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QUESTIONNAIRE ON DELISTING

Columbia

PART I. VOLUNTARY DELISTING

A delisting is deemed voluntary if it is initiated by the company or a shareholder.

1. Is voluntary delisting explicitly allowed by national laws or by jurisprudence?

Yes (X) No

Relevant provision:

Article 5.2.6.1.2 of Decree 2555/10

2. If the answer to 1. is yes, who decides so?

BoD GA (X) Other

Relevant provision:

Articles 5.2.6.1.2 and 5.2.6.1.3 of Decree 2555/10

At least 15 days before the General Assembly's meeting, the issuer must make its intention to delist public.

3. What is the quorum requirement for the delisting decision of the competent organ?

The GA can validly deliberate and decide if the majority of the subscribed shares are present. The bylaws may not provide for a different quorum.

Relevant provisions:

Article 68 of Law 222/95 and Article 5.2.6.1.2 of Decree 2555/10

4. What is the majority requirement for the delisting decision of the competent organ?

The decision shall be approved with the affirmative vote of the majority of shares represented in the GA's meeting.

Relevant provisions:

Article 68 of Law 222/95 and article 5.2.6.1.2 of Decree 2555/10

5. Do (minority) shareholders have statutory veto rights as to a delisting decision?

Yes No (X)

Relevant provision:

Article 68 of Law 222/95 and Article 5.2.6.1.2 of Decree 2555/10

Neither minority nor absent shareholders have statutory veto rights as to the delisting decision. Notwithstanding, the law imposes a mandatory public acquisition offer by the shareholders who voted in favor of the delisting decision to the absent or dissenting shareholders.

6. Should delisting take place within a specific timeframe after the relevant decision? Is there a specific period of time after the decision in which the delisting should be completed?

Yes No (X)

Relevant provision:

Article 5.2.6.1.2 of Decree 2555/10 and Article 1.3.1.9 of the Colombian Stock Exchange's Rulebook

There is no timeframe to delist after the mandatory bid is carried out.

However, the shareholders who voted in favor of the delisting decision shall make a public acquisition offer to the absent or dissenting shareholders within 3 months after the GA's decision to delist. If the mandatory offer is not made within this timeframe, the delisting decision will cease to have legal effects.

Article 1.3.1.9 of the Colombian Stock Exchange's rulebook states that the delisting will be effective five working days after the decision to delist is published in the Stock Exchange official journal.

7. Should the delisting application give a full statement of reasons for the submission of such application?

Yes No (X)

8. Is it required that a competent authority approves the voluntary delisting?

Yes (X) No

Relevant provision:

The issuer must cancel the inscription of the stocks in the National Registry of Securities and Issuers. It must also obtain the approval to carry out the mandatory public acquisition offer (see answer to Q 5).

If the answer to 8. is yes, who is the competent authority?

Colombia's Finance Superintendency decides upon the request for voluntary cancellation and the approval to carry out the mandatory public acquisition offer.

If the answer to 8. is yes, does the competent authority has the competence to verify the reasons of delisting?

No. The Superintendency only verifies that the issuer has complied with the formal requirements.

Relevant provision:

Articles 5.2.6.1.2 and 6.15.2.1.6 of Decree 2555/10

If the answer to 8. is yes, does the competent authority have any discretion? Can the competent authority impose additional terms for investor protection? Can the competent authority postpone the decision?

Not specifically. However, the Finance Superintendency has broad authority to protect investors' rights.

Relevant provision:

Articles 6.15.2.1.6 and 11.2.1.4.50 of Decree 2555/10

9. In case of a voluntary delisting does the issuer have to make an offer to buy the shares of (dissenting) shareholders?

Yes No (X)

However, the shareholders who voted in favor of the delisting decision shall make a public acquisition offer to the absent or dissenting shareholders within 3 months after the GA's decision to delist. If the mandatory offer it is not made within this timeframe, the delisting decision will cease to have legal effects.

Relevant provision:

Articles 5.2.6.1.2, 5.2.6.1.4 and 6.15.2.1.6 of Decree 2555/10

If the answer to 9 is yes, at what price should the offer be made? How is the price calculated?

The price must be calculated via an independent appraiser whose capabilities and expertise will be certified in advance by the Finance Superintendency. The appraisal expenses must be paid by the issuer.

There are 3 different scenarios for choosing the appraiser:

- (1) Any of the shareholders who voted in favor of the decision to delist may submit the appraiser's name to the Superintendency within the 30 days following the GA's decision.
- (2) If various appraisers are submitted to the Superintendency, the shareholders that proposed their names will have five days to agree to one of them. If no agreement is reached, the Superintendency will choose among them.
- (3) If the Superintendency objects the submitted appraisers, the shareholders will have 10 days to submit a new appraiser.

If none of the shareholders submit an appraiser to the Superintendency within the 30 days after the GA's decision to delist, there will be an additional 10 days to do so. If none of the shareholders submit an appraiser, the decision will cease to have any effects.

Relevant provisions:

Article 5.2.6.1.4 of Decree 2555/10

10. Are there any restrictions due to the principle of maintenance of the share capital?

Yes No (X)

The mandatory bid shall be promoted by the shareholders who voted in favor of the decision to delist, not the issuer.

However, there the dissenting or absent shareholders have an additional protection which might affect the share capital: if the GA decides to delist they may exercise their right to withdraw from the issuer.

In that case, the issuer shall offer the rest of the shareholders the shares possessed by the withdrawing shareholders. If the withdrawing shareholders' shares are not acquired by the other shareholders, the issuer must reimburse their share of capital.

In both cases, the price shall be agreed to among of the parties. If no agreement is reached an appraiser named by the Chamber of Commerce will value the shares and the price shall be paid within two months of its decision.

Notwithstanding, if the issuer demonstrates that the reimbursement will affect its financial stability, the Superintendency may provide for an additional timeframe or declare the inadmissibility of the right to withdraw if the issuers' ability to pay its creditors might be affected.

Relevant provision:

Articles 12, 14, 15 and 16 of Law 222/95

11. Does a (majority) shareholder or a third person has the right to offer to buy the shares of (dissenting/all) shareholders and relieve the issuer?

Yes (X) No

As stated before, the issuer is not responsible for the mandatory public acquisition offer to the dissenting or absent shareholders. Furthermore, third parties may participate in this public acquisition offer.

Additionally, if the dissenting or absent shareholders exercise their right to withdraw, their shares are initially offered to other shareholders.

Relevant provision:

Articles 5.2.6.1.2 and 6.15.2.1.14 of Decree 2555/10 and Article 15 of Law 222/95.

12. In case of a voluntary delisting does the issuer or a third person have the obligation to publish a prospectus / informational document?

Yes (X) No

In order to make the mandatory public acquisition offer, the acquiring shareholders must comply with all the requirements established by the law for any public acquisition offer, including the need to file a prospectus including the terms of the offer and certain information about the price, and the issuers' stock.

Relevant provision:

Articles 5.2.6.1.2 and 6.15.2.1.14 of Decree 2555/10

13. Is an exit opportunity available for shareholders in case of delisting?

Yes (X) No

The dissenting or absent shareholders have the opportunity to sell their shares in the mandatory public acquisition offer and the right to retire as shareholders.

See the answers to Q 9 and 10.

If yes, please define:

See the answers to Q 9 and 10.

In a delisting scenario, both the right to retire and the right to participate in the mandatory public acquisition offer may coexist as some shareholders may exercise the latter and others the former.

Relevant provisions:

Article 5.2.6.1.2 of Decree 2555/10 and Article 12 of Law 222/95

14. Is there any specific provision on downlisting?

A downlisting occurs when the shares are no longer traded on a regulated market (as defined by Union law) but on an MTF.

Yes No (X)

15. Is there any specific provision on market migration (delisting from a market and listing in another)?

Yes (X) No

If yes, please define:

A foreign issuer may delist its shares from a local exchange without the obligation to offer the dissenting shareholders to buy their shares, if at the time of delisting they are traded in a foreign exchange or market recognized by the Financial Superintendency de Colombia.

For this market migration to be successful, the issuer must have the authorization of the Financial Superintendency of Colombia.

After obtaining the authorization to delist, the shares must remain listed in the local exchange for at least six months.

The issuer must also commit to develop a liquidity mechanism to allow local investors to sell their shares in the foreign exchange or market where the issuer is listed, for at least six months after delisting in the local exchange.

Relevant provision:

Paragraph 5 of Article 5.2.6.1.2 of Decree 2555/10

16. Is there any specific provision on voluntary delisting in case of increase of listing requirements by both the Law and Stock Exchange?

Yes No (X)

17. Are there different rules on delisting for national and foreign listed companies?

Yes (X) No

Relevant provision:

Paragraph 5 of Article 5.2.6.1.2 of Decree 2555/10

See answer to Q 15.

18. Cold delisting is usually described as a transformation of a listed company resulting to its delisting, including especially the merger by absorption of a listed company by an unlisted company. What is defined as cold delisting in your legal order? Is there any specific provision on cold delisting?

There are no provisions for cold delisting under Colombian Law.

19. Does the merger of a listed company with a non-listed company lead to delisting?

No. If a listed company merges with a non-listed company and the resulting shares are not listed, the dissenting or absent shareholders have a withdrawal right. This withdrawal right may be exercised in the same terms as in the case of voluntary delisting (see answer to question 10).

Relevant provisions:

Articles 12, 14, 15 and 16 of Law 222/95

20. Does the successful completion of a mandatory bid give the right to delisting? If yes, are there any preconditions? Is an exit opportunity available for shareholders? What are the relevant provisions? (please provide translations)

Yes (X) No

If yes, please define:

Only if the mandatory public acquisition offer is carried out within the timeframe set on Article 5.2.6.1.2 the shares can be delisted (see answer to question 9). The offerors do not have to acquire a certain number of shares for the delisting process to proceed.

Relevant provision:

Article 5.2.6.12. of Decree 2555/10

PART II. OBLIGATORY DELISTING

A delisting is deemed compulsory/obligatory, if it is initiated by a supervisory authority or a market operator without consent of the company.

21. What are the prerequisites for compulsory delisting by the competent national supervisory authority?

Delisting may be mandated by the Financial Superintendency in any of the following circumstances:

- a) If the issuer enters into liquidation;
- b) If the issuer enters into an insolvency or restructuring procedure and the issuer and its creditors agree to its liquidation;
- c) As a sanction imposed by the Finance Superintendency.

Relevant provisions:

Articles 5.2.6.2.1 of Decree 2555 of 2010 and 53 (f) of Law 964/05

22. What are the rules of the market that can justify a compulsory delisting imposed by market (art. 52 MiFID II)?

Market operators are free to determine listing and delisting requirements in their rulebooks. However, such rulebooks must be approved by the Finance Superintendency.

Currently, the Bolsa de Valores de Colombia does not establish compulsory delisting circumstances other than those provided for in Decree 2555 of 2010 (see answer to Q 21).

Relevant provisions:

Article 1.3.1.6 of BVC's rulebook

PART III. GENERAL QUESTIONS (if not already answered)

23. How are dissenting shareholders protected in voluntary delisting?

See answers to Q 9 and 10 above.

24. How are shareholders protected in obligatory delisting?

Because of the very limited scope of the circumstances under which mandatory delisting occurs, there are no provisions protecting shareholders in such cases.

Moreover, the Superintendency has never sanctioned a company with compulsory delisting. Infractions by issuers have always been penalized with monetary sanctions.

25. How is the issuer protected in (obligatory) delisting?

See above.

26. How does insolvency and restructuring of a listed company affects delisting?

Delisting occurs only when the issuer and its creditors agree to its liquidation within the insolvency or restructuring procedure.

Relevant provision:

Article 5.2.6.2.1 of Decree 2555 of 2010

27. Do relevant courts have the power to examine the delisting reasons on the merits?

Yes, but only in the case of compulsory delisting. The issuer or any incumbent party may ask the courts may review the legality of the administrative decision adopted by the Finance Superintendency.

Relevant provision:

Article 137 of Law 1437/11

28. What are the legal consequences of delisting: a) on shares, b) on shareholders, c) on the issuer?

- a) No specific consequences.
- b) There are no specific consequences. However, they will not have the rights that are exclusive to listed corporations' shareholders.
- c) The issuer is relieved from its obligations as such, including disclosure obligations, special rights of shareholders, corporate governance, supervision by the Financial Superintendency and the fees thereby associated.

29. Are there any statistical data on delisting in your Country? If yes, please provide further details

There is no public official compilation of the data.

Unofficially, the tally of delisted issuers since 1999 has been of 114 which is almost 2/3 of the corporations in that year. Most delistings are due to ownership concentration and a handful are due to liquidation.