

Overview of the study: Appraisal proceedings after Squeeze Out by Dr. Martin Weimann

This study shows the significance and the course of proceedings for the exclusion of minority shareholders by the majority shareholder in a German stock corporation by way of a squeeze out under German corporate law, i.e. pursuant to secs. 327a et seq. German Stock Corporation Act (AktG), respectively sec. 62 (5) German Companies Transformation Act (UmwG) and sec. 12 (4) German Act on the Acceleration and Simplification of the Acquisition of Shares and Risk Positions of Financial-Sector Enterprises by the Fund “Financial-Market Stabilisation Fund – FMS” (FMSStBG), as well as for the subsequent judicial review proceedings (so-called “appraisal proceedings”). In appraisal proceedings only the adequacy of the cash compensation offered by the majority shareholder to the minority shareholders is reviewed by the competent court.

The study is based on information and data collected by the German Consumer Protection Agency (Vzfk) which has been involved in many of these proceedings. The Vzfk is an association which represents the interests of investors, for example in legislative proceedings, before courts as well as vis-à-vis management and majority shareholders. For more detailed information regarding the association’s purpose and activities see its homepage – www.vzfk.de.

The study evaluates a multitude of data regarding the conduct of a squeeze out, respectively subsequent appraisal proceedings. Experts, courts and shareholders can base their practical work on the data and findings resulting therefrom. The study is considered to contribute towards furthering legal studies by providing quantitative empirical legal research. It aims at a complete collation and analysis of all squeeze out proceedings which were instigated in the period between the introduction of squeeze outs under the AktG on 1 January 2002, respectively under the FMSStBG on 17 October 2008 and the UmwG on 15 July 2011 and 31 December 2013. To this end, data was collected and systematically evaluated for a total of 477 squeeze out proceedings with up to 125 criteria, insofar as it was available up to 31 December 2013.

As of 31 December 2013, squeeze out proceedings affected companies to the total amount of approx. 488.08 billion euros. As a result of these proceedings minority shareholders had to transfer approximately 411 million shares totaling approximately 11.22 billion euros to majority shareholders. Around 86 percent of the effective squeeze out resolutions which were considered in the study were followed by appraisal proceedings. In more than half of these proceedings the cash compensation (initially) offered by the majority shareholders had already been increased by the courts as of 31 December 2013. The aggregate total increase of the cash compensation granted amounts to 609 million euros as of this date. The study therefore not only underscores the relevance of appraisal proceedings for investors, but also the necessity for effective legal protection against the exertion of economic power by majority shareholders.

The success rate of appraisal proceedings lies clearly above that in civil proceedings before a court. While about 75 percent of all appraisal proceedings terminated in the first instance showed an increase in the cash compensation granted, the average success rate in civil proceedings in the first instance before the regional courts was only about 56 percent. This economic result confirms the effectiveness of and requirement for appraisal proceedings under the legal protection system pursuant to German corporate law. On the other hand, however, the study also shows that appraisal proceedings last substantially longer than other proceedings under the jurisdiction of ordinary courts. This indicates the necessity to significantly accelerate appraisal proceedings.

The study shows that appraisal proceedings have proven to be effective in protecting the property rights of minority shareholders and their economic interests. As the study also points out, the regulatory framework, however, needs more development, not only in the range of application of appraisal proceedings (e.g. by expressly including cases of delisting), but also in the administration of the proceedings by the courts (e.g. by allowing the use of electronic means), the examination of the adequacy of the cash compensation (e.g. by abandoning the requirement for ineffective statutory audits), in expediting the proceedings (e.g. by reversal of the burden of proof to the benefit of the minority shareholders) and improvements to the reimbursement of costs and the right to claim interest.