall be specified in an instruction from the Commission, may be issued jointly by the potential acquirer and the target company. The Commission shall also add to its approval any comments it deems appropriate. The procedures for the dissemination of the disclosure document must be approved by the Commission.

The Commission shall compile any additional information it considers necessary and may request that said information be published.

Article 6

Following the publication by the *Conseil des bourses de valeurs* of the notice of filing of a public tender offer, the managements of the companies in question must exercise special vigilance in their statements.

Except as approved by the Commission, the companies in question must limit the information they disseminate to the information contained in the notices published by the *Société des bourses françaises* or in the disclosure documents approved by the *Commission des opérations de bourse.*

SECTION I - PUBLIC TENDER OFFERS FOR CASH OR SHARES - STANDARD PROCEDURE

Article 7

When a public tender offer for cash or shares is carried out according to the standard procedure defined by Articles 5-2-1 to 5-2-9 of the General Regulation of the *Conseil des bourses de valeurs*[1], the potential acquirer must prepare a disclosure document that indicates:

- the identity and characteristics of the potential acquirer;

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[1] Since renumbered Articles 5.2.1 to 5.2.27 of the General Regulations of the CBV.

- its intentions for the next twelve months relative to the industrial, financial and employment policies of the companies in question, as well as with regard to the listing of the shares of the target company;

- the content of its offer:

  . the price or parity proposed, specifying the information used as a basis for its determination,

  . the number of shares that the potential acquirer is committed to acquiring and, if appropriate, the number of shares tendered, below which it reserves the right to cancel the operation,

  . the number of shares in the target company it already holds directly, indirectly or in concert with other companies,

  . the terms of financing for the operation and their effect on the assets, the activity and the net results of the companies in question,

- any agreements relative to the offer to which it is a party and of which it is aware, as well as all required information on the persons with which it is acting in concert.

Article 8

The presenting entity as stipulated by Article 5-2-1 of the General Regulation of the *Conseil des bourses de valeurs* must file the draft disclosure document with the *Commission des opérations de bourse* on the date of publication by the *Conseil des bourses de valeurs* of the notice of the filing of the offer. The presenting entity must countersign this document and guarantee the accuracy of the information in contains as required by Article 7 of this Regulation. It must also simultaneously transmit the draft disclosure to the target company.

Article 9

The Commission has a period of five trading days following the date the draft disclosure is filed. If, during this period, the initiator of the offer does not satisfactorily respond to the requests for explanations or documentation formulated by the Commission, the latter can either extend this period by a further five days or refuse to give its approval, with an explanation of its reasons. The Commission shall so inform the *Conseil des bourses de valeurs* and the companies in question, and shall make its decision public in the form of an announcement.

Article 10

Once the Commission has given its approval to the disclosure document prepared by the potential acquirer, the presenting establishment acting on behalf of the potential acquirer must transmit a copy of said disclosure document to the target company.

Article 11

The target company must then file a draft disclosure document with the Commission not later than the fifth trading day following the date of delivery of the disclosure document from the potential acquirer prepared on the basis of the requirements stipulated in Article 10 of this Regulation.

In addition to a description of the company, this disclosure document must indicate:

- the ownership of the company's stock as of the date of the tender offer, as well as one

- year prior to said date, indicating the number of shares it owned and the number of shares owned by companies it controls or which it is assumed to control within the meaning of Articles 354 to 355 of the Law of July 24, 1966;

- any agreements of which the management of the target company is aware and which may have an effect on the evaluation or the outcome of the public tender offer;

- the documented opinion of the Board of Directors or of the Supervisory Board concerning the risk presented by the offer for the target company and for its shareholders, as well as the conditions of the vote taken to arrive at this opinion, whereby the minority directors may request that their identities and their positions be made known.

The Commission must approve the disclosure document not later than the third trading day following the day on which the draft was filed.

Article 12

The disclosure documents must be made available to the shareholders not later than the fourth trading day following the date the Commission issues its approval. The disclosure documents must be published in at least one daily financial journal with national circulation. When all of the company's shares are registered, the disclosure must be sent to all the shareholders.

In special cases where an additional period appears to be necessary to provide the information to shareholders or the public, the Commission can ask the *Conseil des bourses de valeurs* to postpone the closing date of the public offer.

SECTION II - IMPROVED OFFERS

Article 13

Except in cases of the automatic improvement of the terms of the offer by application of the provisions of Article 5-2-25 of the General Regulation of the *Conseil des bourses de valeurs*[2], the initiator of an offer that exceeds the terms of its previous offer must prepare a document that supplements its disclosure document.

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[2] Since renumbered Article 5.2.23 of the General Regulation of the C.B.V.

This document must indicate the terms of the new offer compared to the terms of the previous terms, as well as the modifications of the information required by Article 7 above. This document must be submitted to the Commission as soon as the notice of the filing of the improved offer has been published by the *Conseil des bourses de valeurs*, for dissemination under the same conditions as the disclosure document, two trading days after the Commission has issued its approval.

The Commission must be sent formal notice of the offer, with an explanation of the reasons behind it, by the Board of Directors or the Management Board of the target company, including the information stipulated in Article 11 above. This notice must be disseminated two trading days after the publication of the improved offer by the *Conseil des bourses de valeurs*, according to the same procedures as those used for the disclosure document relating to the initial offer.

SECTION III - PUBLIC TENDER OFFERS FOR CASH OR SHARES - SIMPLIFIED PROCEDURE

Article 14

A disclosure document, the contents of which shall be specified by an instruction from the Commission, must be prepared by the potential acquirer in the following cases:

- when the potential acquirer already holds, directly or indirectly, at least two-thirds of the stock and voting rights in a company and intends to acquire total control of said company;

- when the public tender offer for cash or shares, with or without a balancing cash adjustment, relates to securities or bonds that cannot be converted into stock;

- when a company buys its own shares under the provisions of Article 217 of the Law of July 24, 1966.

Article 15

When the offer is limited to a shareholding in the target company limited to 10% of the voting shares, or to 10% of the voting rights in the target company, taking into consideration the shares of the same type and the rights the potential acquirer already holds, directly or indirectly, the potential acquirer must publish an announcement, upon publication by the *Conseil des bourses de valeurs* of the opening notice of the offer, and subject to approval by the Commission, in at least one daily financial journal with national circulation.

This announcement must indicate in particular:

- the potential acquirer's objectives,
- the percentage of the stock it already holds, directly or indirectly,
- the basis for the determination of the price.

CHAPTER III - Public Offers of Sale

Article 16

The initiator of a public offer of sale must prepare a disclosure document, the contents of which shall be specified by an instruction from the Commission.

The draft disclosure document must be sent to the Commission on the date the offer is filed with the *Conseil des bourses de valeurs*.

The disclosure document, which is subject to prior approval by the Commission, may be issued jointly by the initiator of the offer and by the company whose shares are being offered for sale.

Article 17

The obligation set forth in the first paragraph of the preceding article does not apply when the offer relates to less than 15% of the shares of the company in question.

In that case, the initiator of the offer must publish an announcement subject to prior approval by the Commission, in at least one daily financial journal with national circulation, once the *Conseil des bourses de valeurs* has given notice of the admissibility of the offer..

This published announcement must indicate in particular:

- the objectives of the initiator of the offer,

- the information required to evaluate the price,

- the number and the characteristics of the shares being put up for sale, specifying the number of shares of the same type that the initiator intends to keep, if any.

Article 18

The disclosure document must be made public by publication in at least one daily financial journal with national circulation not later than three trading days prior to the date specified for the realization of the offer.

Article 19

After the disclosure document has been approved by the Commission, the initiator of the offer must send one copy of said document to the company whose shares are being offered for sale.

If this latter company has not prepared a joint disclosure document with the initiator of the offer, an announcement, submitted prior to its distribution for approval by the Commission and containing the comments made by the Board of Directors or the Management Board concerning the proposed operation, must be published not later than the day before the date specified for the realization of the offer in at least one daily financial journal with national circulation.

CHAPTER IV - Acquisitions of controlling interests and public withdrawal offers

Article 20

The use of the share price guarantee procedure, which becomes necessary when a controlling interest has been acquired, or of the withdrawal procedure stipulated by Articles 7-2-2 and 7-1-2 of the General Regulation of the *Conseil des bourses de valeurs*[3] requires the person or company responsible for providing the share price guarantee or the withdrawal to prepare an announcement which must be submitted for evaluation by the Commission.

This announcement, which must be published not later than the day before the opening of the procedure in at least one daily financial journal with national circulation, must specify:

- the bases for the evaluation of the price,
- the intentions of the acquirers,
- the circumstances of the operation,
- the financing procedures.

Article 21

The use of a public withdrawal offer for shares in a company on the Official List or traded on the *Second marché* resulting:

- either from one or more significant amendments to the provisions of the bylaws,

- or the contribution of some or all of the assets to another company, a change in the company's activity or the failure to pay any dividends for more than one fiscal year,

may require the preparation of a disclosure document that must be submitted for approval by he Commission.

In that case, this disclosure document must indicate:

- the bases for the evaluation of the price,

- the characteristics of the company or companies that are the subject of the proposed modifications,

- the reasons behind the operation, its terms and its consequences,

- the financing procedures.

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[3] Since renumbered Articles 5.5.2 and 5.5.3 of the General Regulation of the C.B.V.

CHAPTER V - Oversight of Public Offer Operations

Article 22

For the duration of a public offer, the companies involved, their directors, persons holding 5% or more of the stock or voting rights in the regular shareholders' meetings and other persons acting in concert with them, directly or indirectly, must declare each day, after the trading session on the *Société des bourses françaises*, the purchases and sales they have made of the shares involved in the offer.
The same declaration obligation applies to persons who have acquired, directly or indirectly, since the initiation of the offer, a number of shares in the target company representing 0.50% or more of its stock

These declarations must indicate:

- the name and address of the seller or the buyer;
- the date of the transaction or of the transfer;
- the number of shares traded and the per-share price at which they changed hands.

In the case of a public tender offer to be paid for in shares, these declarations must be made for operations involving the shares offered in exchange as well as for those involving shares in the companies in question

Article 23

Any broker who intervenes in the routing of the orders must reply to any request from the *Commission des opérations de bourse* relative to the identity of the person issuing the order and must comply with this Regulation, of which the issuer of the order must be informed as necessary.

CHAPTER VI

Article 24

The General Decision dated February 27, 1973, the General Decision dated July 25, 1978, and COB Regulations No. 86-01 and 88-01 are hereby repealed.